

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

**Criminal Miscellaneous No.13916 of 2016**

Arising Out of PS.Case No. -2298 Year- 2015 Thana -BHOJPUR COMPLAINT CASE District-  
BHOJPUR

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Suresh Prasad Singh son of Late Thakur Prasad Singh, resident of village & Post-  
Chawni, P.S.- Karakat, District- Rohtas.

.... .... Petitioner/s

**Versus**

1. The State of Bihar
2. Uttam Kumar Singh son of Shri Shiv Pratap Singh, resident of village- Gidha,  
P.S.- Koilwar, District- Bhojpur, presently residing at Maharana Pratap Nagar,  
Ara, P.S.- Ara Nawada, District- Bhojpur.

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

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**Appearance :**

For the Petitioner/s : Mr. Binay Kumar Pandey, Advocate

For the State : Mr. Amrendra Prasad, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**  
**ORAL JUDGMENT**  
**Date: 30-08-2017**

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

2. This application under Section 482 of the Code of  
Criminal Procedure has been filed by the petitioner for quashing the  
order dated 08.12.2015 passed in Complaint Case No.2298C of 2015  
by the learned Judicial Magistrate, 1<sup>st</sup> Class, Ara, Bhojpur whereby  
the petitioner has been summoned to face trial for the offences  
punishable under Section 138 of the Negotiable Instruments Act, 1881  
(for short 'N.I.Act').



3. A Complaint Case bearing no.2298C of 2015 was filed by one Uttam Kumar Singh alleging therein that the petitioner, who is his relative, is in scrap business. He came to his residence and asked for some money for investing in his business and promised that fifty per cent of the profit from the business besides the principal amount shall be paid to him. Believing his words to be true, he deposited a total sum of Rs.6,00,000/- (rupees six lakh) in the bank account of the petitioner on different dates. It is further stated that on several occasions he met with petitioner and demanded his share of profit from the business, but every time the petitioner refused to pay him the amount on one ground or the other. After much persuasion, the petitioner handed over a cheque of State Bank of India, Kankarbagh Branch, Patna bearing no.287142 amounting to rupees one lakh, which was deposited by him in his S.B.I account of Gidha Branch on 28.07.2015, but the said cheque was returned by the bank due to insufficiency of fund in the account. Thereafter, he went to the house of the petitioner and apprised him about the dishonour of cheque. The petitioner again assured him that sufficient money shall be deposited in the bank account within ten days and asked him to present the said cheque again after ten days. He again presented the said cheque for its encashment twice, but again on both dates the cheque was returned by the bank due to insufficiency of fund.



4. It is further stated that on 24.09.2015, he sent a legal notice to the petitioner, but no satisfactory reply was given. Subsequently, when he went to the house of the petitioner and demanded the amount, the petitioner not only refused to pay the amount, but also abused him in filthy language.

5. The case of the petitioner is complete denial of the allegations, as narrated in the complaint petition. He has pleaded that the complainant, who is his relative, was in dire need of money, as he was constructing his house. He had requested the petitioner to help him in monetary terms. Hence, the petitioner had issued the cheque bearing no.287142 amounting to rupees one lakh. After few days, the complainant again visited the house of the petitioner and stated that due to mistake the said cheque has been mutilated while washing cloth and thus could not be presented before the Bank. He requested the petitioner to issue another cheque. Since the petitioner had received some payment in business transaction, he handed over rupees one lakh in cash to the complainant and requested the complainant to return the cheque, but it was never returned. Thereafter, the petitioner requested the bank officials to stop the payment of the said cheque. However, the complainant dishonestly presented the cheque for encashment.

6. Learned counsel for the petitioner has submitted that the



petitioner is a close relative of the complainant of the case and there is likelihood that if notices are issued, the matter may be amicably settled between the parties.

7. I have heard learned counsel for the petitioner and perused the record.

8. Section 138 of the N.I.Act is a penal provision. If a person draws a cheque on an account maintained by him with a banker for payment of any amount of money to another person for the discharge of any debt or other liability and the cheque is returned by the Bank unpaid due to payment stopped by the drawer and if on issuance of the notice by the holder in due course, he does not pay the same, the statutory presumption under Section 138 N.I.Act stands satisfied.

9. In many cases the practice of stop payment is used by the drawers to deny the legal liability and to avoid proceedings under Section 138 of the N.I.Act. In **Modi Cements Ltd. vs. Kuchil Kumar Nandi**, [(1998) 3 SCC 249], the Supreme Court has clarified that if a cheque is dishonoured because of stop payment instructions even then offence punishable under Section 138 of the N.I.Act gets attracted. Moreover, in the present case, the cheque was dishonoured for insufficiency of fund in account and not due to stop payment instruction. Since ingredients of the offence under Section 138 of the



N.I.Act are clearly attracted, in my opinion, no ground for interference in the impugned order is made out.

**10.** I am also of the opinion that in exercise of power under Section 482 of the CrPC, notices cannot be issued to the complainant only with a view to explore the possibility of compromise.

**11.** The application, being devoid of any merit, is dismissed.

**(Ashwani Kumar Singh, J)**

Md.S./-

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