

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.6561 of 2014

Arising out of P.S. Case No.86 Year 2013 Thana LALIT NARAYAN UNIVERSITY District
DARBHANGA

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Sunil Kumar Jha, Son of Chandrabali Jha @ Lal Babu Jha, Resident of Supaul
Bazar, P.S Biraul, District Darbhanga

.... Petitioner

Versus

1. The State of Bihar
2. Mamta Chaudhary, Wife of Ram Subhag Chaudhary, Resident of Village
Sarswati Vihar, P.S. Sadar, District Darbhanga

.... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Prabhat Kumar, Advocate
For the State	:	Mr. Tarun Prasad Mandal, APP
For O.P. No.2	:	Mr. D.N. Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 19-07-2017

This application of quashing has been filed by the petitioner under Section 482 Cr.P.C., 1973 for setting aside order dated 22.11.2013/28.11.2013, passed by Chief Judicial Magistrate, Darbhanga in LNMU P.S. Case No.86 of 2013 whereby he has taken cognizance of the offence under Sections 406 IPC and 138 of N.I. Act.

2. The allegation in the First Information Report, in brief, is that the petitioner took loan of Rs.3,55,040/- from the informant giving assurance that the money will be returned back within three months but was not returned within the stipulated period. However, on 28.02.2013 petitioner issued a cheque of Rs.1,19,040/-, subsequently other cheques on different dates as on 28.07.2013 of Rs.1,24,000/- and Rs.1,12,000/-. Cheque of Rs.1,19,040/- issued on 28.02.2013 was presented by the informant in the bank on the same day but got bounced due to insufficient fund. Subsequently notice was issued to the drawer



but money was not paid back, even petitioner declined to pay then this case was filed.

3. Learned counsel for the petitioner submits that this present case was filed after the statutory period of filing the complaint as envisaged under Section 142 of the N.I. Act. Complaint is required to be filed within one month of the date on which the cause of action arises under Clause (c) of the proviso to Section 138 of the N.I. Act but in the present case the complaint was filed after expiry of one month from the date of cause of action arose in this case, so cognizance is barred by law. Learned counsel for the petitioner further submits that in this case no *prima facie* case under Section 406 IPC is made out as ingredient of this offence is not made out. There is no entrustment of any property by the informant with the petitioner, it was a simple loan taken by the petitioner. It is also submitted that there is specific provision in the N.I. Act which deals with penalties in case of dishonour of cheques for insufficient funds.

4. Learned counsel appearing on behalf of opposite party no.2 submits that the cheque was issued to informant on 28.02.2013 and it was presented in the bank on same day however, it got bounced on 05.03.2013. Within 30 days notice was sent to the petitioner, precisely on 20.03.2013 followed by notice and the petitioner/accused responded on 03.04.2013, but payment was not made within 15 days, so this FIR was lodged on 05.05.2013, within a month from the date of arising of cause of action in this case. Moreover, loan was given to petitioner as he



had assured to return it back within three months but did not return it back and used the amount for his own benefit, so the offence of breach of trust is also made out.

5. Having considered rival submissions and on perusal of the records it is apparent that notice after bouncing of cheque was sent by opposite party no.2 to the petitioner on 20.03.2013. The material on record shows that on 03.04.2013 petitioner sent reply to the notice, so taking this date as the date of receiving of notice, he was required to pay the amount within 15 days that comes to 18.04.2013, therefore, the cause of action arises on that very day for filing complaint by the informant. Accordingly, within a month he has filed the FIR on 05.05.2013, so there is no bar in taking cognizance under Section 138 of the N.I. Act in the present case. The aggrieved person may file even a written complaint before the police for setting criminal law in motion as the case lodged in the present matter is not exclusively under Section 138 of the N.I. Act rather coupled with Section 406 of IPC also.

6. For the reasons stated above, this petition stands dismissed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.08.2017
Transmission Date	14.08.2017

