IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50027 of 2013

Arising Out of PS.Case No. -1052 Year- 2007 Thana -PATNA COMPLAINT CASE District-PATNA

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Madhukar Anand, S/O Birendra Kumar Sharma, Residing at Village- Awdhara, P.O- Pambhara, P.S.-Dhanarua and District- Saran.

.... Petitioner

Versus

1. The State of Bihar
2. Kumar Anand Ranjan, S/O Sri Raghubir Yadav, Proprietor/ Dealer Maa Shitla Escort, Badi Pahari Near More, P.S-Agam Kuan, District- Patna.

.... Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Dr. Anshuman, Advocate Mr. Sanjay Kumar, Advocate Mr. Devesh Shankaran, Advocate
For the Opposite Party/s	:	Mr. Arif, APP

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

Date: 24-05-2017

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

2. The petitioner under Section 482 of the Code of Criminal procedure (hereinafter referred to as the Cr.P.C.) seeks quashing of the order dated 05.03.2008, passed by Sri R. Kumar, learned Judicial Magistrate, 1st Class, Patna City, Patna in C.A. No. 1052/2007, by which a *prima facie* case under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the Act) has been found to be true and summons have been issued to the petitioner and two other co-accused persons after enquiry under

Section 202 Cr.P.C.

3. The facts of the case is that the opposite party no. 2, Kumar Anand Ranjan, filed C.A. No. 1052 of 2007 in the court of the Additional Chief Judicial Magistrate, Patna City, Patna against the accused including the petitioner alleging therein that he is the dealer of Maa Shitla Escorts and used to do the business of selling the tractor on cash and also on credit by furnishing security by the purchaser of the tractor and its tailor etc. The accused, named in the complaint petition, including the petitioner visited to his office at Bari Pahari on 17.09.2007 and purchased a tractor and hydraulic tractor amounting to Rs. 4,48,492. At that time, the accused persons made payment of Rs. 1,25,000/- through bearer cheque and for rest amount of Rs.3,00,000/- postdated account payee cheque bearing no.476732 dated 17.10.2007 of the Punjab National Bank was issued by the accused, Deepak Kumar, with assurance to deposit the said amount within a week in his account. On 17.10.2007, the opposite party no.2 was requested by the accused persons to meet at his office at 4 P.M. but the accused persons did not reach there. Thereafter, the cheque bearing no.476732 issued by the accused Deepak Kumar was presented on 23.10.2007 in the Bank for clearance and the said cheque remained with the Bank till 26.11.2007 but on 27.11.2007, the said cheque was dishonoured and returned through Memorandum No.1525 of Dhanarua Punjab

National Bank, Patna, showing insufficient fund and also incomplete signature of the drawer. It is also alleged by the opposite party no.2 that the accused persons entered into an agreement for purchase of a Tractor on stamp paper on 17.9.2007, which was signed by the accused, Madhukar Anand (petitioner), Deepak Kumar and one Shyam Kishore Sharma. On 7.12.2007, the opposite party no.2 received a notice of the accused through advocate, Sri Arjun Sharma, acknowledging about the dishonour of the cheque. Thereafter, the opposite party no.2 on 8.12.2007 replied the notice with a request for payment of the amount of the cheque but all in vain. As such, the accused persons, named in the complaint petition, including the petitioner under conspiracy cheated the opposite party no.2 to the tune of Rs.3,00,000/- by issuing the cheque without sufficient money in the account.

4. It has been submitted by the learned counsel for the petitioner that although a complaint was made under Sections 406, 420, 120-B/34 of the Indian Penal Code and Section 138 of the Act, yet the learned Magistrate has taken cognizance under Section 138 of the Act only. He submits that petitioner is not the drawer of the cheque, as the cheque in question has been signed by the other co-accused Deepak Kumar. In this connection, he has filed a supplementary affidavit wherein the photo copy of the cheque has

been enclosed as Annexure-2, which, on perusal, has been found to be of dated 17.10.2007 and signed by the co-accused Deepak Kumar only. It is submitted that yet another co-accused, namely, Birendra Kumar Sharma had moved this Court for quashing of the order of cognizance dated 05.03.2008, passed in the present case, in which a Coordinate Bench of this Court in Cr. Misc. No. 48752 of 2008 by order dated 02.03.2012 has quashed the impugned order dated 05.03.2008 with respect to the petitioner of that case. It is further submitted that from perusal of the complaint case of opposite party no. 2, it appears that he has also admitted that the cheque in question has been signed by Deepak Kumar, co-accused only, which is alleged to be dishonoured due to insufficiency of fund and incomplete signature of the drawer co-accused Deepak Kumar. From perusal of the aforesaid provisions of Section 138 of the Act, it is clear that the said provision is applicable only to the drawer who has signed the cheque and not any other person. Admittedly, the petitioner is not the drawer of cheque in question, which has been said to be dishonoured on presentation by the opposite party no. 2 for credit. The relevant extract of Section 138 of the Act is quoted hereinbelow :-

> "**138. Dishonour of cheque for insufficiency, etc, of funds in the account.-** Where any cheque drawn by a person on 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 provision of this Act, be punished with imprisonment for a term which may be extended to [two] year, or with fine which may extend to twice the amount of 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;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) The drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice."

5. In the result, the impugned order dated 05.03.2008, passed by Sri R. Kumar, learned Judicial Magistrate, 1st Class, Patna City, Patna in CA No. 1052/2007 summoning the petitioner for the offence punishable under Section 138 of the Act appears to be an abuse of the process of the Court, hence, the same is hereby quashed with respect to this petitioner only.

6. The application is, accordingly, allowed.

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.05.2017
Transmission Date	NA