

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22749 of 2014

Arising Out of PS.Case No. -1736 Year- 2009 Thana -ROHTAS COMPLAINT CASE District-
SASARAM (ROHTAS)

=====

Sheshnath Chaurasia Son of Late Jagan Chaurasia resident of Mohalla- Kabirganj,
P.S.- Sasaram (Nagar), District- Rohtas

.... Petitioner

Versus

1. The State of Bihar
2. Ramnath Singh Son of Late Jagdip Singh resident of village- Armal, P.S.-
Dhanarua, District- Patna, at present Mohalla- Karansarai, Ada Road (House of
Rajeshwari Singh), P.S.- Sasaram (Town), District- Rohtas

.... Opposite Parties

=====

Appearance :

For the Petitioner : Mr. Sada Nand Ray, Advocate

For the State : Mr. Manoj Kumar, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 02-08-2017

The petitioner seeks quashing of order dated 22.4.2014
passed by Judicial Magistrate, 1st Class, Rohtas at Sasaram in
Complaint Case No.1736 of 2009 whereby charge has been framed
against the petitioner under Sections 420, 504 of the Indian Penal
Code and 138 of the Negotiable Instruments Act.

2. The contention of the learned counsel for the
petitioner is that he filed a petition for discharge of the case as
cognizance under Section 138 of N.I. Act cannot be taken in view of
the fact that there is no compliance of the mandatory provision
enumerated in Section 138 of the N.I. Act as the complaint was filed
within 15 days from the date of receipt of the notice sent to the



drawer. The cause of action arising only if the drawee fails to make payment within fifteen days from the date of receipt of notice in view of Section 138(C) of N.I. Act. He placed reliance on the case of **Yogendra Pratap Singh Vrs. Savitri Pandey & Anr. reported in AIR 2015 Supreme Court 157.**

3. Learned Additional Public Prosecutor also concedes that this notice was sent by the complainant on 10.12.2009 and this complaint has been filed on 23.12.2009.

4. Having considered rival submissions and on perusal of record, it is found that the case of the petitioner is that the notice dated 10.12.2009 was issued by the complainant for making payment after dis-honour of the cheque was received by the petitioner on 14.12.2009 and the complaint is filed on 23.12.2009, so apparently the complaint was filed within 15 days from the date of issuance of notice. In the case of **Yogendra Pratap Singh Vrs. Savitri Pandey & Anr. (Supra)**, the Hon'ble Supreme Court has held that the complaint filed before expiry of 15 days from the date on which notice has been served on drawer/accused cannot be said to disclose the cause of action in terms of Clause (C) to proviso of Section 138B of N.I. Act and upon such complaint which does not disclose the cause of action, the Court is not competent to take cognizance. The cause of action arises under Section 138(C) of N.I. Act in view of provision of Section 142(b) of N.I. Act. It means unless period of 15



days as prescribed under Clause (C) of the proviso to Section 138 the cause of action to file a case under Section 138 N.I. Act does not arise. In the case of **Yogendra Pratap Singh (Supra)**, Hon'ble Supreme Court also decided that the remedy in such case is only to file a fresh complaint and the Court may take cognizance even after the prescribed period considering the sufficient cause for not making the complaint within such period.

5. However, in the backdrop of said fact as well as legal position, the Court had no jurisdiction to take cognizance under Section 138 of N.I. Act. Therefore, charge only under Section 138 N.I. Act in the said section is set aside but for rest charge fraud for offence related to Indian Penal Code the trial may continue however the complainant has got the remedy by filing a fresh complaint and for initiating a prosecution under Section 138 of N.I. Act and in such situation the Court may proceed according to the proviso of Section 142b subject to satisfaction of the Court finding sufficient cause for delay in filing the complaint.

6. Accordingly, this application is disposed of.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30-08-2017
Transmission Date	30-08-2017

