IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11106 of 2014

Arising out of PS.Case No. -2201 Year- 2013 Thana -DARBHANGA COMPLAINT CASE District-DARBHANGA

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Shamim Akhtar Son of Samsul Haque Resident - Muskan Poultry Agency, Chhawani Chowk, Bettiah, .S. Manuapul, Dist.-West Champaran

.... Petitioner/s

Versus

1. State of Bihar
2. Ashok Kumar Mahansariya son of Badri Prasad Mahansariay Manager and owner of Ashoka Poultry Feeds Private Ltd., A/4 New Industrial Estate and Resident of Mohalla-Bela, Post-Lal Bag, Police Station-Lalit Narayan Mitheela Biswha Vidyalaya, District-Darbhanga

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Sanjay Kumar No.-7, Advocate

For the Opposite Party/s : Mr. Upendra Kumar (APP)

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL ORDER

5 16-01-2017 This quashing petition is directed against the order dated 03.4.2013 passed by Shri Abhishek Kumar, learned Judicial Magistrate, 1st Class, Darbhanga in Complaint Case No. 2201 of 2012 whereby he has taken cognizance of the offence under Section 420 of the Indian Penal Code, 1860 and Section 138 of the Negotiable Instruments Act, 1881.

Heard learned counsels of both sides.

The learned counsel appearing on behalf of petitioner submits that allegation against the petitioner who is accused in Complaint Case in the court below is that a blank cheque was issued by the petitioner in favour of O.P. No. 2 / the complainant as a security so in such situation no prima facie case under section 138 of N.I. Act and under section 420 of I.P.C. is made out, at best it may be a case of civil dispute and not any criminal offence was committed by the petitioner. It is also submitted that the complaint petition itself shows that there was an agreement in between both sides but the copy of the agreement has not been brought on record. Learned counsel appearing on behalf of the petitioner submits that notice was issued but the service report is not there.

The learned counsel appearing on behalf of the State submits that the petitioner used to purchase poultry feed from the complainant which is an admitted position and had submitted him a blank cheque. It is not in dispute that the cheque was not issued by him and there is also presumption of service of notice when notice is sent by registered cover and if the same does not return back after a month.

I find that the allegation in the complaint case is that the business transaction was going on in between both sides. As per the allegation made in the complaint, the complainant is a shop keeper engaging in selling poultry feed an the petitioner used to purchase poultry feed from O.P. No. 2 and the allegation is that a blank cheque as a security was given, when the petitioner was asked to pay Rs. 3,86,552/- the due amount as he had purchased poultry feed in several transactions, he failed to pay thereafter the cheque was deposited by the complainant on 30.6.2012. The said cheque bounced back on 02.7.2012 with endorsement that cheque bounced due to insufficient fund. Thereafter the complainant pursued the matter orally with the petitioner to pay back the due amount but the aforesaid amount was not paid. The complainant sent notice to the drawer of the cheque on 26.7.2012 which did not return back. He again orally contacted the accused and presented the cheque to the bank but again the cheque bounced on 26.9.2012. Subsequently, registered notice was sent by the complainant on 14.10.2012 by way of reminder but no reply received thereafter at last complainant was filed on 03.11.2012. At the enquiry stage three witnesses have been examined and all have supported the case of the complainant.

Section 138 of N.I. Act is as follows:

> **"138. Dishonor of cheque for insufficiency, etc., of funds in the accounts**
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> 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 honor 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 a term which may extend to one year, 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 fifteen 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 purpose of this section, "debt or other liability" means a legally enforceable debt or other liability."

The object of introduction of the Negotiable Instruments Act, 1881 and the amendment made therein was incorporated subsequently in settlement of liabilities by making the drawer liable for penalty in case of bouncing of cheques due to insufficiency of funds in the accounts or for the reason it exceeds the arrangement made by the drawer with adequate safeguards to prevent harassment of honest drawers. This is not a case of the petitioner that the cheque was not issued by the petitioner / accused and first time the cheque was presented by the complainant in bank on 30.6.2012, which bounced subsequently on 02.7.2012 and so he sent notice to the petitioner on 26.07.2012 by registered post. If no service report comes after a month there is presumption of service in law and after 15 days of expiry of said period the money was not returned back by the petitioner the case may be filed. So contents of the complaint petition as well as the evidence coming in course of enquiry do make out prima facie case under section 138 of the NI Act.

In view of Section 139 of the Act, there is presumption in favour of holder unless contrary is proved. There also appears an element of deception in view of the allegations imputed against the petitioner in the complainant. So I find that the allegations in the complaint do make out a prima facie case under Section 420 IPC and Section 138 of the NI Act and the learned Magistrate has rightly taken cognizance. So in this backdrop of the case, I do not find any reason for interference in the cognizance order as there appears no ground, so finding this petition bereft of merit, the same is dismissed.

(Arun Kumar, J)

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