

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.18980 of 2014**

Arising Out of PS.Case No. -1905 Year- 2013 Thana -PATNA COMPLAINT CASE District-  
PATNA

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Rajiv Ranjan Singh @ Raju Singh @ Rajiv Ranjan S/o Late Ram Chandra Singh  
Permanent resident of Village Bajidpur, P.S. Bihta, District Patna whereas at  
present resident at Flat No. 401, Pushpa Mension Apartment, Viveka Nand Marg,  
Police Station Sri Krishna Puri, District/Town Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar.  
2. Sri Jitendra Singh S/o Sri Chandeshwar Singh Managing Director of M/s  
Princeton Niketan Pvt. Ltd. Registered Office at Flat No. 04, Mirambika  
Apartment, Boring Road, P.S. Buddha Colony, District/Town Patna.

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Mr. Jitendra Singh, Sr. Advocate.

For the Opposite Party/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR**

**ORAL JUDGMENT**

**Date: 24-08-2017**

Heard learned counsel for the petitioner, learned counsel  
for the State as well as learned counsel for the O.P. No. 2.

2. The petitioner seeks quashing of the cognizance order  
dated 15.11.2013 passed by the Judicial Magistrate, 1<sup>st</sup> Class, Patna in  
Complaint Case No. 1905 (C) of 2013 whereby he has taken  
cognizance under Section 406 of the Indian Penal Code and Section  
138 of the Negotiable Instrument Act.

3. A brief fact, as stated in the complaint, is that the  
complainant-O.P. No. 2 entered into an agreement for sale for  
purchasing a piece of land, mentioned in the complaint, from the  
petitioner-accused and paid Rs. 1.13 crore as advance through cheque



and cash, total consideration money for the land was Rs. 1.80 crore. As per allegation, orally, the accused also agreed to return back Rs.1.50 crore in case of failure of executing the sale deed in favour of the complainant and in order to show the commitment, the accused issued a cheque of Rs. 1.20 crore on 14.01.2003 in favour of the company, of which O.P. 2 is the Director, and thereafter also issued three cheques, in total of Rs. 25 lacs, in favour of the complainant. Subsequently, the complainant enquired about the right title of the land and found that title is disputed and execution of agreement for sale was cancelled and cheque of Rs. 1.20 crore, as part payment relating to consideration money given to the complainant, when it was presented to the bank, it got dishonoured on 16.04.2013. Legal notice was issued on 18.04.2013 through registered post to the accused but payment was not made and thereafter the present complaint was filed on 01.06.2013.

4. Learned counsel for the petitioner submits that entire transaction, as alleged by the complainant, is of civil nature. The petitioner had entered into an agreement for sale with the land owner, knowing this fact, the complainant-O.P. No. 2, thereafter, entered into such agreement for purchasing the said land, but later on owner not executed sale deed in favour of the petitioner, so he had filed a suit against him under the Specific Performance of Contract Act. Besides



this, the complainant has also filed a money suit for realizing advance money given by him at the time of execution of agreement for sale. Learned counsel has also placed reliance in a case of *Indian Oil Corporation v. NEPC India Ltd. And Ors.* reported in (2006) 6 SCC 736. He further submits with regard to the offence under Section 138 Negotiable Instrument Act that as per allegation that a registered notice was issued on 18.04.2013 to the petitioner, but there is no averment that whether notice was received by the petitioner and the complaint has been filed on 01.06.2003. So, the presumption would be that registered post would have been delivered after 30 days so before lapse of 15 days of mandatory period for giving time to drawee, this complaint was filed.

5. Contrary to it, learned counsel appearing on behalf of the O.P. No. 2 submits that the petitioner, having claimed right title over the land in question, entered into agreement for sale, otherwise, the complainant had not been given part of the consideration amount to the tune of Rs. 1.13 crores, out of total consideration amount of Rs. 1.80 crore. On examining the document, relating to the land, and finding him not having right title over the land, he was issued legal notice. The money taken in advance after execution of agreement for sale was returned back by issuing a cheque, when the same was presented to the bank it also got bounced and even after notice sent to



him by registered post, money was not returned.

6. Coming to the facts of the case, it appears that petitioner does not have right title over the property in question intending to sell the same to the complainant. Despite this fact, he entered into an agreement for sale and taken Rs. 1.13 crore advance from the complainant but even the advance money given by the complainant, he could execute the sale deed. It is also not the case of the petitioner that he has had any power of attorney executed to him by the title holder for dealing with the land. The cheque handed over by the petitioner to the complainant when he deposited it in the bank got dishonoured and even after sending registered notice with regard to return the cheque amount was not paid. It is a matter of proof in trial whether instant complaint was lodged exhausting procedure contained in Section 138 of the Negotiable Instrument Act after lapse of 15 days from the receipt of notice. Moreover, Section 27 of the General Clauses Act it is deemed that notice has been served to the drawer of the cheque.

7. In case of *Arun Bhandari vs. State of Uttar Pradesh and Ors.* reported in (2013) 2 SCC 801, the Hon'ble Supreme Court has held that “ sometimes, a case may apparently look to be of civil nature or may involve commercial transaction but such civil disputes are commercial disputes in certain circumstances may also contain



ingredients of criminal offence and as such disputes have to be entertained notwithstanding they are also civil disputes.

8. In the present case also, it is not a case that the present complaint does not contain ingredients of criminal offence. However, this Court has not expressed any opinion on the merit of the case on the one way or other, rather observation is only limited to order taking cognizance in the case hence only it is held that cognizance is prima facie valid. The court below will decide the case on its own merit without being influenced by the aforesaid order.

9. The application stands dismissed.

**(Arun Kumar, J)**

Sujit/-

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