

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22277 of 2023

Arising Out of PS. Case No.-234 Year-2018 Thana- PIRO District- Bhojpur

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1. Roshan Kumar @RAUSHAN Kumar Son Of Pashuram Singh Resident Of Village- Piro, Ward No. 10 Ps- Piro, Distt- Bhojpur
 2. Pashuram Singh @ Parshuram Singh Son Of Late Ganga Singh Resident Of Village- Piro, Ward No. 10 Ps- Piro, Distt- Bhojpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ramji Prasad Singh Son Of Late Ram Awadh Singh Resident Of Village- Mishr Baliya, Ps- Karakat, Distt- Rohtas

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms.Malti Kumari, Advocate
For the State : Mr.Aditya Narayan Singh.1, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 12-09-2024 Heard learned counsel for the petitioners; learned APP
for the State and learned counsel for the opposite party no. 2.

2. The present application has been filed for quashing the order dated 04.10.2019 passed in Piro P.S. Case No. 234 of 2018/G.R. No. 3238 of 2018 by the learned Chief Judicial Magistrate, Bhojpur by which cognizance has been taken under Sections 406, 420, 341, 323, 379, 504 and 506/34 of the Indian Penal Code and Section 138 of the N.I. Act against the petitioners and summons were issued to procure the presence of the petitioners in the case.

3. As per the prosecution case, the informant Ramji



Prasad Singh on 16.07.2018, went to seek an amount of Rs. 15,00,000/- which the informant had lent to the accused persons, then the accused persons namely Raushan Kumar (Petitioner No.01) and Parshuram Singh (Petitioner No.2) started to assault and abuse the informant. It is alleged further that the accused also snatched the gold chain of 3.5 bhar from the informant. The informant in the complaint alleged that in the past the informant had cordial relationship with both the accused persons and therefore the informant transacted with the accused persons. However, since the informant had lent a substantial amount to the accused persons, they had started to evade the informant with an intention of not returning the amount. The informant alleges that in lieu of the amount, the accused persons had issued a cheque which had bounced due to insufficiency of funds. Thereafter, the informant had served a legal notice to the accused persons which has not been responded by the accused persons. It is lastly alleged that thereafter when the informant went to the house of the accused persons to demand the amount, he was beaten and abused.

4. It has been contended by learned counsel for the petitioners that the cognizance has been taken under Sections 406, 420, 341, 323, 379, 504 and 506/34 of the Indian Penal



Code but no offence under Section 420 of the Indian Penal Code and Section 138 of N.I. Act is made out. He submits that cognizance of offence under Section 138 of the N.I. Act can only be taken by filing a complaint case. He also submits that no offence under Section 420 of the Indian Penal Code is made out.

5. Considering the law laid down by the Hon'ble Supreme Court in the case of *N. Harihara Krishnan vs. J. Thomas* reported in *(2018) 13 SCC 663*, I am of the view the Court below should not have taken cognizance under Section 138 of the N.I. Act in a case registered as an FIR.

6. So far as other offences are concerned, I am of the view that the petitioners have the option of seeking the remedy at the stage of framing of charge. The petitioners can file a discharge application in the Court below taking the other grounds including the ground that no offence under Section 420 of the Indian Penal Code is made out.

7. The impugned order of cognizance is quashed to the extent of taking cognizance against the petitioners under Section 138 of the N.I. Act.

8. If an application for discharge is filed by the accused person, the same shall be considered after hearing both the sides in accordance with law.



9. With the aforesaid observation and direction, this application is partly allowed with an observation that this Court has not given any finding on the merits of the case.

(Sandeep Kumar, J)

P. Kumar

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