

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4132 of 2014

Arising Out of PS.Case No. -2229 Year- 2007 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

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1. Arun Kumar Pathak S/O Late Balram Pathak Proprietor M/S Babu Developer
Resident Of Premchand Chhatravas, Mandroja Road, P.S.- Kotwali, Dist.-
Bhagalpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. Govind Prasad Bajoria S/O Late Shankar Lal Bajoria Resident Of Mohalla-
Baltukarkhana Chowk, Baunsi Road, P.S.- Mozahidpur, Dist.- Bhagalpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vivekanand Vivek, Advocate

For the Opposite Party/s : Mr. Dr. K.R. Uday Pratap, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 18-07-2017

The petitioner challenges order dated 16.07.2010 passed by
Mr. Kaushal Kishore learned Judicial Magistrate 1st Class, Bhagalpur
in Complaint Case No. 2229 of 2007, whereby he has taken
cognizance of offence under Section 138 of the N.I. Act, 1881.

The case of complainant in brief is that the complainant
and his wife entered into an agreement with Arun Kumar Pathak, the
accused, a builder and Rs. 2,00,000/- (rupees two lac) was paid to
the petitioner for construction of flat. But it was not built by the
accused. Pursuant to request for returning back the amount, the
petitioner/accused issued a cheque of Rs. 1,00,000/- (rupees one lac)
in favour of the complainant on 10.05.2007. The cheque was



presented on 30.10.2007 but the said cheque got bounced on account of insufficient fund. A notice was sent to the petitioner on 03.11.2007 and notice was received by him on 07.11.2007, but even after, after receiving of the notice, cheque amount was not paid within statutory period so the present complaint was filed on 07.12.2007.

Learned counsel appearing on behalf of the petitioner submits that the cognizance in the present case is barred by limitation in view of Section 142 (b) of the N.I. Act, 1881 as the cause of action arose in this case on 30.10.2007.

However, the learned counsel for the opposite party no. 2 submits that the limitation of filing the complaint runs according to the Section 138 Clause C of the N.I. Act, only when the drawer of the said cheque fails to make payment of the amount within 15 days of the receipt of the notice. The petitioner received notice on 07.11.2007 and was required to pay within 15 days i.e. on 22.11.2007, so cause of action arises in this case on that very day the present complaint was filed on 07.12.2007 within thirty days.

Learned counsel of the opposite party no. 2 also submits that earlier the matter was referred to mediation centre for settlement though the petitioner agreed to pay the settlement amount of Rs. 55,000/- with interest Rs. 73,000/- as on 31.10.2014 and Rs. 15,000/- was also paid on that day as first installment but thereafter, no



installment was paid.

Having considered rival submissions and on perusal of record, I find that the submission of learned counsel of the petitioner is misconceived one. The limitation of taking cognizance according to the Section 142 of the N.I. Act, 1881 runs from the date of cause of action arises under clause (C) of the proviso to Section 138 of N.I. Act. However, in the present case notice was issued on 03.11.2007 and it was received on 07.11.2007 but the petitioner, drawer of cheque failed to make payment of amount of money to the holder, opposite party no. 2 within 15 days, in other words by 22.11.2007. So the cause of action for filing complaint arises on 22.11.2007 in terms of Section 138 (C) of N.I. Act. The date of filing present complaint is 07.12.2007. The complaint was filed within one month of the date on which cause of action arose. Therefore, the cognizance order is not hit by limitation accordingly there is no ground for interfering with cognizance order.

Accordingly, this petition stands dismissed.

(Arun Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	

