

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4762 of 2017

Arising Out of PS.Case No. -1312 Year- 2016 Thana -BEGUSARAI COMPLAINT CASE District-
BEGUSARAI

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Pritam Kumar, son of Sri Girish Rai, Resident of Village- Gaur, P.S.- Teghra,
District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Hemant Kumar, son of Brajnandan Sharma, Resident of Village- Gaur, P.S.-
Teghra, District- Begusarai.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar, Advocate

For the State : Mr. Md. Fahimuddin, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 30-01-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the petitioner for quashing the order dated 25.07.2016 passed in Complaint Case No.1312(C) of 2016 by which the learned Judicial Magistrate, 1st Class, Begusarai summoned the petitioner finding a prima facie to be made out under Section 138 of the Negotiable Instruments Act (for short 'the N.I.Act') to be true against him.

2. It is submitted by the learned counsel for the petitioner



that even before presentation of the cheque in question before the Bank the petitioner had filed a complaint to the Branch Manager, Central Bank of India, Gaura stating therein that a duly signed cheque by the petitioner had been misplaced and lost. He had also filed a Sanha in this regard before the Teghra Police Station. The cheque in question, which was lost, was misused by the opposite party no.2 and presented before the Bank. He submitted that in view of the facts stated above, since the cheque was not issued in discharge of any debt or liability, cognizance of the offence under Section 138 of the N.I.Act by the learned Magistrate is bad in law.

3. On the other hand, learned counsel for the State submitted that the points argued on behalf of the petitioner are all disputed facts in defence, which can be established in course of trial by adducing evidence. According to him, there is no error in the order impugned passed by the learned Magistrate, as there is no dispute to the fact that a duly signed cheque of the petitioner was presented before the Bank on an account maintained by him for payment, which returned unpaid because of insufficiency of fund and, inspite of notice having been given to the petitioner in this regard by the opposite party no.2, he failed to make payment of the amount of money mentioned in the cheque to the opposite party no.2, the holder of the cheque.

4. I have heard learned counsel for the parties and perused



the record.

5. The complainant opposite party no.2 in his complaint filed on 17.06.2016 stated, inter alia, that being a friend of the petitioner he had given rupees fifteen lacs to the petitioner to invest in his business on assurance that he would return the amount within one month. Later on, on demand, the petitioner issued cheque bearing no.006896 of Central Bank of India in his favour on 08.04.2016. The cheque was presented before the Bank on the account maintained by him on 10.05.2016. On 17.05.2016, he received intimation from the Bank that due to insufficiency of fund the cheque got dishonoured. Thereafter, he gave a legal notice to the petitioner on 01.06.2016, but the petitioner failed to make payment of the cheque amount to the complainant whereafter the complaint has been filed.

6. In view of the allegations made above, it would be evident that the ingredients of the offence punishable under Section 138 of the N.I.Act are clearly attracted. The statement of the complainant made on oath under Section 200 of the Cr.P.C. and the witnesses examined on his behalf have fully supported the allegations made in the complaint in course of enquiry. Learned counsel for the State has rightly urged that the defence of the petitioner can only be considered after the evidence is adduced before the court in trial.

7. In that view of the matter, if the learned Magistrate found



a prima facie case to be made out under Section 138 of the N.I.Act and the petitioner has been summoned to face trial, no illegality can be found with the order impugned.

8. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	31.01.2018
Transmission Date	31.01.2018

