

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46290 of 2015

Arising Out of PS. Case No.-48 Year-2013 Thana- IMADPUR District- Bhojpur

Prem Shankar Singh Son of Late Rup Narayan Singh Residence of village -
Bihita, P.S. Imadpur, District - Bhojpur

... .. Petitioner/s

Versus

1. State Of Bihar
2. Upender Kumar Chaubey Son of Late Dhanpath Chaubey Residence of
village - Bihita, P.S. Imadpur, District - Bhojpur

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Gopal Govind Mishra, Adv.
For the State	:	Mr.Ajay Kumar-II, APP
For the O.P. No.2	:	Mr. Sanjay Kumar Ojha, Adv.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

9 21-01-2025 Heard Mr. Gopal Govind Mishra, learned counsel for
the petitioner, Mr. Ajay Kumar-II, learned APP for the State and
Mr. Sanjay Kumar Ojha, learned counsel for the O.P. No.2.

2. The instant petition has been filed for quashing the
order dated 27.06.2014 passed by the learned Judicial
Magistrate, Ara whereby and whereunder he has taken
cognizance against the petitioner for the offences punishable
under section(s) 406 and 420 of the IPC.

3. The main grounds taken by the petitioner's counsel
to assail the order impugned are that the O.P. No.2 has filed
three cases with the same nature of allegations including the
present one and he firstly filed Complaint Case No. 2137 C of



2012 which was dismissed for non prosecution and he again filed Complaint Case No. 1382 / 2013 with the same allegations upon that basis cognizance of the alleged offences has been taken after holding enquiry by the learned Magistrate and secondly in between the petitioner and the O.P No.2 there was a partnership for doing construction business and in this regard, partnership deed filed with this petition may be perused and the same has a clause for referring the dispute, if arises, in between the petitioner and the O.P. No.2 to single Arbitrator and the said term and condition was not fulfilled by the O.P. No.2 rather he filed several complaints, however if the allegations levelled by the O.P. No.2 are taken into consideration even then with regard to main allegation of non payment of the share of the profit to the O.P. No.2 by the petitioner appears a civil wrong. It is further submitted by the petitioner's counsel that the alleged offences punishable under sections, 406 and 420 of the IPC are not attracted in this matter as main ingredients of both the offences are completely absent even prima facie in this matter.

4. On the contrary, learned counsel for the O.P. No.2 submits that petitioner defrauded the O.P. No.2 by not paying his share in the profit and a sum of Rs. Nine lakhs was misappropriated by the petitioner for which the alleged offences



punishable under sections 406 and 420 of the IPC are attracted. It is further submitted by him that a Complaint Case No. 1299 C of 2013 is also running in between the petitioner and the O.P. No.2 with the same nature of allegations in which cognizance was taken under section 406 of the IPC by the learned Magistrate and the order taking cognizance was challenged by the petitioner by filing Cr. Misc. No. 46165 of 2015 and the same was dismissed by the then Bench of Hon'ble the Chief Justice.

5. Heard both the sides and perused the relevant materials as well as the impugned order.

6. This court finds substance in the aforesaid submissions made by the petitioner's counsel as from the allegations levelled by the O.P. No.2 in the complaint, which was sent for investigation, merely a civil wrong appears on the part of the petitioner and the same relates to the violations of the terms and conditions regarding the distribution of profits earned by both the parties from a particular business and further, the O.P. No.2 has not availed the remedy which is available to him as per clause 10 of the partnership deed and the same relates to the referral of the dispute with regard to the partnership's subject matter to an Arbitrator rather the O.P. No.2 has chosen to



file criminal complaints which is not permissible and he has also filed two other complaints with the same nature of allegations in which first complaint has been dismissed while in the second complaint, the petitioner is facing trial.

7. Considering all these facts, this court finds the order impugned to be completely bad in the eye of law and the same shows that the learned Magistrate has taken cognizance of the alleged offences in the mechanical manner and putting the petitioner to trial for the offences punishable under sections 406 and 420 of the IPC, which are not attracted even prima facie in this matter, will be completely harassment to the petitioner, so, the said order stands quashed and the instant petition stands allowed.

(Shailendra Singh, J)

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