

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.34589 of 2013**

Arising Out of PS.Case No. -376 Year- 2010 Thana -VAISALI COMPLAINT CASE District-  
VAISHALI(HAJIPUR)

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1. Guru Prakash @ Munna Singh S/O Shiv Shankar Singh Resident Of  
Mohalla Veer Kunwar Singh, West Of R.N. College, P.S. Hajipur Town,  
District Vaishali.

.... .... Petitioner/s

Versus

1. The State Of Bihar.  
2. Rajesh Kumar S/O Gaya Prasad Choudhary Resident Of Mohalla Chhoti  
Isopur, P.S. Industrial Area Hajipur, District Vaishali.

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

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**Appearance :**

For the Petitioner/s : Mr. Surendra Kishore Thakur  
For the Opposite Party/s : Mr. Dr. Ajit Kumar(App)

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**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA**  
**ORAL ORDER**

3      12-01-2017      This application has been filed for quashing order dated  
20.5.2010 passed in Complaint Case No.376 of 2010 /Tr. No.107  
of 2010 by Sri Sumit Ranjan, Judicial Magistrate Ist class, Vaishali  
at Hajipur, whereby and whereunder processes had been  
issued against the petitioners finding a prima facie case under  
Section 138 of the N.I. Act read with Section 420 of the Indian  
Penal Code.

The prosecution story in short is that there was an  
agreement between the complainant and the accused persons to  
sale a land at the cost of Rs.7,20,000/- , accordingly, the accused



gave Rs.20,000/- as advance and thereafter the accused person persuaded the complainant to execute a power of attorney on the pretext that he will pay Rs.7 lakh so the complainant executed the power of attorney on 14.1.2010 and the accused issued a cheque no.68222 on 14.1.2010 of S.B.I., Hajipur. It is also the case of the complainant that that thereafter, he submitted the cheque in the Bank, which was bounced, having no sufficient amount. Further, case of the complainant is that though she gave legal notice through Advocate to the accused persons (petitioners) on 30.1.2010 but the accused did not return the amount rather said that he would neither return the amount nor left the land. On which, the present complaint petition was filed.

The learned Judicial Magistrate after enquiry under Section 202 of the Code of Criminal Procedure found a prima facie case under Section 420 of the Indian Penal Code as well as under Section 138 of the N.I.Act for issuance of processes under Section 204 of Code of Criminal Procedure. The aforesaid order issuing processes cognizance is under challenge before this Hon'ble Court.



It is submitted on behalf of the petitioner that there was no agreement between the parties with respect to payment of Rs.7 lakh rather an agreement is with respect to Rs.21 lakh with respect of sale of properties and he had already paid Rs.21 lakh and as such, complainant has executed deed of sale for an area of 2.25 decimal of land, which will clearly appear from Annexre-2 filed by the petitioner and cheque of Rs.7 lakh was given as security only. The opposite party no.2 (complainant) has lodged a false case against the petitioners. It has also been submitted by the petitioner that when they came to know about the cheque by complainant in Bank, they had also filed a Complaint Case No.36 of 2010 of cheating against the complainant. It is also alleged that the case filed against the petitioner is false, but the Learned Magistrate without proper application of mind, issued processes against the petitioner.

On the other hand it is submitted on behalf of the learned A.P.P. that there is nothing illegal in the impugned order as the learned Judicial Magistrate, after perusal of the complaint petition and the materials available during the course of enquiry has issued processes against the accused persons under Section



138 of the N.I. Act read with Section 420 of the Indian Penal Code. Further, there is no denial by the petitioner with respect to issuance of cheque, rather it is admitted in the present application and whatever plea has been taken by the petitioner, that is his defence, which can not be looked into at this stage.

Heard both sides and perused the record, from which it clearly appears that cheque has been issued by the petitioners in favour of the complainant and on presentation before the Bank, that bounced as having no sufficient money. Even from perusal of the application, it appears that the petitioners have also admitted about issuance of cheque, however, it is their plea that the cheque has been issued as security and they paid whole amount of Rs.21 lakh and the sale deed was executed by the complainant but all the above facts is the defence of the petitioners that can not be looked into at this stage. Further had the cheque been issued as security and whole amount was paid, the petitioners ought to have stopped the payment, but in the present case, cheque did not bounce, on the ground of stop payment rather the same was returned due to insufficient money.

Considering the above facts, there is no error apparent on



the face of record. Accordingly, this application is dismissed.

(Vinod Kumar Sinha, J)

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