

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44969 of 2016

Arising Out of PS. Case No.-2635 Year-2015 Thana- PATNA COMPLAINT CASE District-
Patna

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B.B. Mishra @ Brij Bihari Mishra, Managing Director, The Chairiot Resort and Spa, Sipasura Bali, Balia Panda, at Puri, Orissa.

... .. Petitioner/s

Versus

1. State of Bihar
2. Mr. Sushil Kumar Jain, Son of late Madan lal Jain, Resident of Flat No. 301, Shyam Kishore Apartment, Frazer Road, P.S Kotwali, town and District Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Surendra Kishore Thakur, Adv. Mr. Alok Kumar Jha, Adv. Ms. Shweta Priya, Adv.
For the State	:	Mrs. Sucheta Yadav, APP
For the O.P. No. 2	:	Mr. B.N. Yadav, Adv. Mr. Shyam Bihari Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

8 09-12-2024 Heard Mr. Surendra Kishore Thakur, learned counsel appearing for the petitioner, Mrs. Sucheta Yadav, learned APP appearing for the State and Mr. B.N. Yadav, learned counsel appearing for the O.P. No. 2.

2. The instant criminal miscellaneous application has been filed under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') for quashing the order dated 04.02.2016 passed by the Court of learned Judicial Magistrate First Class, Patna in connection with Complaint Case No. 2635(C) of 2015, whereby and whereunder the cognizance of the offence



punishable under section 417 of the Indian Penal Code (in short 'IPC') has been taken against the petitioner.

3. The main grounds taken by the petitioner's counsel to assail the order impugned are that the allegations levelled by the O.P. No. 2 in his complaint completely attract a civil wrong on the part of the petitioner and further, the petitioner's hotel is situated in Puri, Odisha and the transaction with regard to booking of petitioner's hotel was made in Puri, Odisha and therefore, the court of learned Magistrate at Patna has no jurisdiction to entertain the complaint of the O.P. No. 2 and from the face of the allegations, it clearly appears that there was no *mens rea* on the part of the petitioner to commit the alleged offence of cheating rather the same relates to breach of a contract relating to hotel booking and if the prosecution story narrated by the O.P. No. 2 is entirely taken into account even then no wrong appears on the part of the petitioner rather the O.P. No. 2 himself was liable for the cancellation of the booking which was made by him in respect of the hotel rooms of the petitioner which is an admitted position and further, the cancellation was made by the O.P. No. 2 himself and not by the petitioner in respect of the said booking. The O.P. No. 2 has also filed a case in the District Consumer Forum for redressal of his



grievance.

4. On the contrary, learned counsel appearing for the O.P. No. 2 has submitted that though at the beginning of the alleged transaction, there was no dishonest intention (*mens rea*) on the part of the petitioner but the same developed later on when the advance amount paid by the O.P. No. 2 in respect of the alleged booking was demanded as refund amount but the same was refused by the petitioner and in this regard, the petitioner undertook to return the advance paid amount of O.P. No. 2 by first week of February, 2015 but thereafter, did not take any step to return the same and since then, the dishonest intention arose on his part, so, in view of this dishonest intention having developed on the part of petitioner, the offence punishable under section 417 of IPC, of which cognizance has been taken, is made out and the learned trial court has rightly taken cognizance of the same.

5. Heard both the sides and perused the order impugned and complaint filed by the O.P. No. 2 as well as his statement in counter affidavit. This Court finds substance in the above-mentioned grounds taken by the petitioner as it is an admitted position that the O.P. No. 2 booked the hotel-cum-resort of the petitioner and also, paid some advance amount on



different occasions but later on, the O.P. No. 2 himself cancelled that booking and in that cancellation, there was no role on the part of the petitioner though as per allegation, the advance amount paid by the O.P. No. 2 in respect of the said booking was not refunded as per the cancellation policy but in this regard, the petitioner can not be subjected to a criminal proceeding for the offence of cheating punishable under section 417 of IPC as from the face of allegation, it is clearly evident that at the beginning of the transaction in between the petitioner and the O.P. No. 2 there was no dishonest intention on the part of the petitioner and the instant matter purely relates to a civil wrong only. Accordingly, this Court finds merit in this petition, so, it stands allowed and the order impugned which is completely bad in the eye of law is hereby set aside.

(Shailendra Singh, J)

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