

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40821 of 2014

Arising Out of PS. Case No.-1021 Year-2011 Thana- PATNA COMPLAINT CASE District-
Patna

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Nutan Kumar Singh Patel @ Nutan Kumar Singh , Son of Pannalal Singh Patel, resident of village- Pansalwa, P.S.- Beldaur, District- Khagaria, at present address- Flat No. 1, M.L.A. Flat, back of Museum Road, Patna, P.S.- Kotwali, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Housing and Urban Development Corporation Ltd. (HUDCO), a Government of India Enterprises, 2nd Floor, Block-B/2, Maurya Lok Complex, Dak Bungalow Road, Patna- 800001, represented through Subendo Ghosh, son of Sri Swapan Kumar Ghosh, at present posted as Assistant Law Officer, HUDCO, Regional Office at Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shekhar Kumar Singh

For the Opposite Party/s : Mr. A.L.Pandit (APP)

Sri Prashant Kumar

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

7 20-09-2017 Heard Sri Shekhar Kumar Singh, learned counsel for the petitioner, Sri A.L. Pandit ,learned Additional Public Prosecutor as well as Sri Prashant Kumar, learned counsel, who has appeared on behalf of the complainant / opposite party no. 2 / Housing and Urban Development Corporation Limited.

The sole petitioner has approached this court invoking its



inherent jurisdiction under section 482 of the Code of Criminal Procedure 1973 (hereinafter referred to as “Cr.P.C.”) with a prayer to quash an order dated 04.10.2012 passed by Miss Rashmi, learned Judicial Magistrate, Patna (hereinafter referred to as the “Magistrate”) in Complaint Case No. 1021C of 2011. By the said order learned Magistrate after considering complaint petition, evidence on S.A. of the complainant and inquiry witness, has taken notice of the offence under section 138 of the Negotiable Instruments Act 1881 (hereinafter referred to as “N.I. Act”) and summoned the accused persons .

Short fact of the case is that the opposite party no. 2 /Housing And Urban Development Corporation Limited filed a complaint which was numbered as Complaint Case No. 1021 (C) of 2011. In the complaint petition it was alleged that the complainant had granted loan of Rs. 2,50,00000 /- (Two Hundred Fifty Lacs Only) to the accused persons namely M/s Pansalwa Cold Storage Private Limited (accused no. 1) and Mr. Nutan Kumar Singh Patel , Managing Director M/s Pansalwa Cold Storage Private Limited (accused no. 2) . In the complaint it was alleged that the petitioner had subsequently given two cheques for an amount of Rs. 12,70,000 /- and Rs. 12,48,000/- in favour of the complainant.



It was alleged that both the cheques were presented in the Axis Bank but same were dishonored with endorsement as “insufficient fund”. On the allegation of violation of Section 138 of the N.I. Act the complaint was filed. After filing complaint the complainant was examined on S.A. and thereafter, one inquiry witness was also examined. Finally, the learned Magistrate being satisfied with the *prima facie* case has passed the impugned order and summoned the accused persons.

Sri Shekhar Kumar Singh, learned counsel for the petitioner while assailing the impugned cognizance order has argued that in the complaint petition nothing has been indicated save and except the no. of the cheque and amount of cheque. No date was mentioned as to when it was presented, when dishonored and whether any notice was given or not within time. He submits that in such a situation order of cognizance which has been passed in the complaint petition is required to be interfered with. Learned counsel for the petitioner also tried to persuade the court to examine other facts which were not in complaint proceeding, however the court considering the fact that order of cognizance was challenged in a proceeding under Section 482 of the Cr.P.C. did not find any ground to allow such submission.



Learned counsel appearing on behalf of complainant by way of referring to the S.A. of the complainant has submitted that on S.A. the complainant has made categorical statement that on which date cheque was dishonored and Bank had issued memo with indication "insufficient fund" as well as the fact that within statutory period notice was given to the accused persons even thereafter cheque amount was not deposited by the accused persons. He submits that it is true that in complaint petition specific date of presentation of cheque and return has not been mentioned, but said error has been cured in S.A. of the complainant. Learned counsel for the complainant has also referred to Annexure - '2' i.e. part of the complaint petition to show the date of cheque and amount of cheque.

Besides hearing learned counsel for the parties, I have perused the materials available on record. Since during inquiry and S.A. the complainant had given detail, I do not find any apparent error in the order of cognizance.

The petition stands dismissed.

Considering the fact that order of cognizance was passed long back on 04.10.2012 while dismissing the petition it is desirable to direct the court below to take appropriate steps so that the case may come to its logical end without unnecessary



delay.

(Rakesh Kumar, J)

praful/-

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