IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22897 of 2016

Arising Out of PS.Case No. -240 Year- 2015 Thana -MAJHAHGARH District- GOPALGANJ

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Ravindra Prasad S/o Rajpati Prasad Resident of Village - Manjhagarh, Sudha Sah Ke Tola, P.S. Manjhagarh, District - Gopalganj.

.... Petitioner

Versus

1. The State of Bihar.
2. Manoj Kumar S/o Late Dinanath Sah Resident of Mohalla - Nai Bazar, Manish Vastralaya, P.S. Manjhagarh, District - Gopalganj.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Sanjeev Kumar, Advocate.
For the Opposite Parties : Mr. C.Sen Pd.Singh(App)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

5 17-10-2016 Heard learned counsel for the petitioner, learned APP for the State as well as learned counsel for the informant.

The petitioner apprehends his arrest in Manjhagarh P.S. Case No. 240 of 2015 registered for the offences punishable under Sections 406, 420, 311 and 120B of the Indian Penal Code and under Section 138 of the Negotiable Instrument Act.

The complainant alleged that Rajendra Prasad took loan of Rs. 9,50,000/- from the complainant and he also gave Rs. 10,00,000/- on the next day. The petitioner who happens to be younger brother of Rajendra Prasad issued cheques of Rs. 9,00,000/- on 02.06.2014 and Rs. 9,50,000/- on 15.07.2014. The cheques were presented to the bank, but the same was returned due to insufficiency of fund. The cheques were dishonoured on 17.07.2014 and the complainant/informant gave notice to the petitioner on 31.07.2014, but the complaint petition was filed on 05.08.2015.

Learned counsel for the petitioner submits that no offence under Section 138 of the Negotiable Instrument Act is made out and the ingredients for filing the complaint within one month from the date of issuance of notice for dishonour of the cheques has not been complied with. Section 142 of the Negotiable Instrument Act clearly bars of taking cognizance under Section 138 of the Negotiable Instrument Act. If the three ingredients that is presentation of cheque within six months or within the period of validity of the cheque and notice within 15 days from the date of return of the cheque on the ground of insufficiency of fund and within 30 days thereafter the complaint should have been filed. The 3rd ingredient has not been fulfilled and the court is barred from taking cognizance under Section 138 of the Negotiable Instrument Act. It is further submitted that both the parties are on lending and borrowing of money. From perusal of the complaint itself, it appears that the complainant/informant and the petitioner were having good relations and they used to lend and borrow money from each other.

On the other hand, learned APP as well as learned counsel for the complainant/informant vehemently opposed the prayer for anticipatory bail of the petitioner but did not give any explanation about filing of the complaint petition after more than one year from the date of issuance of notice that is 31.07.2014.

Considering the facts aforesaid and the fact that the dispute arose during the course of lending and borrowing money, the petitioner above named, in the event of his arrest or surrender before the court below within a period of four weeks from the date of receipt/production of a copy of this order, is directed to be enlarged on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of the Chief Judicial Magistrate, Gopalganj in Manjhagarh P.S. Case No. 240 of 2015, Subject to the conditions as laid down under Section 438 (2) of the Code of Criminal Procedure.

(Prabhat Kumar Jha, J.)

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