

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13547 of 2017

Arising Out of PS. Case No.-24843 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

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Raj Kumar Son of Late Krishna Murari Singh, Properitor M/S Sai Tronics,
F/147, Road No. 3F. S.K. Puri, Boring Road, Police Station S.K. Puri, District
Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. A.K. International, through its Partner Amit Keshri Son of Sri Arun Keshri
Resident of Shanti Deep, Kamdhenu Lane, Kankarbagh Road, Police Station
Kankarbagh, District Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dinesh Maharaj, Adv.
For the Opposite Party/s : Mr. Zainul Abedin, Adv.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 20-09-2023 Heard Mr. Dinesh Maharaj, learned counsel appearing

on behalf of the petitioner and Mr. Zainul Abedin, learned

counsel appearing on behalf of the State.

2. The petitioner is aggrieved by order dated
04.12.2014, passed in Complaint Case No. 24843 of 2014, in
which the learned Judicial Magistrate, Ist Class, Patna has been
pleased to take cognizance under Section 406 of the Indian
Penal Code.

3. The complainant and the petitioner were in
business relationship and in due course of business, the
petitioner had issued Cheque of Rs.1,00,000/- (One Lakh) in



favour of the complainant, which got dishonoured on 28.10.2011, due to insufficient amount in the account of the petitioner.

4. Learned counsel appearing on behalf of the petitioner submits that the cognizance has not been taken under Section 138 of the N.I. Act. However, the learned Trial Court has proceeded to take cognizance under Section 406 of the I.P.C., although the amount was settled, as would appear from Annexure-2 to the quashing application.

5. The offence of criminal breach of trust contains two ingredients as per the provision of Section 406 of the I.P.C.:-

(I) Entrusting any person with properties or with any dominion over property; and

(II) The person entrusted dishonestly misappropriates or converts to his own use that property to the detriment of the person who entrusted it.

6. The Apex Court in ***S.W. Palanitkar Vrs. State of Bihar*** reported in ***(2002) 1 SCC 241*** held as under:-

“8. Before examining respective contentions on their relative merits, we think it is appropriate to notice the legal position. Every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation. An act of



breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damages in a civil court but a breach of trust with mens rea gives rise to a criminal prosecution as well.”

7. Considering the fact that the amount which was due to the complainant was already settled on 05.03.2013 and the petitioner has brought on record the ledger account of M/s Saitronics, Patna on whose behalf the complaint has been lodged against the petitioner. The order taking cognizance is not only vexatious, but the learned Trial Court has not taken into consideration that no criminal case can proceed in absence of any ingredient of Section 405 or Section 420 of the I.P.C. Admittedly, in the present case the complaint was lodged on account of dishonour of Cheque of Rs. 1,00,000/-, which subsequently was settled by the petitioner, as would appear from Annexure-2. The order taking cognizance has been passed in mechanical manner against the law laid down by the Apex Court.

8. None of ingredients of the offence of criminal breach of trust can be inferred from the allegations made in the complaint case bearing Complaint Case No. 24843 of 2014. Considering the conduct of the petitioner, who has settled the



amount and the complainant has acknowledge the same in Annexure-2. Alleged breach of contractual terms does not *ipso facto* constitute the offence of criminal breach of trust without there being a clear case of entrustment.

9. The matter being purely business transaction and in due course of business amount in dispute or any loss has already been meted out by the petitioner and the Company/complainant has acknowledge the same.

10. The law is well settled that the intention to commit fraud or forgery must be established from the very beginning of the transaction. In the present case, in absence of the said ingredient, no case, as alleged in the complaint is made out against the petitioner and as such continuation of criminal proceeding will be not only vexatious, but also abuse of process of law.

11. Accordingly the quashing application is disposed of.

(Purnendu Singh, J)

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