

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40466 of 2013

Arising Out of PS.Case No. -363 Year- 2011 Thana -SAMASTIPUR COMPLAINT CASE District-SAMASTIPUR

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Ram Prahalad Choudhary Son Of Late Muneshwar Choudhary R/O Village
And P.O.-Malikaur Via Dighara, P.S.-Pusa, District-Samastipur

.... Petitioner

Versus

1. The State Of Bihar

2. Avanish Kumar Son Of Sri Umesh Chandra Rai R/O Village And P.O.-
Malikaur Via Dighara, P.S.-Pusa, District-Samastipur

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Madan Prasad Singh No-2

For the Opposite Party/s : Mr. Nand Kishore Pd.(App)

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN
SHARMA**

ORAL ORDER

8 17-04-2017 This Criminal Miscellaneous application has been filed

for quashing the order dated 18.04.2013 passed in Complaint Case

No. 563 of 2011 whereby and whereunder learned Judicial

Magistrate Ist Class, Samastipur has taken cognizance of offence

under Sections 138/142 of Negotiable Instruments Act.

Heard learned counsel for the petitioner and learned
counsel representing the State.

As per complaint petition, the complainant gave Rs.
25,000/- to the petitioner on 04.07.2009 and when he asked to
refund, the petitioner gave a cheque of Rs. 25,000/- on 01.07.2010
drawn in the Central Bank of India, Branch Vaini (Pusa Road),
Samastipur, which was deposited on the same day in the Regional
Gramin Bank, Dighara but it was returned on 17.09.2010 due to



insufficiency of fund. Thereafter, the complainant contacted the petitioner for refund of the money but he went avoiding, then, legal notice was sent on 29.09.2010. On receipt of notice the petitioner contacted the complainant and requested not to file the case and requested to deposit the said cheque again as there was still time for depositing of the cheque and this time he could get the money. On that assurance, the complainant again deposited the cheque on 02.11.2010 for encashment but it was again returned due to insufficient fund. Thereafter, the complainant himself went to the petitioner but he refused to meet him. The complainant again sent notice dated 23.04.2011 but no reply thereof was given and then the complaint case was filed on 18.05.2011.

Submission on behalf of the petitioner is that time for filing the case has already expired as the complaint was not filed within the time prescribed under Section 138 read with 142 of Negotiable Instruments Act and as such the order of cognizance and the complaint itself is fit to be quashed. Learned counsel for the petitioner relied upon a judgment reported in **2014 (1) PLJR 299** in the case of **Kamlesh Kumar Vs. State of Bihar & Anr.**

On the other hand, learned APP submits that the facts of the present case is quite on different footing than the case before the Hon'ble Apex Court. Here, after receiving the legal notice the



petitioner requested the complainant not to lodge case and requested to deposit the cheque again with assurance that this time cheque will be encashed. Then, the cheque was deposited second time on 02.11.2010 but again the same was dishonoured on 13.04.2011 and then legal notice was sent on 23.04.2011 to which in spite of service of notice the petitioner did not reply and then the complaint case was filed on 18.05.2011.

In the facts and circumstances stated above, considering that in this case on the assurance given by the petitioner the case was not filed earlier thereafter, the cheque was again deposited for encashment which was dishonoured on 13.04.2011 and then legal notice was sent on 23.04.2011 and after waiting for reply the case was filed on 18.05.2011. So, in my view, the complaint case is not barred by limitation. Learned Magistrate has rightly passed the impugned order and there is no illegality, incorrectness or impropriety in the said order.

In the result, finding no merit in this Criminal Miscellaneous application, the same is hereby dismissed.

(Jitendra Mohan Sharma, J)

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