

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3425 of 2018

Arising Out of PS. Case No.-903 Year-2015 Thana- MUNGER COMPLAINT CASE
District- Munger

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Lalan Pathak @ Kamal Nayan Pathak, S/o Late Saryug Pathak, Resident of
Mohalla- Walipur, P.S.- Jamalpur, District- Munger.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Hira Rani, W/o Sanjeev Kumar, Resident of Sadar Bazar Khalasi, Mohalla-
Mohanpur Kali No.2, P.S.- Jamalpur, District- Munger.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Pankaj Kumar Sinha, Advocate Mr. Raunak Kumar Singh, Advocate
For the State	:	Mr. Satyendra Narayan Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

8 21-04-2026 Heard learned counsel for the petitioner as well as
learned APP for the State.

2. The present application has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') for quashing the order dated 13.02.2017 passed by the learned Additional Chief Judicial Magistrate- IV, Munger (hereinafter referred to as 'Magistrate') in connection with Complaint Case No. 903 C of 2015, wherein the learned Magistrate has taken cognizance of the offences under Section 420 of the Indian Penal Code, 1860 and under Section 138 of the Negotiable Instruments Act, 1881 against three accused persons including the petitioner herein.



3. Brief facts of the case, as emerging from the complaint petition and the materials available on record, are that the complainant (O.P. No.2) entered into an agreement for purchase of a piece of land with accused Babita Devi for a total consideration of Rs.12,00,000/-. It is alleged that accused Babita Devi, by representing that her husband had been traceless for about 10 years, got the land mutated in her name and, through the mediation of co-accused Lalan Pathak (petitioner herein) acting as a commission agent, negotiated the sale with the complainant (O.P. No.2). Pursuant to such agreement, the complainant paid a sum of Rs.1,31,000/- in cash on 20.08.2014 and subsequently paid Rs. 1,70,000/- through cheque on 21.11.2014, thus making a total payment of Rs. 3,01,000/- as part consideration. A deed of agreement (*Zerbaianama*) was also executed between the parties, fixing a stipulated period for execution and registration of the sale deed, i.e., prior to 19.07.2015. It is further alleged that despite readiness and willingness on the part of the complainant (O.P. No.2), the sale deed was not executed within the agreed time. The complainant is said to have sent a legal notice dated 14.07.2015 to accused Babita Devi, upon which she sought further time and assured that in case the sale deed was not executed, the amount received



would be refunded. Subsequently, on 15.06.2015, accused Babita Devi is alleged to have issued a cheque of Rs. 3,01,000/- in favour of the complainant (O.P. No.2) towards repayment of the amount. However, when the said cheque was presented for encashment, the same was dishonoured on the ground of “insufficient funds”. Thereafter, despite service of legal notice demanding payment, the accused persons failed to make good the amount. Further alleging that she has been cheated and subjected to wrongful acts by the accused persons, the complainant (O.P. No.2) instituted Complaint Case No. 903 C of 2015.

4. Upon perusal of the materials available on record and after inquiry under Sections 200 and 202 of the Cr.P.C., learned Magistrate took cognizance of the offences under Section 420 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act against Babita Devi, Shankar Mandal and Lalan Pathak (petitioner). Being aggrieved by the impugned order of cognizance dated 13.02.2017, the petitioner herein has filed the present Criminal Miscellaneous Application to quash the same against him.

5. Learned counsel for the petitioner submits that the impugned order taking cognizance is wholly illegal, arbitrary



and has been passed without application of judicial mind. Learned counsel submits that even on a bare perusal of the complaint petition as well as the statement of the complainant (O.P. No.2) recorded on solemn affirmation and the inquiry witnesses examined, no specific allegation whatsoever is made against the present petitioner. It is submitted that the entire dispute, as would be evident from the complaint itself, is primarily between the O.P. No.2 and accused Babita Devi with regard to a transaction of sale of land and alleged non-refund of money. The petitioner has neither been attributed any role in the negotiation nor in the execution of any agreement, nor has he been alleged to have received any part of the consideration amount or issued the cheque in question. He further submits that the petitioner has been roped in the present case on the basis of vague, general and omnibus allegations, which do not disclose the commission of any offence under Section 420 IPC or Section 138 of the Negotiable Instruments Act.

6. Learned counsel for the petitioner further submits that the petitioner has been falsely implicated due to ulterior motives and personal enmity. Learned counsel submits that the essential ingredients constituting the offences alleged are completely absent so far as the petitioner is concerned,



inasmuch as there is no material to suggest any dishonest intention at the inception of the transaction or any involvement in the issuance or dishonour of the cheque. It is submitted that the learned Magistrate has mechanically taken cognizance without considering the materials on record in their proper perspective and without recording any satisfaction regarding the involvement of the petitioner. Learned counsel, therefore, submits that continuance of the criminal proceeding against the petitioner would amount to abuse of the process of the Court and is fit to be quashed in exercise of inherent jurisdiction.

