

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36693 of 2012

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Dilip Kumar, S/O Late Ram Briksh Prasad, R/O Mohalla-Janakpur, P.S.-
Mufasil, Distt-Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. Kanhaiya Lal, S/o Late Mahendra Prasad, resident of village-Dariyapur,
P.S. Sherghati, District-Gaya.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Ms. Sushmita Mishra, Advocate
For the Opposite Party/s : Mr. Ashok Kumar Singh 1 (APP)
Mr. Arvind Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL ORDER

10 02-07-2015

This petition is filed under Section 482 of the Code of Criminal Procedure with a prayer to quash the order dated 03.03.2012 through which the Chief Judicial Magistrate, Gaya has taken cognizance in Muffasil P.S. Case No.39 of 2010 wherein offences punishable under sections 420 and 506 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act (for short, 'the Act') are alleged against the petitioner.

The principal contention urged by the petitioner is that Section 138 of the Act cannot constitute the subject matter of FIR and it is only on a complaint by the presenter of the cheque that the Court can take cognizance under Section 142 of the Act.

Learned A.P.P., on the other hand, submits that allegation against the petitioner is referable under Section 420

and 506 of the Indian Penal Code as well as under Section 138 of the Act and that no exception can be taken for the order under challenge.

Three provisions are invoked against the petitioner under Section 420, 506 of the Indian Penal Code and Section 138 of the Act. The question as to whether the allegation made in the FIR against the petitioner referable under Sections 420 and 506 need to be examined at the trial. Learned counsel for the petitioner is not able to point out that the F.I.R. to the extent of offence punishable under Sections 420 and 506 IPC be quashed.

The allegation referable to Section 138 of the Act, however, stands on a different footing. If one takes into account the purport of Section 138 of the Act, it becomes clear that it is only the person who feels aggrieved by dishonouring of the cheque that can file a complaint before the Court duly complying with the requirements under Section 138 of the Act. Several ingredients, such as cheque having been presented within six months from the date of issue, the payee makes a demand for payment of the amount by giving notice in writing to the drawer of the cheque, within thirty days, and the drawer of the cheque failing to comply, need to be mentioned in the complaint. Section 142 of the Act mandates that the Court can take cognizance only

on receiving a complaint. In other words, the police cannot play any role in such matters; much less there is no scope for any investigation into the offence referable to Section 138 of the Act. The judgment of the Hon’ble Apex Court in case of *Pankajbhai Nagjibhai Patel Vs. State of Gujrat and another*¹ supports this point of view.

Therefore, the petition is partly allowed setting aside that part of the FIR wherein offence punishable under Section 138 of the Act is mentioned. As regards offences punishable under Section 420 and 506 IPC, the FIR shall remain.

(L. Narasimha Reddy, CJ)

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¹ (2001) 2 SCC 595