

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40044 of 2014

Arising Out of PS. Case No.-1556 Year-2011 Thana- DARBHANGA COMPLAINT CASE
District- Darbhanga

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Mukesh Kumar Srivastava Son of Yogendra Prasad Srivastava Resident of
Mohalla - Denta Chawk (Suraj rest house gali, Near Dr. A.N. Singh Clinic),
P.S. - Laheriasarai, District - Darbhanga, Prop. M/s Shivam Enterprises,
Telephone Exchange Road, Mohalla - Alalpatti, P.S. - Laheriasarai, District -
Darbhanga

... .. Petitioner/s

Versus

1. The State of Bihar
2. Jai Narayan Raut Son of Late Hari Raut Resident of Mohalla - Kathalbari,
P.S. - L.N.M. University, Campus, District - Darbhanga

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ansul
For the State	:	Mr. AJAY KUMAR JHA(APP)
For the O.P. No. 2	:	Mr. Iqbal Asif Niazi, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 12-10-2017

Heard learned counsel for the parties.

This application under Section 482 of the Cr.P.C
has been filed for quashing the order dated 14.08.2014
passed in Cr. Revision No. 104 of 2014 passed by the
learned District and Sessions Judge-1st, Darbhanga as well
as order dated 27.11.2013 passed in Complaint Case No.



1556 of 2011 passed by learned court of Sri V.K. Pandey learned Magistrate 1st Class, Darbhanga, rejecting the petition under Section 258 of the Cr.P.C filed by the petitioner.

The complainant has filed a complaint case alleging therein that the complainant gave Rs. 95,000/- to the accused-petitioner on 12.04.2001. The accused also gave cheque of Rs. 95,000/- and stated that the cheque may be encashed after two months. Again the complainant gave amount of Rs. 95,000/- and accused-petitioner gave him cheque of Rs. 95,000/- on 11.06.2011 with assurance that it may be presented after four days and both the cheques given by the accused-petitioner will be encashed. The complainant presented both the cheques for encashment on 15.06.2011 but the same was dishonoured by the bank with return memo dated 17.06.2011 and received by complainant on 21.06.2011 as insufficient amount. The complainant sent a legal notice dated 06.07.2011 to the accused-petitioner demanding Rs. 1,90,000/- but it was not paid, and thereafter the complainant filed the present complaint case.

On the basis of complaint petition, examination of complainant on S.A. and inquiry of witnesses, the court



below took cognizance of the offence under Section 138 of the N.I. Act and issued summons to the accused-petitioner for his appearance. The accused-petitioner appeared before the court below and acknowledged his debt and undertook to pay the amount to the complainant and thereafter by two bankdrafts dated 25.05.2012 and 31.07.2012 in the name of complainant paid Rs. 1,40,000/- and Rs. 50,000/- and the same was deposited by the complainant in his account and was encashed. The accused-petitioner thereafter filed a petition dated 29.11.2012 under Section 258 of the Cr.P.C on the ground that the cheque amount of Rs. 1,90,000/- has been paid to the complainant, as such it should be deemed that the matter has been compromised and the amount has been paid and complainant has condoned the default of petitioner by accepting the amount. However, the trial court rejected the petition and criminal revision filed by the accused-petitioner before the District and Sessions Judge, Darbhanga, was also dismissed.

From the facts of the present case, it appears that on notice accused-petitioner appeared before the trial court and acknowledged his debt and undertook to pay the amount and the same was also paid by two bankdrafts



dated 25.05.2012 and 31.07.2012, which was accepted by the complainant and also encashed which shows the fair and bonafide conduct of the accused petitioner. The Supreme Court in its recent judgment in the case of **M/s Meters and Instruments Private Limited & Anr vs Kanchan Mehta** passed in Criminal Appeal No. 1732 of 2017 and Criminal Appeal No. 1733 of 2017, disposed of on 05.10.2017, had held that the Court should encourage compounding of offence at an early stage. The compensatory aspect of remedy should be given priority over the punitive aspect.

The Apex Court has also held that Section 258 of the Cr.P.C which enables proceedings to be stopped in a summons case is applicable in cases instituted under Section 138 of the N.I. Act. Paragraph nos. 10 and 11 of the said judgment reads as follows:-

"10. Again, this Court considered the matter in **J.V. Baharuni and Anr. etc. versus State of Gujarat and Anr etc. reported in (2014) 10 SCC 494**, and observed that the procedure prescribed for cases under Section 138 of the Act was flexible and applicability of Section 326(3) of the Cr.P.C. in not acting on the evidence already recorded in a summary trial did not strictly apply to the scheme of Section 143 of the Act. This Court observed that the procedure being followed by the Magistrates was not commensurate with the summary trial provisions and a successor Magistrate ought not to mechanically order de novo trial. This Court observed that the Court should make endeavour to expedite hearing of cases in a time bound



manner. The Magistrate should make attempts to encourage compounding of offence at an early stage of litigation. The compensatory aspect of remedy should be given priority over the punitive aspect.

11. While it is true that in **Subramaniam Sethuraman versus State of Maharashtra reported in (2004) 13 SCC 324** this Court observed that once the plea of the accused is recorded under Section 252 of the Cr.P.C., the procedure contemplated under Chapter XX of the Cr.P.C. has to be followed to take the trial to its logical conclusion, the said judgment was rendered as per statutory provisions prior to 2002 amendment. The statutory scheme post 2002 amendment as considered in *Mandvi Cooperative Bank and J.V. Baharuni (supra)* has brought about a change in law and it needs to be recognised. After 2002 amendment, Section 143 of the Act confers implied power on the Magistrate to discharge the accused if the complainant is compensated to the satisfaction of the Court, where the accused tenders the cheque amount with interest and reasonable cost of litigation as assessed by the Court. Such an interpretation was consistent with the intention of legislature."

Considering the aforesaid facts and circumstances of the present case, the petitioner is directed to deposit sum of rupees Thirty Thousand (Rs. 30,000/-) in the court below as an amount of compensation awarded in favour of complainant within one month from the date of receipt/production of a copy of this order, and on such deposit being made by the accused-petitioner, the complainant is permitted to withdraw the said amount. After deposit of such amount of rupees Thirty Thousand (Rs. 30,000/-) by the accused-petitioner, the Complaint Case No. 1556 of 2011, shall stand quashed.



With the aforementioned observation and
direction, this application is disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18.10.17
Transmission Date	18.10.17