7. Per contra, learned APP for the State submits that the impugned order has been passed after due consideration of the complaint petition, the statement of the complainant on solemn affirmation as well as the materials collected during the inquiry, which does not call for any interference by this Court in exercise of its inherent jurisdiction.

8. Despite valid service of notice and repeated opportunities, no one appears on behalf of the O.P. No.2 to contest the present application. Accordingly, this Court proceeds to consider the matter in absence of O.P. No. 2.

9. Having heard learned counsel for the petitioner and learned APP for the State, and upon perusal of the materials



available on record, including the complaint petition, the statement of the complainant on solemn affirmation and the inquiry witnesses examined under Section 202 of the Cr.P.C., this Court proceeds to examine whether the impugned order taking cognizance warrants interference by this Court in exercise of inherent jurisdiction under Section 482 of the Cr.P.C.

10. It is well settled that the inherent jurisdiction of this Court under Section 482 of the Cr.P.C. is to be exercised sparingly, with circumspection and only in cases where the allegations made in the complaint, even if taken at their face value and accepted in their entirety, do not disclose the commission of any offence or where the continuation of the criminal proceeding would amount to abuse of the process of the Court. In matters relating to offences under Section 420 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act, the Court is required to examine whether the essential ingredients of the offences, namely, dishonest intention at the inception of the transaction in the case of cheating, and issuance of cheque by the accused towards discharge of a legally enforceable debt or liability in the case of dishonour of cheque, are *prima facie* made out from the materials on record.



If such foundational ingredients are absent, the criminal proceeding cannot be permitted to continue merely on the basis of vague or omnibus allegations, and interference under Section 482 of the Cr.P.C. would be justified to secure the ends of justice and to prevent abuse of the process of the Court.

11. Upon perusal of the complaint petition as well as the statement of the complainant (O.P. No.2) on solemn affirmation and the materials collected during inquiry under Section 202 of the Cr.P.C., it transpires that the entire allegation primarily revolves around a transaction of sale of land between the complainant (O.P. No.2) and accused Babita Devi. The specific case of the O.P. No.2 is that she had paid part consideration amount to accused Babita Devi pursuant to an agreement for sale and that upon failure to execute the sale deed, a cheque issued by the said accused towards refund of money was dishonoured. From the materials on record, it *prima facie* appears that the role attributed is essentially against accused Babita Devi, who is alleged to have received the consideration amount and issued the cheque in question. The allegations, thus, predominantly disclose a dispute arising out of a contractual transaction between the O.P. No.2 and Babita Devi.



12. So far as the present petitioner is concerned, a careful scrutiny of the complaint petition and the statement on solemn affirmation does not reveal any specific or direct allegation attributing any overt act to him in relation to the alleged transaction. The petitioner has neither been shown to be a party to the agreement nor alleged to have received any part of the consideration amount or issued the cheque in question. There is also no material to indicate that the petitioner had any role in inducing the O.P. No.2 or that he possessed any dishonest intention at the inception of the transaction. The allegations, insofar as the petitioner is concerned, appear to be vague and omnibus in nature, without any supporting material indicating his involvement in the commission of the alleged offences.

13. In view of the aforesaid factual matrix, this Court finds that the present case squarely falls within the principles laid down by the Hon'ble Supreme Court in *State of Haryana and Ors. v. Bhajan Lal and Ors.*, reported in *1992 Supp (1) SCC 335* and *Pradeep Kumar Kesarwani v. State of Uttar Pradesh & Anr.*, reported in *2025 SCC OnLine SC 1947*, wherein categories of cases have been illustratively enumerated where exercise of inherent powers under Section 482 of the Cr.P.C. would be justified. In particular, the present case falls



within the category where the allegations made in the complaint, even if taken at their face value and accepted in entirety, do not *prima facie* constitute any offence against the petitioner and also where the proceedings appear to have been instituted with *mala fide* intention and for wreaking vengeance. Accordingly, continuation of the criminal proceeding against the petitioner would amount to abuse of the process of the Court and would not serve the ends of justice.

14. Accordingly, in view of the discussions made hereinabove and in the facts and circumstances of the case, this Court is of the considered opinion that the impugned order dated 13.02.2017 taking cognizance against the petitioner is not sustainable in the eye of law. The same is, therefore, liable to be quashed and is hereby set aside, so far as the present petitioner is concerned.

15. Resultantly, the entire criminal proceeding arising out of Complaint Case No. 903 C of 2015, pending in the court of learned Additional Chief Judicial Magistrate-IV, Munger, stands quashed *qua* the petitioner.

16. The present Criminal Miscellaneous Application, accordingly, stands allowed.

17. Let a copy of this order be communicated to the



court concerned forthwith.

(Sunil Dutta Mishra, J)

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