IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20522 of 2016

Arising Out of PS. Case No.-1799 Year-2015 Thana- MUZFFARPUR COMPLAINT CASE District- Muzaffarpur

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M/s Karina Fincap Limited, Through Its Authorized Representative Sahil Arora resident of B-2, Jungpura, Extension, P.S. Hazarat Nizamuddin, New Delhi.

... ... Petitioner

Versus

1. State of Bihar
2. Mahesh Kumar, son of Late Jai Narayain Singh, resident of village-Ust, P.O. Bhagawatpur, P.S. Paru , Dstrict- Muzaffarpur.

... ... Opposite Parties

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with

CRIMINAL MISCELLANEOUS No. 24714 of 2016

Arising Out of PS. Case No.-1799 Year-2015 Thana- MUZFFARPUR COMPLAINT CASE District- Muzaffarpur

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1. MR. AMANVEER SINGH @ AMAN Son of Jagmohan Singh
2. Mr. Shyamlal Kaushik, Son of Shambhunath Kaushik
3. Mrs. Kaveri Anand, Wife of Rajinder Kumar Atal
4. Mr. Vikramjeet Chawala, Son of Jagdish Rai Chawla All Directors of M/S. Karina Fincap Limited, Registered Office at B-2, Jungpura Extesion, P.S. Hazrat, Nizamuddin, New Delhi.

... ... Petitioners

Versus

1. State of Bihar
2. Mahesh Kumar, Son of late jai Narayain Singh, resident of Village- Ust, P.O.- Bhagawatpur, P.S. Paru, District- Muzaffarpur.

... ... Opposite Parties

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Appearance :
(In both cases)

For the Petitioners :	Mr. Ravi Bhardwaj, Advocate Mr. Nilabh Ranjan, Advocate
For the Opposite Party-State: (In Cr. Misc. No.20522 of 2016)	Dr. Mritunjay Kumar Gautam, APP
For the Opposite Party-State: (In Cr. Misc. No.24714 of 2016)	Mr. A.K.Choudhary, APP
For the Opposite Party No.2:	Mr. Yashraj Bardhan, Advocate Mr. Prakash Chandra, Advocate Mr. Saket Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRAVEEN KUMAR
ORAL JUDGMENT

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Date : 11-08-2026

Since both the cases arise out of the same impugned order taking cognizance, therefore, both the cases have been heard together and are being disposed of by this common order.

2. Heard learned counsel for the petitioners and learned Additional Public Prosecutor as well as learned counsel for opposite party No.2.

3. The petitioners have filed these applications seeking quashing of the order dated 10.03.2016 passed in Complaint Case No. 1799 of 2015 by the learned Judicial Magistrate 1st Class, Muzaffarpur, whereby cognizance has been taken against the petitioners under Sections 420/120B/34 of the Indian Penal Code.

4. The case of the complainant, briefly stated, is that though opposite party No.2 is a government servant, he along with his son, namely, Aditya Kumar, and his partner, namely, Suman Kumar, was running a company in the name and style of M/s ILMP Technologies Private Limited at Muzaffarpur and the petitioner company, being a registered Finance Company, approached the son of opposite party No.2 for grant of loan on reasonable yearly interest rate. On execution of relevant loan documents/agreements, 19 loans were sanctioned, totaling to the tune of Rs.3.70 crores, and an amount of Rs.16.75 lakhs were disbursed on 10.09.2013 in the account of company of opposite

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party No.2. It has further been alleged that against security, on 22.09.2013, 66 and 55 blank cheques were respectively taken from the complainant and his wife. It has further been alleged that against total sanctioned loan of Rs.3.70 crores, only Rs.3,29,26,531.00 was credited into the account of the complainant in 47 transactions, out of which, the complainant has repaid an amount of Rs.1,82,03,151.00, leaving an outstanding due of Rs.1,47,23,380.00, which, as alleged, is the liability of the directors of the ILMP Technologies Pvt. Ltd. Thereafter, it has been alleged that the blank cheques, which were tendered as security, could have been used/utilized in case of default in repayment of loan amount, after due intimation to the guarantors, however, without complying with the terms of the agreement, the petitioners have got the said cheques, issued by the complainant and his wife, dishonoured and got lodged several cases against them under Section 138 of the Negotiable Instruments Act (NI Act) in different States and thereby hampering not only their social reputation, but their CIBIL score also, resulting into their debarment from getting loan from any other financial institutions.

5. Learned counsel for the petitioners has submitted that the initial dispute originated when massive defaults in servicing monthly installments of structured commercial loan facilities extended by M/s. Karina Fincap Limited to the borrowers

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associated with the family network of opposite party No.2 occurred as the business operations and financial health of the borrowers deteriorated, resulting into leading to the classification of the accounts as Non-Performing Assets (NPAs).

5.1. It has further been submitted that to recover the debts of crores of rupees of outstanding corporate debt, the finance company instituted multiple legal mechanisms, prominently including criminal complaints under Section 138 of the NI Act across various judicial jurisdictions (such as Delhi and Punjab) due to the systemic dishonor of repayment of debts by way of cheques.

5.2. It has further been submitted that the complainant, feeling pressurized by the multi-front recovery proceedings and criminal cases under the N.I. Act, as a counter-offensive, has filed the present complaint into the territorial jurisdiction of Muzaffarpur district.

