

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43430 of 2013

Arising Out of PS.Case No. -855 Year- 2013 Thana -VAISALI COMPLAINT CASE District-
VAISHALI(HAJIPUR)

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Dinanath Singh Son Of Late Ram Chandra Singh Resident Of Village -
Bagtajkha @ Plkhra (South Of Veer Kunwar Singh Colony) P.S. + P.O.
Nagar, Hajipur, District – Vaishali Petitioner

Versus

1. The State Of Bihar
2. Jagarnath Singh Son Of Kedar Singh Resident Of Mohalla - Chhoti
Marai, P.S.- Nagar, Hajipur, District - Vaishali

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Shiv Shankar Sharma, Advocate
Mr. Arun Kumar Sinha

For the O.P. No. 2 : Mr. Ramakant Sharma, Sr. Advocate
Mr. Niraj Kumar, Advocate

For the Opposite Party/s : Mr. Shyam Bihari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN
SHARMA**
ORAL ORDER

6 13-04-2017 This Criminal Miscellaneous application has been filed
for quashing the order dated 14.05.2013 passed in Complaint Case
No. 855 of 2013 by learned Chief Judicial Magistrate, Vaishali at
Hajipur whereby and whereunder cognizance has been taken
against the petitioner under Section 138 of Negotiable Instrument
Act and summons has been ordered to be issued.

Heard learned counsel for the petitioner, learned APP for
the State and learned Sr. Counsel on behalf of opposite party no. 2.

Complaint Case No. 855 of 2013 was filed by O. P. No. 2
against the petitioner making allegation that the petitioner took Rs.
50 lakhs i.e. Rs. 25 lakhs and Rs. 25 lakhs at two times and when



pressure was made to return the amount, he gave cheques of Rs. 25 lakhs and Rs. 25 lakhs bearing Cheque No. 935189 and 935190 which were bounced as there was insufficient funds in the account of the petitioner. Thereafter, legal notice was given on 12.03.2013 which was served upon the complainant but no reply was given and then, the complaint case was filed on 30.03.2013.

After examination of the complainant on solemn affirmation and after examination of inquiry witness Ravi Singh, the learned Chief Judicial Magistrate passed the impugned order after finding prima facie case to be made out under Section 138 of Negotiable Instrument Act and summons was ordered to be issued after filing requisites.

Submission on behalf of the petitioner is that in the complaint petition there is no averment as to on what date the legal notice was served upon the petitioner and that is mandatory one, further in the S.A. and in the statement of inquiry witness also it has not come as to when the legal notice was served upon the petitioner and as such the order taking cognizance is bad in law and is fit to be set aside. Further it has been argued that what was the source of the complainant that he paid Rs. 50 lakhs to the petitioner whether he has filed return or not in the Income Tax Department for the same and that has not been disclosed and as



such on that ground also the impugned order is fit to be quashed.

On the other hand, learned APP and learned Sr. Counsel for the O. P. No. 2 submit that at this stage the defence of the accused cannot be looked into, prima facie material collected during inquiry has to be looked into and on that basis whether the prima facie case is made out or not has to be considered. After perusal of the complaint petition and after considering the statement of complainant on S.A. and statement of inquiry witness, prima facie case is made out under Section 138 of Negotiable Instrument Act and the learned Chief Judicial Magistrate has rightly passed the impugned order which requires no interference of this Court.

Having considered the submissions urged at bar and after going through the records, it appears that complaint was filed on 30.03.2013 wherein it is specifically stated that legal notice was given to the petitioner on 12.03.2013 which was served but no reply was given and thereafter, on 30.03.2013 the complaint was filed, so, it is manifest that the time required under the provisions has been given to the petitioner for returning the amount or to say otherwise but he has not given any reply in this regard. So the complaint filed appears maintainable and on this ground the order taking cognizance cannot be quashed. So far as the source of



money of the complainant is concerned, it cannot be adjudged at this stage and for that during trial all these things can be adjudged. I have also perused the complaint petition, the statement of complainant on S.A. and statement of inquiry witness Ravi Singh. From those materials prima facie case under Section 138 N.I. Act is being made out against the petitioner and there is no illegality, incorrectness or impropriety in the impugned order.

In the result, this Criminal Miscellaneous application is hereby dismissed.

(Jitendra Mohan Sharma, J)

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