

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31446 of 2016

Arising Out of PS. Case No.-318 Year-2014 Thana- RUNISAIDPUR District- Sitamarhi

1. Shiva Kumari, Wife of Shri Raju Kumar Choudhary.
2. Raju Kumar Choudhary Son of Shri Mahendra Baitha. Both residents of Village- Prem Nagar, Tola-Bahori, P.S.- Runni Saidpur, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kedar Nath Jha, Son of Late Ramchandra Jha Village- Manikchawk, P.S.- Runnisaidpur, Dist- Sitamarhi

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ram Narayan Jha, Advocate
For the O.P. No.2	:	Mr. Sudhir Kumar Jha, Advocate
		Mr. Pawan Kumar, Advocate
		Mr. Utsav, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

3 29-10-2024 Heard Mr. Ram Narayan Jha, learned counsel for the petitioners, Mr. Sudhir Kumar Jha, learned counsel for O.P. No.2 and Mr. Jharkhandi Upadhyay, learned APP for the State.

2. The instant criminal miscellaneous petition has been filed under Section 482 of the Code of Criminal Procedure (in short ‘Cr.P.C.’) for quashing the order dated 01.06.2016 passed by the learned Chief Judicial Magistrate, Sitamarhi in Trial No. 324 of 2016 arising out of Runni Saidpur P.S. Case No. 318 of 2014 by which the cognizance of the offences under Sections 406 and 504 of the Indian Penal Code (in short ‘IPC’) has been taken against the petitioners.



3. Learned counsel appearing for the petitioners submits that the instant matter is based on complaint filed by the O.P. No.2 upon that basis, the police investigation was made and thereafter, only petitioner no.2 was chargesheeted and petitioner no.1 was not sent up by the police and the instant matter relates to a civil wrong. As per the allegations made in the FIR which is based on complaint, the petitioners asked the O.P. No.2, who was running a building materials shop to provide the building materials for some construction work in a government school and petitioner no. 1 was posted as Panchayat Teacher at the said school at that time and with regard to the supply of building materials, the petitioners assured the O.P. No. 2 to make payments for the supplied materials and initially gave a cheque of Rs. 2,25,000/- which was encashed by the O.P. No.2 and thereafter, a dispute arose in between them with regard to the payment of dues and there is nothing in the complaint regarding entrustment of any property to the petitioners by the O.P. No.2, so, the offence under Section 406 of IPC is completely not made out. It is further submitted that before the registration of the FIR, Runni Saidpur P.S. Case No. 275 of 2014 had been registered by the petitioner no.2 against the sons of the informant and one Chandan Jha, thereafter, with retaliatory



view, the FIR of the present matter was registered by filing complaint before the court concerned.

4. On the contrary, learned counsel appearing for O.P. No.2 submits that in the instant petition, the order taking cognizance has been challenged and in the present time, the trial of the petitioners has proceeded and after the framing of charges upon them three witnesses have been examined so far, so, the stage of the petitioners' case has changed, hence, the prayer of the petitioners has become infructuos now. It is further submitted that the petitioners violated the oral agreement with regard to the payment of the supplied building material which was completely a criminal breach of trust. It is further submitted that the petitioners have not brought the relevant documents such as the police report which has been filed by the police after completion of the investigation, charge and depositions of the witnesses who have been examined till date.

5. Heard both the sides, perused the order impugned as well as the other relevant materials. The learned trial court has taken cognizance of the offences punishable under Sections 406 and 504 of IPC but from the bare perusal of the FIR, which is based on a complaint, any kind of entrustment of any property by the O.P. No. 2 to the petitioners does not appear and the



instant matter relates to a dispute arisen in between both the parties on account of non-payment of the dues amount with regard to the building materials which were supplied by the O.P. No.2 in the school where the petitioner no.1 was posted and initially a cheque of Rs. 2, 25, 000/- was issued by the petitioner no.2 in favour of Abhay Kumar Jha, son of the O.P. No.2 and the encashment of the said cheque has not been disputed by the counsel for the O.P. No.2 and the same is sufficient to show that the petitioners had no dishonest intention in the beginning of the alleged transaction. Here it is also relevant to mention that the O.P. No. 2 filed his complaint after the registration of Runnisaipur P.S. Case No. 274 of 2015 by the petitioner no.2 against the informant and others which shows that the FIR/complaint was filed by the O.P. No.2 with a retaliatory view. If the allegations made in the complaint are accepted in entirety even then, no offence even *prima facie* is made out against the petitioners and the allegations mainly attract a civil wrong. Considering these facts, I find the order impugned taking cognizance of the offences under Sections 406 and 504 of IPC to be not proper and the same has been passed without application of judicial mind, in mechanical manner, by the learned trial court, so, it is set aside and all the criminal



proceedings which have arisen in the light of the cognizance order in connection with Trial No. 324 of 2016, stand quashed.

6. In the result, the instant criminal miscellaneous petition stands allowed.

(Shailendra Singh, J)

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