5.3. It has further been submitted that opposite party No.2 has falsely alleged that the finance company and its functionaries have fraudulently extracted and subsequently misused the blank security cheques, which resulted into exorbitant and predatory interest rates and committed offenses punishable under Sections 420, 120B, and 34 of the Indian Penal Code.

5.4. It has further been submitted that none of the ingredients is made out in the facts and circumstances of the case

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and the present complaint is an absolute abuse of the process of the court and has purposely been lodged as a malicious counterblast to frustrate the legitimate recovery and evade liability of crores of rupees, while the core controversy involves a contractual financial transaction and, in the absence of any dishonest intention from the very inception, invalidates any charge under Section 420 IPC.

5.5. It has further been submitted that opposite party No.2 has also suppressed material facts like ongoing mediation settlements between the parties, compromise deeds and active contempt proceedings pending against them before the higher judicial forums.

5.6. It has further been submitted by learned counsel for the petitioners that it is an admitted position between the parties that a massive outstanding debt remained unpaid and multiple cases under Section 138 of the NI Act are actively pending against opposite party No. 2, his son and other close associates.

5.7. It has further been submitted that security cheques were never misused, rather when the cheques were presented for realization, the same got dishonoured so also the commitments under the repayment schedule.

5.8. It has further been submitted that the statement of enquiry witnesses confirms these facts regarding the origin of

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the cheques and the same was purposely manufactured to create a jurisdiction under the territorial court at Muzaffarpur.

5.9. It has further been submitted that continuous defiance of court commitments led to the filing of a contempt application, bearing Contempt Case (C) No. 195 of 2017 before the Delhi High Court, which amply demonstrates that the opposite party No.2 has habitual disregard for the commitments and has used the present criminal case against the petitioners as a weapon of harassment with vexatious and malicious intent, the loan agreements were never manipulated in any manner whatsoever or in order to gain unauthorized interest rates, rather the interest were charged strictly in accordance with law and in terms of contractual agreement and the guarantors remained jointly and severely liable.

5.10. Learned counsel for the petitioners has placed reliance upon a judgment of the Hon'ble Supreme Court ,in the case of ***Indian Oil Corpn. v. NEPC India Ltd.***, reported in **(2006) 6 SCC 736**, and has referred to paragraph 14 and 34 of the said judgment, wherein the Hon'ble Supreme Court has strongly deprecated the growing corporate tendency to convert purely civil and commercial disputes into criminal prosecutions as a pressure tactics on debtors, observing that such misuse warrants immediate quashing to prevent harassment.

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5.11. Learned counsel for the petitioners has also placed reliance on another judgment of the Hon'ble Supreme Court, in the case of ***Vesa Holdings (P) Ltd. v. State of Kerala***, reported in **(2015) 8 SCC 293**, and referring to paragraphs 12, 13 and 16 of the said judgment, it has been submitted that every breach of contract does not give rise to the offense of cheating, unless fraudulent or dishonest intention existed right at the beginning of the transaction and the criminal courts should not be used as instruments for recovering contractual dues.

5.12. Learned counsel for the petitioners has, thus, submitted that a civil dispute has been given the colour of criminal cloak and the continuance of the present proceedings against the petitioners would be an absolute abuse of the process of law and of the court as well.

6. Learned Additional Public Prosecutor for the State as well as learned counsel for opposite party No.2 has vehemently opposed the prayer made in this application. Learned counsel for the opposite party No. 2 has submitted that the blank security cheques handed over in good faith were unlawfully misused by the finance company to file vexatious NI Act cases against the opposite party No.2 and the company allegedly charged exorbitant interest rates to the tune of 110 *per cent per annum* even

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though the loan amount was disbursed irregularly in disregard to the terms of the agreement.

6.1. It has further been submitted that the substantial loan amounts were never disbursed and the opposite party No.2 had to face huge loss in the business. It has further been submitted that the statement of the complainant on solemn affirmation as well as the statement of the enquiry witnesses substantiate the allegations against the petitioners, the impugned order taking cognizance is good on law and facts both and a *prima facie* case is made out against the petitioners and, at this stage, when a *prima facie* case is made out, the proceeding against the petitioners should continue.

7. Heard learned counsel for the parties and perused the records including the counter affidavit(s) and reply to the counter affidavits.

8. From the facts and circumstances of the case and in the light of the discussions, as above, it transpires that the allegations in the complaint is in the backdrop of commercial transactions, leading to initiation of the proceedings against opposite party No.2 under NI Act for dishonour of the cheques, the present complaint came to be filed with an oblique motive. The factual matrix of the case is with regard to non-fulfilling the terms of the agreement as well as the contractual terms and in view of

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the judgments of the Hon'ble Supreme Court in the cases of ***Vesa Holdings (P) Ltd.*** (supra) and ***Indian Oil Corpn.***(supra), this Court is of the view that it would, at best, give rise to a civil dispute before a competent court of civil jurisdiction and the present proceedings against the petitioners would be an abuse of the process of the court.

9. Resultantly, the order taking cognizance dated 10.03.2016 passed in Complaint Case No. 1799 of 2015 by the learned Judicial Magistrate 1st Class, Muzaffarpur, is hereby quashed.

10. The applications stand allowed accordingly.

(Praveen Kumar, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
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