

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27795 of 2021

Arising Out of PS. Case No.-1453 Year-2020 Thana- SARAN COMPLAINT CASE District-
Saran

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OMKAR NATH TIWARI Son of Late Ram Sagar Tiwari(wrongly mentioned as Late Ramnath tiwari in the Complaint petition) Resident of Village - Tiwari Chakia, Police Station - Bhorey, District - Gopalganj. At Present residing at Q. No. 38, Shalimar Garden Extn. 2, Sahibabad, District - Gaziabag (U.P.)

... .. Petitioner/s

Versus

1. The State of Bihar
2. Biresh Kumar Singh Son of Sitaram Singh Resident of village - Sadhpur Chattar, Police Station - Daudpur, District - Saran at Chapra.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Lokesh Kumar Singh
For the Opposite Party/s : Mr.A.G

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 29-03-2024 Heard learned counsel for the petitioner and learned
APP for the State.

2. This application has been filed for quashing the order dated 08.01.2021 passed by the learned Chief Judicial Magistrate, Saran at Chapra in Trial No. 1175 of 2021, arising out of Complaint Case No. 1453 of 2020, whereby and where under the learned Court below has been pleased to issue summon to the petitioner after finding a *prima facie* case under section 138 of the Negotiable Instrument Act.

3. Learned counsel for the petitioner submits that the order of cognizance has been passed in the mechanical manner.



It is submitted that after filing of the complaint, the O.P. No. 2 filed affidavit by way of evidence and on the basis of affidavit the trial Court found *prima facie* case true against the petitioner and issued summons. He submits that no enquiry witness has deposed against this petitioner. In fact the complainant had made an agreement with the daughter-in-law of the petitioner namely, Neha Tiwary and his brother namely, Rishu Tiwary for plying the three trucks on lease. As per the agreement three trucks were required to be maintained by the O.P. No. 2 and EMI were also required to be paid. On failure to do so the petitioner filed complaint against the O.P. No. 2 and only with a view to put pressure upon this petitioner and to save his skin from the aforesaid case this false and concocted case has been lodged by the complainant.

4. Learned APP for the State vehemently opposes the submission advanced on behalf of the petitioner and while supporting the order impugned, submits that at the stage of cognizance, the learned Court below is only required to evaluate the material and documents on record with a view to find out the existence of all the ingredients. At this stage, there is no need to evaluate the sufficiency of evidence to convict the accused and as such, this petition is devoid of merit and fit to be rejected.



5. Having heard learned counsel for the parties and perused the materials available on record, at this stage, the Court cannot embark upon an enquiry as to the probability, reliability or genuineness of the allegations made in the FIR. Hence, this petition is devoid of merit and is fit to be rejected.

(Prabhat Kumar Singh, J)

Prakash/-

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