

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40877 of 2014

Arising Out of PS.Case No. -961 Year- 2011 Thana -DARBHANGA COMPLAINT CASE District-
DARBHANGA

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Shahnawaz Ahmad @ Gulab @ Gulab Ahmad S/o- Late Nazeer Ahmad, Resident
of Mohalla- Sena Path, P.O.- Lal Bagh, P.S.- Town, District- Darbhanga

.... Petitioner

Versus

1. The State of Bihar
2. Shiv Nath Sah, S/o- Late Ram Kripal Sah, Resident of Mohalla- Bakarganj, P.S.-
Laheriasarai, Dist- Darbhanga

.... Opposite Parties.

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Appearance:

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Mr. Md. Imteyaz Ahmad and Mr. Shashank Shekhar, Advocates.
For the State	:	Mr. Brijendra Nath Pandey, A.P.P.
For the Opposite party no.2:	:	Mr. Girish Chandra Jha and Mr. Kumar Goutam, Advocates.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 09-10-2017

Heard learned counsel for the petitioner and learned
counsel representing the opposite party no. 2 as well as learned A.P.P.
for the State.

2. The petitioner is seeking quashing of the order dated
01.03.2012 passed by the learned Judicial Magistrate 1st Class,
Darbhanga in Complaint Case No. 961/2011 / Misc. Case No. 8/2011
in which cognizance of offences under Section 138 of the Negotiable
Instruments Act read with Section 420 of the Indian Penal Code has
been taken and summons has been issued against the petitioner.

3. Learned counsel representing the petitioner submits that



from perusal of the complaint petition it would appear that the complainant has not stated about the date on which the demand notice was issued or served upon the accused, therefore, in absence of such a categorical statement the order taking cognizance is bad in law.

4. On the other hand, learned counsel representing the opposite party no. 2 would submit that the petitioner does not deny issuance of cheque in favour of the opposite party no. 2 and there being a presumption under Section 139 of the Negotiation Instruments Act that a cheque issued is for consideration, the learned Magistrate upon perusal of the materials which includes the copy of the demand notice and proof of despatch thereof has rightly taken cognizance of the offence and presently the order taking cognizance need not be interfered with at the instance of the present petitioner.

5. A perusal of the complaint petition shows that in the last paragraph the complainant has specifically stated about the submission of the cheque, cheque deposit slip, cheque return memo, demand notice in the form of legal notice and only on those materials which were filed by the complainant in the court below, the learned Magistrate has taken cognizance and decided to issue summons against the petitioner.

6. Even if the argument of the learned counsel is considered that the demand notice was not received by the accused, in



absence of a specific plea that the accused has either tendered the cheque or is ready to deposit the amount on the very first day of his appearance before the learned Magistrate, the plea cannot be said to be *bona fide*.

7. This Court does not find any merit in the application.
The application is accordingly dismissed.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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