

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37325 of 2014

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Laxman Singh @ Laxman Prasad Son of Sri Kant Prasad, Proprietor Of
Ramji Scooter Works Resident of Durga Chowk, Indrapuri, P.S.- Patliputra,
District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Mahesh Prasad Son of Sri Narsingh Prasad Resident of Mohalla-
Patliputra, P.S.- Patliputra, District- Patna.

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Vivek Kumar Singh, Advocate
For the Opposite Party/s : Mr. Gautam Kumar Yadav, Advocate
For the State : Mr. Madhuranand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

6 09-08-2017 Heard Shri Vivek Kumar Singh, learned counsel for

the petitioner and Shri Gautam Kumar Yadav, learned counsel for

the opposite party no. 2.

The short facts of the case are that the opposite party
no. 2 filed a complaint case bearing Complaint Case No. 986(C) of
2013 dated 19.3.2013 *inter alia* alleging therein that the petitioner
and the opposite party no. 2 are friends and the petitioner had
requested the opposite party no. 2 for giving him a sum of Rs. 1,
79,000/- since he had to pay money for the land and thereafter the
opposite party no. 2 is said to have paid a sum of Rs. 1,79,000/- in
three installments to the petitioner herein.

Further case of the complainant i.e. opposite party



no. 2 is that when he had demanded the aforesaid amount from the petitioner herein, the petitioner had handed over a cheque for a sum of Rs. 1,79,000/- dated 15.12.2012 bearing No. 625891 drawn on Canara Bank, Patliputra Branch. It is the case of the opposite party no. 2 that he had enquired from the said bank and found that there was no money in the account of the petitioner. The opposite party no. 2 has been examined on solemn affirmation by the learned Magistrate on 11.4.2013 and in the same he has admitted that he had not presented the cheque before the Bank.

On the basis of the aforesaid Complaint Case No. 986 (C) of 2013, the learned Judicial Magistrate-1st Class, Patna by an order dated 20.12.2013 has been pleased to find a prima facie case against the petitioner herein under section 138 of the N.I. Act and 418 of the IPC and has thereafter issued summons to the petitioner herein.

The aforesaid order dated 20.2.2013 passed by the Judicial Magistrate-1st Class, Patna is under challenge in the present petition.

The learned counsel for the petitioner submits that the ingredients of section 138 NI Act, is not satisfied, hence the present case is liable to be quashed. He further submits that a bare reading of the complaint petition would show that no case is made



out for the offences as alleged.

The learned counsel for the opposite party no. 2 vehemently opposed the prayer of the petitioner for quashing of the complaint case and he submits that a fraud has been committed by the petitioner in as much as after having taken money from him in good faith he is now refusing to return the same.

Having considered the rival submissions of the parties, I find that at the outset it would be appropriate to reproduce section 138 of the Negotiable Instruments Act, 1881 herein below:-

“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 provision of this Act, be punished with imprisonment for [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;

(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.

Explanation.-For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.

A bare reading of the complaint and the allegations levelled therein as well as section 138 of the N.I. Act would show that the ingredients necessary for constituting the offence under section 138 are clearly missing in the present case. Similarly no cognizable offence is made out under section 418 of I.P.C. Upon bare perusal of the complaint case at best the aforesaid case can



be said to be a case of civil nature for which opposite party no. 2 is free to take appropriate steps before the court of competent civil jurisdiction. It is a trite law that purely civil dispute, sought to be given a colour of a criminal offence amounts to abuse of the process of law, hence the Courts should not permit a person to be harassed although no case for taking cognizance of the offence has been made out.

For the reasons mentioned hereinabove, the order dated 20.12.2013 passed in Complaint Case No. 986(C) of 2013 by the learned Judicial Magistrate-1st Class, Patna is set aside. The petition is allowed.

There shall be no order as to costs.

(Mohit Kumar Shah, J)

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