

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.46696 of 2023

Arising Out of PS. Case No.-924 Year-2022 Thana- KHAGARIA COMPALINT CASE
District- Khagaria

-
1. Manohar Singh @ Manohar Kumar Singh S/O Late Yogendra Narayan Singh R/O Village- Chautham, Ps. Chautham, Dist. Khagaria
 2. Prince Kumar @ Prince Kumar Singh S/O Sri Manohar Singh @ Manohar Kumar Singh R/O Village- Chautham, Ps. Chautham, Dist. Khagaria

... .. Petitioner/s

Versus

1. The State of Bihar
2. Mr. Arjun Singh S/O Late Lakhpatri Singh R/O Village- Kharaita, PS. Chautham, Dist. Khagaria

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Akshansk Ankit, Advocate Mr. Bholu Kumar, Advocate
For the State	:	Ms. Anita Kumari, APP
For the OP No. 2	:	Mr. Binod Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

10 23-07-2024 Heard Mr. Akshansk Ankit, learned counsel for the petitioners; Ms. Anita Kumari, learned APP for the State and Mr. Binod Kumar, learned counsel for the opposite party no. 2.

2. The present application has been filed for quashing the order taking cognizance dated 16.03.2023 in Complaint Case No. 924(c) of 2022 passed by the learned J.M. Ist Class, Khagaria whereby cognizance of the offence under Section 417 of the Indian Penal Code was taken against the petitioners and summons have been issued to the accused persons to face the trial.

3. As per the complaint petition, the petitioner no. 1 took a loan of Rs. 6 lakhs from the complainant for settlement



of Nawada Ghat with an assurance that he will return the said amount within three to four months. Thereafter, the complainant handed over an amount of Rs. 6 lakhs in cash to the petitioner no. 2, who is the son of the petitioner no. 1 in presence of Paro Singh, Jitendra Kumar, Suraj Kumar and Fulchand Singh but the petitioners neither returned the money to the complainant nor allowed him to run the Nawada Ghat. When the complainant demanded his money, the petitioners abused and threatened him. On the basis of complaint petition filed on behalf of the complainant namely, Arjun Singh in the Court of Chief Judicial Magistrate, Khagaria on 04.11.2022, the instant complaint case bearing Complaint Case No. 924(c)/2022 has been instituted for alleged offences under Sections 406 and 420/34 of the Indian Penal Code.

4. Learned counsel for the petitioners submits that after instituting the aforesaid complaint case, an enquiry under Section 202 of the Cr. P.C. has been started and in support of complaint case, four witnesses were examined by the complainant. All are relative of the complainant and no independent witness was examined by the complainant in the instant case. It has further been submitted that the learned Court below has taken cognizance under Section 417 of the Indian



Penal Code against the petitioners in mechanical manner by impugned order.

5. Learned counsel for the petitioners submits that the petitioners are innocent and have not committed any offence rather they have falsely been implicated in this case due to bargain the money.

6. It has also been submitted by learned counsel for the petitioners that no cheat of paper has been submitted by the complainant before the learned Court below regarding taking aforesaid so-called loan to the complainant by the petitioners. So, the whole prosecution case is false and fabricated.

7. From perusal of the complaint petition itself, it is evident that the aforesaid dispute relates to oral contract between the complainant and the petitioners which is a purely civil dispute and settling civil dispute, the complainant has filed the instant criminal case which is abuse of the process of the Court. Learned counsel submits that the opposite party no. 2, allegedly, advanced the money without any cheat of paper and without any proof, so, he can not get protection of law.

8. It is further submitted by learned counsel for the petitioners that the opposite party no. 2 can bring a suit for recovery of the aforesaid amount, therefore, he cannot be



allowed to bring a criminal litigation for redressal of his grievance. It has been submitted that the learned Judicial Magistrate- Ist Class, Khagaria has taken cognizance of offence under Section 417 of the Indian Penal Code against the petitioners only on the basis of statements of complainant and interested witnesses. It is a settled law that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course.

9. Learned counsel also submits that the present case is a frivolous and vindictive complaint on part of the complainant which do not establish any ingredients of offences alleged against the petitioners. The learned Magistrate before taking cognizance of the offence did not examine any independent witnesses or sought any cheat of paper in support of the allegations made in the complaint petition. The Court may consider that in absence of any independent witness or any cheat of paper regarding proof of alleged loan, statements of the complainant and interested complainant witnesses are untrustworthy being vague, malicious and spiteful in nature.

10. Learned counsel for the petitioners has relied upon the judgments of the Hon'ble Supreme Court rendered in the case of *Pepsi Foods Ltd. and Anr. v. Special Judicial*



Magistrate and Ors. reported in (1998) 5 SCC 749; *Hridaya Ranjan Prasad Verma v. State of Bihar* reported in (2000) 4 SCC 168; *Ranu Krishna Shedbalkar v. State of Karnataka* reported in 2024 SCC Online SC 200 and *Kunti v. State of Uttar Pradesh* reported in (2023) 6 SCC 109 and has submitted that the present case is fit to be quashed.

11. Learned counsel for the opposite party no. 2 has opposed the case and has submitted that from the averments made in the complaint and the evidence of the complainant and witnesses, it appears that the petitioners had entered into a partnership with the complainant and taken Rs. 6 lakhs and thereafter, they have not shared the profit with the complainant. He further submits that the intention of the petitioners was to cheat right from the very beginning. He also submits that at the stage of quashing of the order taking cognizance, the facts of the case cannot be properly examined as the petitioners had argued that no offence of cheating is made out as there was no intention to cheat from the very beginning.

12. I have considered the submissions of the parties. The main contention of the petitioners is that since it is a cash transaction and the petitioners are closely related to the complainant, therefore, the veracity of the complaint is doubtful



and because the entire amount is said to have been paid in cash, the prosecution case cannot be believed.

13. In my opinion, the cash transactions do take place in the society and particularly in Bihar and there is oral agreement with regard to partnership between the complainant and the petitioners and the defence of the petitioners cannot be tested at the stage of cognizance. It is a matter of trial when oral evidence shall be lead by both the parties in support of their cases. Similarly, whether offence of cheating is made out or not has to be examined only after the examination of the witnesses and not at the initial stage of cognizance.

14. In view of the aforesaid, I am of the view that this is not the right stage for considering the case of the petitioners that no money was paid by the complainant to the petitioners and no offence is made out against the petitioners. All these issues can be examined during trial.

15. Accordingly, this application is dismissed.

16. The interim order 25.08.2023 is vacated. The Magistrate is directed to proceed with the case.

(Sandeep Kumar, J)

P. Kumar

U		T	
---	--	---	--

