

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43826 of 2014

Arising Out of Complaint Case No. -10 Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

Chandrika Prasad Sah Son of Late Basudeo Prasad Sah Resident of Bhirkhi,
Ward No.21, Madhepura P.S. Madhepura, District- Madhepura.

.... Petitioner/s

Versus

1. The State of Bihar
2. Binod Tej Narayan Jha, Manager (Marketing) resident at Plot No. 67,
Shubham Nagar, Near Genda Square, Rajiv Nagar, Hingana Road,
Nagpur-440023

.... Opposite Party/s

Appearance :

For the Petitioner/s :

For the Opposite Party/s :

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL ORDER

4 30-04-2015 Heard learned counsel for the petitioner, learned
A.P.P. for the State and learned counsel for the complainant.

The petitioner apprehends arrest in Complaint Case
No. 10(C) of 2013 dated 02.01.2013 instituted under Sections 420
of the Indian Penal Code and 138 of the Negotiable Instruments
Act (hereinafter referred to as the 'Act').

The allegation against the petitioner is that he along
with his partner had received material from the complainant

Company but the cheque issued by them for Rs. 55,00,000/- was neither honoured nor the amount made good in spite of notice sent to them.

Learned counsel for the petitioner submits that it is a pure case of dispute relating to accounting which is civil in nature and the criminal proceeding is an abuse of the process of the court. It is further submitted that the cheque which is said to have been returned uncashed was issued by another co-accused and not the petitioner and thus he cannot be made accountable for the same and further the petitioner is not liable for any payment as the receipt of material from the complainant Company has not been shown to have been made. It is further submitted that the petitioner has also made payment to the complainant Company initially which clearly shows that the dues even as claimed by the complainant Company is not correct.

Learned A.P.P. and learned counsel for the complainant submit that the petitioner was the person who had taken the State Government contract from the PHED and pipes which were to be supplied were sought to be bought from the complainant Company and only after supply of the same the cheque was issued. It is submitted that the petitioner was the person in whose name the business was done and the other person was his partner and thus, once the cheque has been issued without

there being any complaint of either the items not being supplied or being substandard and also not returned, the duty to pay cannot be shirked. It is further submitted that the present case cannot be said to be of a civil nature since after making payment through cheque when the same was not honoured and despite notice the amount not made good, law itself provides that criminal proceeding can be initiated and thus there is neither infirmity in filing of the complaint nor the court taking cognizance under Section 138 of the Act as well as Section 420 of the Indian Penal Code.

Considering the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to enlarge the petitioner on anticipatory bail.

The application, accordingly, stands dismissed.

However, in the event the petitioner surrenders and prays for regular bail before the court below with the offer to pay the amount due to the complainant Company, the Court may consider the same and decide the application for bail on its own merits without being prejudiced by the present order.

(Ahsanuddin Amanullah, J)

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