

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86284 of 2019

Arising Out of PS. Case No.-232 Year-2015 Thana- BARGAINIA District- Sitamarhi

AMIT KUMAR TEKRIWAL @ AMIT KUMAR Son of Arun Kumar
Tekriwal Proprietor of Ram Janki Textile, Sutapatti, Saketgali, P.S.- Town,
Distt - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Binod Kumar Son of Late Sachdev Prasad Resident of Village - Baba Laldas
Math Road, Bairgania, P.S.- Bairgania, Distt. - Sitamarhi.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vijay Anand
For the Opposite Party/s : Mr. Chandra Bhushan Prasad

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 26-04-2023 Heard learned counsel for the parties.

This application has been filed for challenging the order dated 17.10.2019 passed by learned ACJM-VI, Sitamarhi in G. R. Case No. 4317/2015, arising out of Bairgania P.S. Case No. 232/2015 whereby and whereunder learned court below was pleased to reject the discharge petition filed by the petitioner u/s 239 of the Cr. P.C.

As per prosecution case, it is alleged that on 11.01.2013 the petitioner himself attained the shop of the complainant and introduced him as a whole seller and proprietor of M/s Ram Janki Textile, Sutapatti, Muzaffarpur and requested the complainant to purchase the clothes from the shop. It is



further alleged that the complainant showed inability to purchase the clothes in cash then the petitioner persuaded him to purchase on credit and the payment will be made to the petitioner after selling the cloth. Then the complainant gave 13 signed blank cheques to the petitioner as security and thereafter petitioner sent the clothes of amounting Rs. 3 lacs to the complainant. It is further alleged that complainant sold the clothes and made necessary payment on various dates to the petitioner through cheques. When the complainant demanded his security cheques, 13 in number then the petitioner refused to refund those cheques to the complainant. Then this complaint petition has been lodged against the petitioner.

Learned senior counsel Mr. N. K. Agrawal has submitted that one Complaint Case No. 579 of 2014 was filed against the petitioner under sections 406, 420 and 120B of the Indian Penal Code and section 131 of the N.I. Act on 04.03.2014 and a counterblast to that case, the present case has been filed after filing of the complaint case. The learned senior counsel has relied upon a judgment of the Hon'ble Supreme Court in the case of *Mahindra & Mahindra Financial Services Ltd. and Anr. Vs. Rajiv Dubey, 2009 Volume 1, SCC 706* has submitted that this malicious prosecution should be nipped at



the bud. In reply to the aforesaid submission of the petitioner, learned counsel for the opposite party no. 2 has submitted that he has filed this F.I.R. that the facts stated in the F.I.R. cannot be denied by the petitioner and he has submitted that offence is made out reading the F.I.R.

If a malicious prosecution has been lodged against the petitioner by the opposite party no. 2 (informant) even if a prima facie case is made out in the F.I.R., the malicious prosecution cannot be continue. The Court has to see as to whether the prosecution has been launched to rack vengeance upon the petitioner or not. In my opinion, when the complaint case was filed by the petitioner for bouncing the cheque the present F.I.R. has been filed as a counterblast.

Accordingly, this application is allowed.

(Sandeep Kumar, J)

Ranjeet/-

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