

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40859 of 2018

Arising Out of PS. Case No.-1059 Year-2012 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Gautam Ghosh and Anr Son of late Nitai Chandra Ghosh resident of Das Kutir, East Lohanipur, Kadamkuan, Police Station - Kadamkuan, District - Patna.
 2. Shambhu Kumar Son of Rajdeo Singh resident of Narauli, Post Office - Karauta, Police Station - Salimpur, District - Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Shyam Nandan Das son of Late Dularchand Das resident of Mohalla - Arun Kumar, M.R.Railway Hunder Road, East Lohanipur, P.S. Kadamkuan, Patna - 800003 present residing St. Marry School, Laljee Tola, P.S.KadamKuan, Patna - 800001.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar, Advocate Pravashankar Mishra, Advocate
For the Opposite Party/s	:	Mr. Bhanu Pratap Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 18-04-2024

1. At the outset, it is submitted that entire cognizance of this case has already been quashed through Cr. Misc. No. 33132 of 2018, therefore, keeping pending this matter for serving notice would not serve any further purpose.

2. The present application has been filed for quashing the order dated 17.12.2013 passed by learned



Judicial Magistrate 1st Class, Patna in Complaint Case No. 1059(C)/2012 by which learned Magistrate has taken cognizance for the offence under Section 418 of the Indian Penal Code (in short the 'I.P.C.') and issued process against the petitioners.

3. Mr. Sanjeev Kumar, learned counsel for the petitioners submitted that the impugned cognizance order dated 17.12.2013 has already been quashed by one of the learned coordinate Bench of this Court through Cr. Misc. No. 33132 of 2018 vide order dated 01.03.2024 after considering all aspects of the matter, where petitioners were the company M/s Angel Broking Private Limited and the present petitioners were employees of M/s Rajat Intermediary Private Limited, which is a sub-broker of the said firm. It is submitted that the present application be disposed in aforesaid terms.

4. Learned counsel for the opposite party no. 2 is present.



5. It would be apposite to reproduce paragraph Nos. 10, 11 & 12 of Cr. Misc. No. 33132 of 2018, which reads as under:

“10. Upon perusal of the statement made in the complaint and the tripartite agreement as well as statements of account showing the transactions of shares through the petitioner’s company, this Court comes to the conclusion that petitioner, in abuse of the process of Court, has lodged the criminal complaint instead of taking recourse to arbitration, as per the arbitration agreement, provided in the Member Client Agreement entered into between the stock broker, sub-broker and the complainant.

11. This Court is of the opinion that a dispute of civil nature has been converted into a criminal case in order to pressurize and harass the petitioner. Learned Magistrate, without application of mind and in a mechanical manner, has taken cognizance under Section 418 of the Indian Penal Code. In **(Mehmood Ul Rehman v. Khazir Mohammad Tunda & others)** reported in **(2015) 12 SCC 420**, Supreme Court has held that Magistrate must not issue process in a mechanical manner or as a matter of course. Though no formal or speaking or reasoned orders are required at the stage of Sections 190/204 Cr.P.C.,



there must be sufficient indication in the order that the Magistrate is satisfied that : (i) the facts alleged in the complaint constitute an offence and (ii) these facts when considered along with statements recorded under Section 200 Cr.P.C. and the result of inquiry or report of investigation under Section 202 Cr.P.C., if any, prima-facie make the accused answerable before the criminal court. In absence of any such indication in the order, the High Court under Section 482 Cr.P.C. is bound to invoke its inherent power in order to prevent abuse of power of criminal court. In the present case, there is no indication in the order of learned Magistrate regarding application of judicial mind at the time of taking cognizance and issuance of process to accused.

12. Accordingly, in order to prevent abuse of process of Court and to secure the ends of justice, the order taking cognizance and issuance of process is quashed."

6. In view of the aforesaid, as the impugned order has already been quashed by learned coordinate Bench of this Court, accordingly, present application is being disposed of in terms of order dated 01.03.2024 passed in Cr. Misc. No. 33132 of 2018.



7. Let a copy of this order be communicated to
the learned trial court immediately.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.04.2024
Transmission Date	24.04.2024

