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**(2001) 07 JH CK 0015**

**Jharkhand High Court**

**Case No:** Criminal Miscellaneous No. 5344 of 2000

Babul Nath Singh

APPELLANT

Vs

State and Another

RESPONDENT

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**Date of Decision:** July 25, 2001

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 210(2), 482
- Penal Code, 1860 (IPC) - Section 406, 420

**Hon'ble Judges:** D.N. Prasad, J

**Bench:** Single Bench

**Advocate:** Anil Kumar, for the Appellant; Assistant Public Prosecutor, Laljee Sahay and A.K. Sinha, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

Deoki Nandan Prasad, J.

This application has been filed u/s 482 of the Code of Criminal Procedure for quashing the entire criminal proceeding along with the order taking cognizance dated 12.7.2000 for the offence u/s 406/420, IPC in connection with Sonari P.S. Case No. 32 of 2000 corresponding to G.R. No. 806 of 2000.

2. Short facts giving rise to this application is that the opposite party No. 2 filed a complaint case which has sent to the police for registration u/s 156(3), Cr PC and it was lodged that the accused approached the complainant for purchase of the truck bearing registration No. BHT 7122 and the accused purchased the said truck for a sum of Rs. 96,001/- and he paid a sum of Rs. 76001/- and took possession of the truck on 12.11.1997 with a promise to pay the rest amount of Rs. 35,000/- and obtained the papers and get the name transferred. It was also agreed upon that the petitioner will be liable to pay the tax, insurance etc. and liable for all responsibility from 12.11.1997 onward but the accused did not pay the rest amount as agreed

upon rather when the complainant approached for payment, he was assaulted by the accused and also refused to pay the tax in connection with the truck in question. The first information report was lodged accordingly and after investigation the police submitted charge-sheet.

3. It is also stated that the complainant had filed a complaint case being CI 303 of 1998 which was ended and disposed of in the term of compromise. The accused had paid a sum of Rs. 15,000/- only and agreed to pay the rest amount in monthly instalment which has never been complied with. Another complaint case No. CI 75/99 was also filed which is still pending.

4. Learned counsel appearing on behalf of the petitioner submitted at the very outset that since the complaint case No. 75 of 1999 is still pending, as such this G.R. Case in which the cognizance was taken is mala fide and cannot proceed. It is also submitted that the complainant/Opposite party No. 2 is in habit of filing the criminal cases against the petitioner. It is also argued that in the complaint case No. 75 of 1999 the Court below took cognizance for the offence u/s 506/323, IPC and against the order dated 23.3.1999 taking cognizance in the said complaint case, the opposite party No. 2 moved before the Sessions Judge, Jamshedpur in Cr. Revision No. 51 of 1999 and the said Criminal Revision is still pending. It is further argued that the entire amount for the truck in question was paid to the opposite party No. 2 but till date he has not transferred the name in favour of the petitioner.

5. On the other hand, the learned counsel for the opposite party No. 2 contended before me that neither the rest amount of Rs. 35,000/- has been paid by the petitioner as yet nor he has paid the tax in connection with the said truck. It is further argued that there is no Illegality in the impugned order as the learned Magistrate has rightly took cognizance as well as the complaint case which was filed earlier ended in terms of compromise as the petitioner was agreed to pay the rest amount and also pay the tax but the petitioner has not complied with his promise though the petitioner is in possession of the truck and also plying the same.

6. From perusal of the record, it is apparent that the complaint case No. 75 of 1999 is still pending in the Court below. No any document is coming to show that the petitioner had paid the rest of the amount to the opposite party No. 2 and admittedly the truck in question is in possession of the petitioner. The instant case was investigated into by the police and some witnesses were also examined during investigation and they have supported the prosecution case. However, the facts of the instant case more or less are identical to the complaint case No. 75 of 1999, therefore, it would be appropriate to tag this police case to the said complaint case No. 75 of 1999 and both the cases will be tried together as per Section 210(2) of the Cr PC. Thus there appears no illegality in the order impugned for Interference.

7. With the above observation, this application is dismissed. However, the petitioner may raise all those points before the Court below at the appropriate stage of trial.

8. Application dismissed.