

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50582 of 2023

Arising Out of PS. Case No.-753 Year-2022 Thana- RUPASPUR District- Patna

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Ankit Kumar, Son Of Shri Dhanji Singh Resident Of C/O Shri Raj Kumar Rai, Road No. 2, Bank Colony, Gola Road, Chanakya Puri More, Danapur, Ps- Rupaspur, Dist- Patna (Bihar)

... .. Petitioner/s

Versus

1. The State of Bihar
2. Amod Sharma, Son Of Shri Radhe Shyam Sharma Resident Of Kalipri Niwas, Near Gurikul School, Gola Road, Ps- Rupaspur, Dist- Patna (BIHAR)

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Saket Gupta, Adv
For the Opposite Party/s : Mr.Syed Mojibur Rahman, APP

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 10-01-2024 1. Heard learned counsel for the petitioner, learned APP along with learned counsel for the OP No. 2.

 2. The learned counsel for the petitioner submits that the present quashing application has been filed seeking quashing of the order dated 1-2-2023 passed by the learned ACJM-1st, Danapur in connection with Rupaspur PS Case No. 753 of 2022, whereby cognizance of offence under Sections 406 and 420 of the IPC read with Section 138 of the NI Act has been taken.

 3. The learned counsel for the petitioner, at the outset, submits that the law is clear that with respect to bouncing of cheque, an FIR is not maintainable and for the said proposition, relies on the judgment in the case of *Hemant Kumar Das &*



Anr. vs. The State of Bihar reported in **2018 (4) PLJR 725**. The learned counsel next relies on an order dated 9-10-2023 passed in ***Criminal Miscellaneous No. 87202 of 2019 (Polimetala Ravi Prasad @ Ravi Prasad & Ors. versus the State of Bihar & Anr.)***, for the same proposition.

4. The learned counsel for the OP No. 2 is not in a position to rebut the submission of the learned counsel for the petitioner with respect to the fact that an FIR is not maintainable in a case relating to bouncing of cheque. However, the learned counsel for the OP No. 2 submits that *prima facie* an offence under Sections 406 and 420 of the IPC has been made out.

5. The learned counsel for the petitioner rebuts the submission of the learned counsel for the OP No. 2 and submits that in the nature of allegation as alleged in the FIR, no offence under Sections 406 and 420 of the IPC is made out. It is next submitted that what is not in dispute rather stands admitted is that an agreement was entered in between the petitioner and the OP No. 2 on 21-9-2022, whereby the OP No. 2 had agreed to sell his business in the name and style of *Cafe Insta* to the petitioner for an amount of Rs. 48,60,000/- at Gola Road, Patna. It is next submitted that in terms of the agreement dated 21-9-2022, the petitioner paid the said amount by two cheques,



bearing No. 000003 dated 20-10-2022 for an amount of Rs. 25,00,000/- and cheque No. 000004 dated 10-12-2022 for an amount of Rs. 23,60,000/-, as detailed in the FIR.

6. It is further submitted that no doubt in terms of the agreement dated 21-9-2022, the petitioner had issued those two cheques in consideration for purchasing the business of the OP No. 2, but then the petitioner on 20-10-2022 had written to the OP No. 2 not to present the aforesaid cheques for encashment as there was some dispute relating to calculation, but the petitioner, despite being aware of the letter dated 20-10-2022, presented the cheque for encashment, which bounced leading to the institution of the present FIR. The learned counsel for the petitioner thus submits that in nature of the allegation as alleged, *prima facie* no offence under Sections 406 and 420 of the IPC is made out for the reason that petitioner never had any intention of cheating the OP No. 2 from the beginning, nor any property was entrusted with the petitioner which was misappropriated warranting a case under section 406 of the IPC. It is further submitted that the petitioner is not averse to making payment of the amount as agreed in terms of the agreement dated 21-09-2022, but then for some issues of calculation, he had requested the OP No. 2 not to present the cheque for encashment, but the



OP No. 2, for reasons best known, presented the cheque for encashment leading to bouncing of the cheques.

7. The learned counsel for the OP No. 2 rebuts the submission of the learned counsel for the petitioner and submits that the case is not as simple as it has been portrayed by the petitioner. It is next submitted that petitioner right from the beginning had an intention to cheat the OP No. 2 and he even became successful in his program. It is next submitted what is not in dispute rather stands admitted is that OP No. 2 did not get a penny in lieu of the business, which he sold to the petitioner and the petitioner is in possession of the shop, namely, *Cafe Insta*, and is carrying on with the business and is litigating on the ground that he has invested some amount in the coffee shop, which requires calculation.

8. The Learned counsel for the OP No. 2 next submits that it absolutely does not stand to reason that if in terms of the agreement dated 21-09-2022, the petitioner intended to purchase the business of the OP No. 2 and in lieu thereof had paid the amount as agreed and even possession was handed over to him where is the question now for the petitioner to raise the issue that he has invested certain amount in the business which requires calculations. The learned counsel thus submits that the



petitioner should pay the amount as agreed by the agreement dated 21-09-2022 or hand over the business of the OP No. 2 to him.

9. It is next submitted that the petitioner does not intend to pay the consideration amount and at the same time is enjoying the business after it was entrusted to him, since possession was handed over. This amply demonstrates that the petitioner is misappropriating the profit from the business without making payment of the consideration, it is thus submitted that the conduct of the petitioner *prima facie* demonstrates, that he intended to cheat the OP No. 2 right from the beginning in garb of entering into an agreement, as such *prima facie* offence under Sections 406 and 420 IPC is made out.

10. Considering the submission made by the learned counsel for the OP No. 2, the Court is not inclined to interfere with the entire order dated 1-2-2023 passed by the learned ACJM-Ist, Danapur in Rupaspur PS Case No. 753 of 2022, however, the order dated 1-2-2023 passed by the learned ACJM-Ist, Danapur in connection with Rupaspur PS Case No. 753 of 2022 is quashed to the extent it has taken cognizance under Section 138 of the NI Act.



11. Accordingly, the quashing application is allowed to the extent indicated above.

12. It is made clear that cognizance under Sections 406 and 420 of the IPC, has not been interfered with.

(Satyavrat Verma, J)

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