

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34634 of 2013

Arising Out of PS.Case No. -1861 Year- 2011 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Ranjeet Singh @ Ranjeet Ranjan Singh S/O Paras Nath Thakur Resident Of Village Musaypur Bajrng Chowk, P.O. Gopalpur, P.S. Basantpur, District Siwan, Managing Director, M/S Swastika Construction Company, House No. 14, Lachit Nagar Behind Rang Mahal, Bibah Bhawn Ulabari, Guwahati.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Smt. Pratima Sinha W/O Sri Mithlesh Kumar Sinha For M/S Pratima Enterprises C/O Ashish Kumar (Ias) Bagrahpur Road, Near Kamla Market, New Bus Stand, P.S. Jakkanpur, District Patna, At Present Sanjay Nagar, Road No. 3, Sheela Sadan 3rd Floor, Jakkanpur, District Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prashant Kumar

For the Opposite Party/s : Mr. Anita Kumari (App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

4 13-01-2017 This application has been filed on behalf of the petitioner for quashing order dated 18.11.2011 passed in Complaint Case No.1861(C) of 2011 by Miss Rashmi, Judicial Magistrate Ist class, Patna, by which the cognizance of the offence under Section 138 of the N.I. Act was taken and processes were issued against the petitioner.

The prosecution story in short is one Pratima Sinha, Proprietor of M/S Pratima Enterprises filed Complaint Case No.1861C of 2011 stating inter alia that some bills of electrical



and civil foundation bills are pending for payment so the Managing Director of the accused Firm issued a cheque of Rs.4,94,000/- in favour of M/S Pratima Enterprises of Kotak Mahindra Bank Ltd., Guwahati and stated to deposit the same for encashment after a month but since then he never contacted to the complainant to deposit the cheque in Bank for payment. The complainant tried to contact again and again but he always avoided and thereafter legal notices were issued but no reply was submitted and in the last, the said cheque was deposited in the account but the same was returned unpaid on 15.6.2011.

From perusal of the record, it appears that the learned Judicial Magistrate Ist Class, Patna, after enquiry under Section 202 of the Code of Criminal Procedure found the case prima facie true under Section 138 of the N.I. Act and issued processes against the petitioner and the aforesaid order issuing processes is being challenged in the present quashing application.

It is submitted on behalf of the petitioner that from perusal of the complaint petition, it will appear that the cheque was issued prior to 16.12.2009, whereas the cheque was presented



on 25.5.2011, even it is found true, it shows that the cheque was presented much after six months statutory period, which has been provided under Section 138 (1) of N.I. Act.

In this case, notices were issued to the Opposite Party no.2 and the learned counsel appearing on behalf of the Opposite Party no.2 yesterday also had sought adjournment and thereafter, the case was listed for today but today also, the learned counsel for the Opposite Party No.2 appeared and stated that he has given no objection certificate, as such it appears that his attitude is only to linger the matters just to keep the case pending. It is the case of the year, 2013 and pending for more than three years.

Heard learned A.P.P. also.

Section 138 Proviso (a) of the N.I. Act provides as follows :

“138. Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from



that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for ¹⁹ [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a). The cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.”

From perusal of the aforesaid Act, it appears that there is statutory period of six months provided for presenting the cheque but in the present case even as per complaint petition there is delay of about more than one year in presenting the cheque in the Bank, Learned counsel for the petitioner has also made some submission about the merit of the case.

Hence, I am inclined to allow the petition on the ground of more than two years delay in presentation of the cheque, which is clearly against the provisions of Section 138, Proviso (a) of the N.I. Act.

As such the order issuing processes under Section 138 of the N.I. Act is not sustainable in the eye of law on this sense



above, hence, the impugned order dated 18.11.2011 passed by MS Rashmi Verma, J.M. First class, is quashed, however, the matter is remitted back to the court below to examine it afresh as to whether the cheque has been filed within statutory period or not and accordingly pass a fresh order within a period of six months.

(Vinod Kumar Sinha, J)

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