

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33827 of 2013

Arising Out of PS.Case No. -2445 Year- 2009 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Virendra Kumar Singh @ Veerendra Kumar Singh S/O Nathuni Singh @
Nathuni Prasad Singh Resident Of Village- Tarawan, P.S- Darihat, District-
Rohtas.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Narendra Prasad Singh S/O Late Shyam Narayan Singh Resident Of
Village- Ramjeechak, Digha, P.S- Digha, P.O- Bataganj, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amar Nath Singh

For the Opposite Party/s : Mr. Ashok Kumar-1(App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

6 17-01-2017

The petitioner has filed the present application for quashing of order dated 20.11.2009 passed by Smt. Gayatri Kumari, Judicial Magistrate Ist Class, Patna in Complaint Case No.2445(C) of 2009, whereby the learned Judicial Magistrate finding a prima facie case under Section 406 of the Indian Penal Code as well as Section 138 of Negotiable Instrument Act, issued processes against the petitioner.

The prosecution story in short is that Opposite Party No.2 filed a complaint petition alleging therein that the petitioner purchased paddy of Rs.1,80,000/- from him under an agreement dated 22.1.2009 and he issued a cheque on 28.2.2009 of Bank of



India, Dehri-on-Sone Branch, Rohtas, which was deposited in S.B.I., Digha Branch, which could not be encashed as limit discontinued and thereafter a legal notice was issued on 11.8.2009 but the petitioner did not responded. As such, he filed a complaint petition

The learned Magistrate after enquiry, vide order dated 20.11.2009 passed in Complaint Case No.2445(C) of 2009 has found a prima face case under Section 406 of the Indian Penal Code as well as Section 138 of Negotiable Instrument Act and issued processes against the petitioner and the aforesaid order of the learned Judicial Magistrate is under challenge before this Hon'ble Court.

It is submitted on behalf of the petitioner that so far processes issued under Section 138 of the N.I. Act is concerned, provision of Section 138, Proviso (b) and (c) clearly shows that within 15 days of service of notice, the complaint has to be lodged but there is no compliance of Section 138 Proviso (b) and (c) of N.I. Act in this case. He has also submitted that so far Section 406 of the Indian Penal Code is concerned, from perusal of the complaint petition, it appears that no case is made out under Section 406 of the Indian Penal Code. On the basis of aforesaid



submission, it has been argued that order issuing processes against the petitioner is itself not sustainable in the eye of law.

Heard learned A.P.P. also.

A notice was issued to the Opposite Party No.2 under both the processes but he did not appear.

Having heard both sides. From perusal of the complaint petition as well as materials available on the record, it appears that so far contention of the petitioner that within 15 days the same has not been filed, no doubt a legal notice was also sent on 11.8.2009 and the information was received and the complaint petition was filed on 19.9.2009 so it appears that the complaint petition has been filed after 15 days under Section 138 of the N.I. Act, however, the processes were also issued under Section 406 of the Indian Penal Code and from perusal of the complaint petition, it does not appear that any ingredients under Section 406 is available on the record or not.

As such, without going on merit of the case, I am disposing of this application with liberty to the petitioner to raise these points at the time of framing of charges and at that time apart from examining the materials available on record, learned court



below will see as to whether charge under Section 406 of the Indian Penal Code and 138 of N.I. Act is made out or not, especially as there is non-compliance of Section 138, proviso (b) and (c) of the N.I. Act.

With the aforesaid observation, this application is disposed of.

(Vinod Kumar Sinha, J)

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