

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.9938 of 2013

Arising Out of PS.Case No. -445 Year- 2012 Thana -COMPLAINT CASE District- -

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Anurag Basant, son of Basant Rai, resident of Ward No. 10, Araria, P.S. Araria, District - Araria

.... Petitioner.

Versus

1. The State of Bihar.
2. Md. Sabir, son of Late Mozibur Rahman R/O Hariabara, P.S. Araria R.S., District - Araria

.... Opposite Parties.

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Appearance :

For the Petitioner : Mr. Raj Kumar, Advocate.
Mr. Rajnish Kumar, Advocate.

For the Opposite Party
No. 2 : Mr. Anil Prasad Singh, Advocate.
For the State : Mr. Akshaylal Pandit, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

4 23-07-2015 Heard learned counsel for the petitioner and learned
counsel for the State.

This is an application for quashing the order dated 15.10.2012 passed by the learned Sub-Divisional Judicial Magistrate, Araria, by which he has been taken cognizance against the petitioner in connection with Complaint Case No. C-445/2012 registered under Section 138 of Negotiable Instrument Act.

The case of the complainant-opposite party no. 2 is that petitioner was given order for supply of Kathal wood and complainant had supplied the same. Thereafter, the petitioner gave an account payee cheque of H.D.F.C. vide cheque



no.172571, dated 14.12.2011 for Rs.60,000/-. It is alleged that said cheque was presented for encashment of the amount, but on 27.12.2011 the cheque was returned with an endorsement that there is difference in signature of the petitioner as well as there is no fund in the account. It is alleged that the complainant went to the house of the petitioner along with cheque and he assured to pay the amount in cash and will return the cheque. It is further alleged that several reminders have been issued and on 23.02.2012, he refused to pay the amount and abused and threat the complainant and hence, this complaint was filed on 24.02.2012. On the basis of which the complainant was examined on Solemn Affirmation and enquiry started under Section 202 of I.P.C. and cognizance was taken under Section 138 of Negotiable Instrument Act.

Learned counsel for the petitioner has challenged the order taking cognizance on the ground that lodging a case under Section 138 of Negotiable Instrument Act is not valid, as no notice has been issued in writing within thirty days on the receipt of information by him from the bank regarding return of the cheque. It is further submitted that there is no allegation whatsoever with any notice was given within 30 days of the receipt of the information regarding dishonour of the cheque and hence there is

non-compliance of sub-clause (b) of Section 138 of Negotiable Instrument Act as well as sub clause (c).

Having regard to the fact, there is no averment in the complaint that notice having been issued under provision contained under Section 138 of Negotiable Instrument Act and further clause (b) provides that such complaint is made within one month of the date on which cause of action arise under clause (c) of the proviso to Section 138 of Negotiable Instrument Act. However, Clause (c) of Section 138 provides that if the drawer of cheque fail to make the payment of the said amount within 15 days of the receipt of the notice under Section 138(b) but since no notice is alleged to have been issued under Section 138(b) there is no question of compliance of Section 138(b) of Negotiable Instrument Act.

Having regard to the fact Section 138 (b) of Negotiable Instrument Act has not been complied and hence order taking cognizance is not sustainable and hereby quashed. Accordingly, the petition is allowed.

However, the complainant may, have liberty pursuing the matter in alternative remedy in accordance with law.

m.p.

(Gopal Prasad, J)

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