

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.43205 of 2015

Arising Out of PS. Case No.-576 Year-2011 Thana- EAST CHAMPARAN COMPLAINT

District- East Champaran

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Rupesh Rai @ Rupesh Kumar Son of Devendra Rai, resident of village-Gaura, P.S. and Post Teghra, District- Begusarai.

... ... Petitioner/s

Versus

1. State Of Bihar
2. Ram Pravesh Singh @ Ram Babu Pd. Son of Late Gena Lal Singh, resident of village- Chainpur, P.S. Dhaka, District- East Champaran.

... ... Opposite Party/s

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Code of Criminal Procedure, 1973—Section 482—Quashing—of cognizance order taken under Section 406 of IPC—petitioner offered complainant to install tower of a company—complainant given certain sum of money in the bank account of different persons; and three lakh rupees to the petitioner in cash—transaction between complainant and company—complainant not made company as an accused in his complaint petition—entire business activity was made between company and complainant; and nowhere appears that any amount of money was deposited in bank account of petitioner—impugned order of cognizance with all its consequential proceedings quashed and set aside—application allowed.

(Paras 5 to 7)

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Appearance :

For the Petitioner/s : Mr. Jai Prakash Singh, Advocate

For the Opposite Party/s : Mr. Navin Kr. Pandey, APP

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 01-04-2024

Heard learned counsel for the petitioner and
learned counsel for the respondents.

2. The present quashing petition has been
preferred to quash the order dated 13.12.2012 passed



in Complaint Case No. 576 of 2011, where learned Judicial Magistrate, Sikrahana at Motihari took cognizance for the offence punishable under Section 406 of the Indian Penal Code (in short IPC) against the petitioner.

3. From the complaint petition, it appears that Ram Pravesh Singh filed a complaint on 01.08.2011 in the Court of Sub Divisional Judicial Magistrate, Sikrahana at Motihari, East Champaran for the occurrence dated 10.03.2010 to 01.08.2011 instituted for the offences punishable under Sections 420, 120 B and 406 of the IPC against the petitioner and four other persons. He stated in the petition that on 02.01.2010 the petitioner came at the shop of the complainant and offered him to install tower of M/s. India Net Wireless Service, thereafter when complainant was ready to install the tower, one agent for Dhaka area was also appointed. Thereafter the named person in the complaint petition gave certain sum of money in the bank account



of different persons and three lakh rupees to the petitioner. It is further alleged in the complaint petition that when he demanded the aforesaid amount for repayment but accused persons did not gave satisfactory answer, thereafter the complainant came to know that such company named as M/s. India Net Wireless Service was never to exist. In the meantime the petitioner gave a cheque of Rs. 1,300/- in the name of Amrullah Ansari but from the said cheque no amount was withdrawn due to certain issues. Thereafter the complainant on 17.07.2011 came at the Dhaka Police Station to lodge FIR but when same was instituted, present complaint has been filed.

4. It is submitted by learned counsel for the petitioner that entire alleged transactions as stated through complaint petition was made with M/s. Net Wireless Service, company registered under the Companies Act. It is pointed that the aforesaid company was not made accused in the said complaint petition and



on this score alone, present proceeding is fit to be quashed. It is further submitted that from the details of complaint it can be gathered on its face easily that no amount was ever deposited with the petitioner and as such *prima facie*, it is not a case of entrustment as to raise allegation of criminal breach of trust. It is also submitted by learned counsel that there is no documentary evidence in support of fact that at any point of time Rs. 3,00,000/- was ever paid to the petitioner in cash. It is further submitted by learned counsel that from the above fact fraudulent or dishonest intention cannot be gathered against petitioner. In support of the submissions learned counsel relied upon the report of Hon'ble Supreme Court, as reported in the matter of **Dr. Lakshman Vs. State of Karnataka**, as reported in **(2019) 9 SCC 677**.

5. In support of his submissions learned counsel further relied upon the report of Hon'ble Supreme Court in the case of **Raju Krishna**



Shedbalkar Vs. State of Karnataka and Another as reported through **Criminal Appeal No. 577 of 2024 (Arising out of SLP (CRL.) No. 6137 of 2021)**, where he presses para no. 6 of the said report, which is as under:-

6. In the case of **Hridaya Ranjan Prasad Verma vs. State of Bihar (2000) 4 SCC 168**, this Court held as under:

"15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep



up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

(Emphasis supplied)

Further, in the case of **Indian Oil Corporation v. NEPC India Ltd. and Others (2006) 6 SCC 736** this position was reiterated in the following manner:

33. The High Court has held that mere breach of contractual terms would not amount to cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction and in the absence of an allegation that the accused had a fraudulent or dishonest intention while making a promise, there is no "cheating". The High Court has relied on several decisions of this Court wherein this Court has held that dishonest intent at the time of making the promise/inducement is necessary, in addition to the subsequent failure to fulfil the promise. Illustrations (f) and (g) to Section 415 make this position clear:

"(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.



(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery, A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract."

(emphasis supplied)

6. In view of aforesaid factual and legal discussions, as entire business activity was made through M/s. Net Wireless Service, which was not made an accused through complaint case and from the bare perusal of complaint it nowhere appears that any amount was deposited with the bank of petitioner. Accordingly, impugned order of cognizance dated 13.12.2012 with all its consequential proceedings, *qua*, petitioner arising thereof as passed in Complaint Case No. 576 of 2011, pending before learned Judicial Magistrate, Sikrahana at Motihari is hereby quashed and set aside.



7. The application stands allowed.

8. Let a copy of this order be sent to learned
Trial Court, immediately.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	

