

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51364 of 2014

Arising Out of PS.Case No. -704 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Suresh Ram Son of Late Prayag Ram Resident of Quarter No. 4 Maikdonal
Road, P.O. & P.S. Secretariat (Sachiwalay) District Patna Presently Posted at
Secretariat, Sichai Bhawan, Patna

.... Petitioner/s

Versus

1. The State of Bihar

2. Karu Singh Son of Late Brijnandan Singh Resident of Village - Teera, P.O.
Chero, P.S. Harnaut, District - Nalanda at Present Yarpur, P.S. Gardanibagh,
District - Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mrityunjay Kumar

For the Opposite Party/s : Mr. Sanjay Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 08-12-2017

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

This application under Section 482 of the Code of
Criminal Procedure has been filed for quashing the order dated
09.08.2012 passed by the learned Judicial Magistrate, 1st Class,
Patna in Complaint Case No. 704(C) of 2012 by which the learned
Magistrate after holding enquiry has found prima facie case against
the petitioner and other accused persons for the offence under



Section 138 of the N.I. Act.

Counsel for the petitioner has submitted that the cheque does not bear the signature of the petitioner. Counsel for the petitioner has, further, submitted that in the agreement, there is no signature of this complainant although it bears the signature of the petitioner. There is only signature of this petitioner and witnesses namely Deeraj Kumar and Bal Mukund Singh. One of the enquiry witnesses, namely, Bal Mukund Singh has stated that in his presence, there was agreement between the petitioner and the wife of the complainant. Counsel for the petitioner has, further, submitted that legal notice was not issued within the period as described in the law and therefore, the mandate of the law has not been adopted. The order of taking cognizance is bad in law.

This Court is of the view that such things are to be considered by the court below at the time of trial.

Counsel for the Opposite Party No. 2 has submitted that the agreement was entered into between the complainant and the petitioner for sale of the land for consideration of Rs. 2,50,000/-. As per agreement, an amount of Rs. 2,50,000/- was given by the complainant to the petitioner. The petitioner did not execute the sale deed and thereafter, legal notice was issued for return of money and finally, cheque was issued by the petitioner of an amount of Rs.



2,50,000/- on 28.12.2011 vide cheque No. 875873, which got bounced due to insufficient fund in the account of the petitioner.

The court below has after holding enquiry found prima facie case against this petitioner for the offence under Section 138 of the N.I. Act.

Counsel for the O.P. No. 2 has pointed out that, on the back pages of the agreement there is signature, of petitioner having received the amount on different dates from the complainant.

The court below is only required to see prima facie case at the time of holding enquiry on the basis of allegation in the complaint petition as well as the statement of witnesses recorded during enquiry. The court below has mentioned in the impugned order that the complainant in S.A. and other witnesses in their statement have supported the case. Accordingly, the court below found prima facie case for offence under Section 138 of N. I. Act against the petitioner.

Therefore, this Court does not find any illegality in the impugned order passed by the learned Magistrate. This application is, accordingly, dismissed.

The petitioner is given liberty to raise all the points as raised in this application at appropriate stage, which shall be considered and disposed off by the court below, in accordance with



law without being prejudiced by this Court.

(Sanjay Priya, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.12.2017
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