

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31580 of 2013

Arising Out of PS.Case No. -3416 Year- 2011 Thana -PATNA COMPLAINT CASE District-
PATNA

=====

Nirmal Kumar Srivastava, S/O Late Siddhnath Lal, Resident of Flat No. 202 & 203,
Lalita Kunj Apartment, B. Area, Mithapur, P.S. - G.P.O., P.S. - Jakkanpur, District
- Patna

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sunal Kanchan, S/O Mr. Mahesh Prasad Singh, R/O Vijay Nagar, P.S. -
Chitragupta Nagar (Patrakar Nagar), District - Patna

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 04-07-2017

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

2. This application, under Section 482 of the Code of
Criminal Procedure, is directed against the order dated 08.01.2013
passed in Complaint Case No. 3416(C) of 2011, whereby the Judicial
Magistrate Ist Class, Patna, summoned the accused-petitioner, on
inquiry, under Section 204 of Cr.P.C., finding the prima facie case,
under Sections 420 of the Indian Penal Code and Section 138 of the
Negotiable Instruments Act.

3. Learned counsel for the accused-petitioner submits
that it would appear from the complaint petition that legal notice was



issued by the complainant-opposite party no. 2 on 17.11.2011 to accused-petitioner but when the notice was served upon him is not detailed and the complainant-opposite party no. 2 filed the Complaint Case No. 3416(C) of 2011, on 24.12.2011, within 37 days of issuing the legal notice to the accused-petitioner. Further submission is that in case of non returning the registered notice within one month there is presumption of the service of notice and according to that also at least the complaint case ought to be filed after 45 days of issuing the legal notice. As such, the complainant case of the complainant-opposite party no. 2 is not filed after 15 days of service of notice as required under Section 138 of the Negotiable Instruments Act. As such, entertaining the complaint case and summoning the accused-petitioner for the offence under Section 138 of the N.I. Act is bad in law and liable to be set aside. Further submission is that on perusal of the complaint petition, the ingredients as required for the offence under Section 420 of the Indian Penal Code is missing but, in spite of that the learned Judicial Magistrate Ist Class, Patna, took cognizance under Section 420 of the Indian Penal Code also.

4. On going through the impugned order, it appears that on perusal of the complaint petition, S/A of the complainant and the statement of the witnesses, the learned Judicial Magistrate Ist Class, Patna, arrived at conclusion that the prima facie case is made out under Section 420 of the Indian Penal Code and Section 138 of the



Negotiable Instrument Act. It is not detailed in the complaint petition when the notice was served. The fact regarding the defect of service of notice is also not detailed by accused-petitioner in the present application. Under the General Clauses Act, there is presumption of service of notice as issued under the registered post if the same is not returned within 30 days. There is no indication that on which date service of notice will be deemed to be served. As such, I do not find any substance in the first submission of the leaned counsel for the petitioner. As far as second submission about non- existing the ingredient of Section 420 Indian Penal Code in complaint petition is concerned, the petitioner has opportunity to raise this point at the time of framing of charge.

5. As such, I do not find any illegality in the impugned order amounting to abuse of the process of the court for interference in inherent jurisdiction under Section 482 of the Code of Criminal Procedure. Accordingly, this application is dismissed . However, the petitioner would be at liberty to raise his defence/points in trial court at the appropriate stage.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	



