

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4151 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- JEHANABAD

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1. Ranjeet Ranjan Singh, S/O Rama Nath Singh, Proprietor, Swastika Vishal Tel Services and Swastika Construction Company, Bhuiya Mension, 1st Floor, Upper Floor of T.I. Ford Show Room, P.O.- Silpukhari, Police Station- Silpukhari, District- Gauhati (Assam).

.... Petitioner/s

Versus

1. The State of Bihar
2. Ram Indar, S/O Late Sant Sharan Prasad, resident of Mohalla- Court Area, Police Station- Jehanabad, District- Jehanabad.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Harsh Anuj, Advocate

For the Opposite Party/s : Mr. Arun Kumar, Advocate

Mr. Bhanu Prtatap Singh, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 09-05-2016

The Petitioner seeks quashing of the order of cognizance dated 26.09.2011 passed by the Judicial Magistrate, 1st class, Jehanabad, in Complaint Case No.292 of 2011/T.R. No.3019 of 2011.

The case of the Complainant is that he and the Petitioner had entered into a relationship for installing Mobile Towers for which there was a certain amount which was due of the Complainant. However, the Petitioner did not pay the same and instead issued a cheque which was dishonoured. It is under these circumstances that he filed the present complaint.



It has been submitted on behalf of the Petitioner that there was some dispute on account of which the parties had sat together and worked out a financial solution as per which the Petitioner was not liable to pay any amount to the Complainant. However, later on, the Complainant misused the cheque after filling the date subsequent to the meeting and presented it in the bank which was dishonoured.

Submission is that the cheque had not been issued by way of any liability which is evident from the rejoinder to Counter Affidavit, wherein, the Complainant is said to have given an undertaking on 14.10.2010 that he would deposit the instant cheque only after having permission of the Petitioner which means that the cheque could be deposited only if the Petitioner had admitted his liability and to what extent.

On the other hand, counsel for the Complainant submits that, no doubt, compromise had taken place between the parties after which the Petitioner had given him a fresh cheque to discharge his financial liability. It was on his instruction that the cheque was deposited and hence, when he admits this position the Petitioner admits his financial liability as well and hence, he cannot escape from prosecution under Section 138 of the Negotiable Instrument Act.

However, I am not satisfied with the submission of the Complainant. I find that it is he, who had given an undertaking that the cheque of the aforesaid amount would be deposited only after seeking permission from the Petitioner and hence it cannot be said that the petitioner had admitted his liability, which was certainly conditional.

Under such circumstances, the order of cognizance dated 26.09.2011 passed by the Judicial Magistrate, 1st class, Jehanabad, in Complaint Case No.292 of 2011/T.R. No.3019 of 2011, is hereby set aside without prejudice to the right of the parties.

The application stands **allowed**.

(Anjana Prakash, J)

J.Alam/-

AFR/NAFR	NAFR
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