

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49314 of 2015

Arising Out of PS.Case No. -1088 Year- 2011 Thana -PATNA COMPLAINT CASE District-
PATNA

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Shyam Babu Sah son of Bisheshwar Sah, resident of Technical College More, C/o
M/s Maa Parwati Pharma, Rayan Road, Bardhman, P.S. Bardhman, District-
Bardhman (West Bengal)

.... Petitioner

Versus

1. The State of Bihar.
2. Shailendra Kumar Sinha, son of Ram Ishwar Prasad Sinha, resident of Mohalla-
Maheshpur, P.S. Mehdiganj, District- Patna

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Naresh Chandra Verma, Advocate

For the Opposite Party/s : Mr. Rita Verma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 15-07-2016

By the present application under Section 482 of the
Code of Criminal Procedure, the petitioner has sought for quashing
of the summoning order dated 07.06.2013 passed by the learned
Judicial Magistrate, Patna City in C. A. No. 1088 of 2011 by which
cognizance has been taken for the offences punishable under
Sections 406 and 504 of the Indian Penal Code and Section 138 of
Negotiable Instruments Act.



2. It would appear from the complaint that Rs.1,75,000/- was given by the complainant to the petitioner. In order to repay the amount, the petitioner had issued three cheques in favour of the complainant. On deposit in the bank, said cheques got dishonoured due to insufficiency of fund. On oral demand, the petitioner failed to repay the amount in question. Thereafter, a legal notice was also sent to the petitioner, but the petitioner failed to respond to the notice. It is also alleged that the petitioner abused and humiliated the complainant when he went to him in order to demand his money back.

3. It is submitted by learned counsel for the petitioner that the offence punishable under Section 406 of the Indian Penal Code would not be attracted in the present case in view of the fact that for dishonours of cheque there is special provision under the Negotiable Instruments Act and the impugned order to that extent is bad in the eye of law.

4. Heard learned counsel for the petitioner and learned counsel for the State.

5. The legality of the question as to whether or not an offence under Section 406 of the IPC is made out can be determined by the court at the stage of framing of charge. So far as the summoning order is concerned, it does not suffer from any

illegality.

6. In that view of the matter, I am not inclined to interfere with the impugned order. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

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