

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.9020 of 2014

Arising Out of PS.Case No. -615 Year- 2012 Thana -GAYA COMPLAINT CASE District- GAYA

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Raj Kumar Gupta S/O Late Mahabir Prasad Gupta, resident of Mohalla -
Swarajpuri Road, Opposite Bank of Baroda Gali, P.S. Kotwali, District - Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. Kumar Vicky S/O Indradeo Singh, Resident of Mohalla - Gurudwara Road, P.S.
Kotwali, District - Gaya

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dharmendra Kumar Sinha, Advocate
For the State : Mr. Shailendra Kumar 2, APP
For Opposite Party No.2 : None

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

Date: 18-11-2016

Heard learned counsel for the petitioner and the learned
A.P.P. for the State. In spite of valid service of notice, no one appears
on behalf of opposite party no.2.

2. The present application has been filed for quashing of
the order dated 10.09.2012 passed by Sri A.K. Singh, learned Judicial
Magistrate 1st Class, Gaya in Complaint Case No. 615 of 2012, Trial
No. 2147 of 2012 whereby processes were directed to be issued after
cognizance being taken for the offences punishable under Section 138
of the Negotiable Instrument Act (hereinafter referred to as the Act).

3. The prosecution case is that the complainant gave Rs.



90,000/- to the petitioner in the month of November, 2011 on assurance that the said sum will be returned by the petitioner in the month of January, 2012 along with interest. When the said sum was not returned by the petitioner nor any interest paid on the said amount, complainant put pressure on the petitioner, resultantly, petitioner issued a cheque of Rs. 90,000/- in favour of the complainant bearing No. 500686 dated 27.02.2012 drawn on Bank of Baroda, which when deposited by the complainant, the same got dishonoured due to insufficient fund and a requisition with regard thereto was sent by the Bank on 29.02.2012. The complainant gave Pleader's notice on 14.03.2012 and on 11.04.2012 the present complaint case was filed.

4. It has been submitted by the learned counsel for the petitioner that on 15.02.2012 a sanha, Annexure-2 was lodged with the Officer-in-charge, Kotwali Police Station, Gaya stating that his bag containing cheque book of Bank of Baroda bearing cheque Nos. 500672 to 500700 had been lost. A letter dated 15.02.2012, Annexure-3 was also written to the Branch Manager, Bank of Baroda, Gaya to stop payment of the aforesaid cheques bearing nos. 500672 to 500700. Learned counsel for the petitioner has relied upon a judgment of the Supreme Court in the case of ***K. K. Sidharthan Vrs. T.P. Praveena Chandran and another*** since reported in (1996) 6 SCC 369, and with reference to the said judgment submitted that in

case of stoppage of payment, no case under Section 138 of the NI Act is made out.

5. From perusal of the judgment in the case of **K. K. Sidharthan** (supra), it appears that no case under Section 138 of the NI Act is made out if on the drawer's instruction to stop payment is returned by the Bank with the endorsement "payment countermanded by the drawer". In the present case, cheque has been dishonoured due to insufficient fund, as such, ratio decided by the Supreme Court in the case of **K. K. Sidharthan** (supra) is not applicable to the present case. Thus, prima facie, as per the allegations made in the complaint case, ingredients of the cognizable offence are attracted.

6. Accordingly, I find no merit in this application. This application is, accordingly, dismissed.

(Nilu Agrawal, J.)

Arjun/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	22.11.2016
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