

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22786 of 2016

Arising Out of PS. Case No.-30027 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Lal Babu Chaudhary, son of Chamari Lal
 2. Raj Kumar S/o Lalbabu Chaudhary,
Both are Resident of Kali Mandir Road, Hanuman Nagar, P.S.- Patrakar
Nagar, Distt.- Patna

... .. Petitioners

Versus

1. The State of Bihar
2. Kailash Kumar, S/o Jawahar Prasad, Managing Director, 'KOSUT' Builders
and Developers, Pvt. Ltd., Chandpur Bela (Pani Tanki), P.S.- Jakkanpur,
Distt- Patna

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr. Vijay Kumar Mishra, Advocate
For the Opposite Party/s : Mr. Madhuranand Jha, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 30-04-2024

Heard learned counsel for the petitioners and
learned APP appearing for the State.

2. The present application has been filed by the
petitioners for quashing the order dated 07.11.2015 passed
by learned Judicial Magistrate-1st Class, Patna in connection
with Complaint Case No.30027 of 2014, whereby the
learned Jurisdictional Magistrate has taken cognizance for
the offences punishable under Sections 406, 420, 379 and
323 of the Indian Penal Code (for short 'IPC') against the



petitioners and summoned them to face trial.

3. The case of the prosecution, in brief, as per complaint is that a partnership agreement was made between the complainant and petitioner no.2 for construction of an apartment with certain conditions of investment. As per condition of agreement, the petitioners have not invested his share but, work charge was handed over to them because they were resident of nearby to site. It is further alleged in the complaint that petitioners have taken the amount from the flat holders through A/C payee cheques and cash but, they did not deposited to the construction company. It is further alleged that on 30.11.2014 at about 7:30 P.M., the petitioners came in Head Office at Patna and after assaulting complainant taken away one ring and cash of Rs.10,500/-. It was alleged that petitioners had intention to cheat the complainant.

4. Learned counsel appearing on behalf of the petitioners submitted that petitioner no.1 is implicated in this case only being the father of petitioner no.2, who is the partner of complainant in terms of partnership deed dated



05.08.2010. It is further submitted that said partnership deed clearly speaks that the petitioner no.1 was not the business partner of complainant but, by making a false averment in complaint petition that the petitioner no.1 is also the partner with opposite party no.2, the present false implication was raised. It is further submitted by learned counsel that the entire allegation related with occurrence, which appears to be committed at Jharkhand i.e. beyond the territorial jurisdiction of this Court and just to invite territorial jurisdiction false allegation of assault and snatching cash was shown at Patna office. It is further pointed out that the cognizance order, which is impugned order of this petition, is bad in the eyes of law, as same is without any reason and, as such, on this ground alone, the same is liable to set aside.

5. While concluding argument, learned counsel for the petitioners relied upon the legal report of Hon'ble Supreme Court rendered in the matter of **Lalankumar Singh & Ors vs. State of Maharashtra [2022 LiveLaw (SC) 833]**.



6. Despite valid service of notice upon opposite party no.2, he failed to join the present proceeding.

7. Learned APP for the State while opposing the application submitted that there is no need of detailed order as reason assigned is sufficient to make out a *prima facie* case against the petitioners.

8. It would be apposite to reproduce the impugned order dated 07.11.2015 as passed in CrI. Complaint Case No.30027 of 2015, which is cognizance order. It runs as under:-

"30027(C)2014

Tr. 1871/15

07-11-15

The complainant files hazri. Heard the complainant lawyer. Perused the case record. This case has been received from the Court of CJM Patna on 13/03/15 for enquiry and trial under section-192(1) Cr.p.c. The complainant **Kailash Kumar** has been examined on **S.A.** and Two witnesses have also been examined namely **1. Subodh Ajad @ Chhunu Singh and 2. Viswajeet Kumar** who accepted on complaint petition.

Perused the statement of complainant on S.A., inquiry witnesses and sufficient document.



I find there is sufficient material available on the record for summoning as **Prima facie** case under section **406, 420, 379, 323 I.P.C.** is made out against accused person namely **Lal Babu Choudhary and Raj Kumar** in complaint petition.

Complainant is directed to file necessary requisite within fifteen days. O.C. is directed to issue summon.

Fixing on 21-11-15 for appearance.

Sd/-
J.M. 1st Class
Patna
07.11.15"

9. It would further be apposite to reproduce Para-28 of the legal report of Hon'ble Supreme Court rendered in the matter of **Lalankumar Singh case (supra)**, which runs as under:-

"28. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a *prima facie* case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this



respect could be made to the judgment of this Court in the case of ***Sunil Bharti Mittal vs. Central Bureau of Investigation [(2015) 4 SCC 609]***, which reads thus:

"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it



cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

10. In view of aforesaid factual and legal submissions and going through the impugned order, it appears that no reason was assigned by the learned Jurisdictional Magistrate while while coming to conclusion that a "prima facie" case is made out against petitioners punishable under Sections 406, 420, 379 and 323 of the IPC. Thus, by taking a guiding note of the ratio as



settled in the matter of **Lalankumar Singh & Ors vs. State of Maharashtra** (supra), the impugned order taking cognizance dated 07.11.2015 as passed by learned Judicial Magistrate-1st Class, Patna in connection with Complaint Case No.30027(C) of 2014 with all its consequential proceedings *qua* petitioners is quashed and set aside.

11. The application is allowed.

12. However, the learned Jurisdictional Magistrate is directed to pass a fresh reasoned order in accordance with law, as discussed above.

13. Let a copy of the judgment be communicated to the learned Trial Court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.05.2024
Transmission Date	03.05.2024

