

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24836 of 2021

Arising Out of PS. Case No.-1024 Year-2019 Thana- MUZZFARPUR COMPLAINT CASE
District- Muzaffarpur

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NAND KISHORE PRASAD SINGH SON OF MAUJELAL PRASAD
SINGH R/O JAMALABAD, P.S.- AHYAPUR, DIST.- MUZAFFARPUR

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. RUPA DEVI WIFE OF JAGDISH KUMAR R/O MOHALLA-
BAGLAMUKHI MANDIR MAHARAJI POKHAR, P.S.- TOWN, DIST.-
MUZAFFARPUR, AT PRESENT R/O MOHALLA- RAMBAGH,
NAKULWA CHOWK, P.S.- MITHANPURA, DIST.- MUZAFFARPUR

... .. Opposite Party/s

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Appearance :

For the Petitioner	:	Mr. Shambhu Narayan Singh, Advocate
For the State	:	Mr. Ram Anurag Singh, APP

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 22-03-2024 1. Heard learned counsel for the petitioner and
learned A.P.P. for the State.

2. This application has been filed under Section 482
of the Code of Criminal Procedure, 1973, for quashing the order
dated 23.08.2019 passed by court of learned S.D.J.M. (East),
Muzaffarpur, in connection with Complaint Case No. C-
1024/2019, whereby the learned court below has taken
cognizance for the offence punishable under Section 146 of the
Indian Penal Code and Section 138 of the N.I. Act, against three
accused persons, including this petitioner.

3. The prosecution story in brief is that, this



petitioner, along with two other accused persons, is in a syndicate of real estate. That the complainant wanted to buy a house in town. It is alleged that this petitioner, along with other co-accused persons, showed a house to the complainant and the complainant agreed to buy the said house at a price of Rs. 9,70,00/- and on the instance of this petitioner and co-accused Kanahiya Prasad, she paid the entire consideration money to co-accused Muniendra Kumar Sharma @ Munna. It is further alleged that thereafter all the accused persons, including this petitioner, did not execute the sale deed in favour of the complainant. After that, the complainant got knowledge that some other person is the owner of the house in question. It is further alleged that after repeated requests to return the consideration amount, all the accused persons entered into an agreement on 05.02.2019 and gave a cheque bearing Cheque No. 052275 of Rs. 8,70,000/- of Bank of India, Ahiyapur Branch, which was returned unpaid. Thereafter, the complainant sent a legal notice to co-accused Muniendra Kumar Sharma @ Munna on 26.03.2019, who sent a reply without any positive averments, leading to filing the present complaint case.

4. Learned counsel appearing on behalf of the petitioner submits that prior to filing of the present complaint



petition, the petitioner had already filed an informatory petition to the learned court of Sub-Divisional Magistrate East, Muzaffarpur, wherein the petitioner has stated that the complainant/Opposite Party No. 2 has threatened the petitioner to implicate him in false, frivolous and baseless case and filing of the present complaint case has confirmed the apprehension of the petitioner regarding his false implication in a criminal case by the complainant/Opposite Party No. 2. It is next submitted that as a matter of fact, the complainant/Opposite Party No. 2 entered into an agreement for return of the money with co-accused Muniendra Kumar Sharma @ Munna, and in that very agreement this petitioner is only a witness because the complainant/Opposite Party No. 2 resides in the same building where a Post Office was situated, in which petitioner was working on the post of Post Master and at the time of agreement between co-accused Muniendra Kumar Sharma @ Munna and the complainant/Opposite Party No. 2 came to the Office of the petitioner and requested him to put his signature as a witness. Being a good neighbor, petitioner put his signature on the said agreement and except this, there is no involvement of the petitioner. It is further submitted that the transaction took place between the complainant/Opposite Party No. 2 and co-accused



Muniendra Kumar Sharma @ Munna. It is next submitted that this petitioner never took any money from the complainant/Opposite Party No. 2, nor issued any cheque to the complainant/Opposite Party No. 2 and he has not even executed any agreement in favour of the complainant/Opposite Party No. 2 for return of the consideration amount, which was received by co-accused Muniendra Kumar Sharma @ Munna. Lastly, it is submitted that even if the entire allegation leveled against this petitioner is considered to be true on its face value, even then, no offence is made out against this petitioner. At best it is a case of civil nature, and the present complaint case is purely a civil dispute and the present criminal proceeding is an abuse of the process of law.

5. On the other hand, learned A.P.P. appearing for the State vehemently oppose the arguments advanced on behalf of the petitioner and supported the impugned order while submitting that at the stage of taking cognizance, the learned court below is only required to take into consideration the facts mentioned in the complaint petition and the materials collected during course of investigation. At the stage of taking cognizance the learned court below is not required to take into consideration the defence version or the materials or arguments, nor is he



required to evaluate the materials or evidence of the complainant.

6. Having heard the rival submissions advanced on behalf of the parties and perused the materials on record, it is not in dispute that this petitioner was a witness to the agreement in question. It is also not in dispute that that after repeated requests of the complainant/Opposite Party No. 2 for return of her money, all the accused persons entered into an agreement on 05.02.2019 and gave a cheque of Rs. 8,70,000/- to the complainant/Opposite Party No. 2, which was returned unpaid and thereafter the present complaint case has been lodged. It is settled law that at the stage of taking cognizance or summoning the accused, the learned court is required to apply judicial mind only with a view to take cognizance of the offence. The defence version of the accused persons cannot be looked into at this stage. The points raised by the petitioner are in the realm of defence, which can only be seen at the stage of trial, after adducing evidences on behalf of the parties. In this connection, reliance can be placed on a judgment of the Hon'ble Apex Court passed in the case of *Sonu Gupta v. Deepak Gupta and Others* reported in *(2015) 3 SCC 424*.

7. In view of the aforesaid facts and circumstances of



the case, this court does not find any illegality, irregularity or error in the impugned order.

8. Accordingly, this application is dismissed.

(Prabhat Kumar Singh, J)

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