

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.48943 of 2017

Arising Out of PS.Case No. -839 Year- 2016 Thana -VAISALI COMPLAINT CASE District-
VAISHALI(HAJIPUR)

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1. Chandrakant Singh S/o Amar Nath Singh, R/o Village+Post Asoi
Lachhiram, Lachhiram, P.S.- Bhagwanpur, District- Vaishali at Hajipur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Hari Bhushan Singh S/o Late Dharmnath Singh, R/o Village-Lal Pokhar
Dighi, Post Dighi Kala, P.S.- Hajipur Sadar, District- Vaishali.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Roy

For the Opposite Party/s : Mr. Sri Anil Kumar Singh 1

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 26-06-2018 The instant application under Section 482 of the Code of Criminal Procedure has been preferred for quashing part of the order dated 15.02.2017 passed by the learned Judicial Magistrate, 2nd Class, Hajipur (Vaishali) in Complaint Case No. 839 of 2016 corresponding to Tr. No. 705 of 2016/ 692 of 2017 whereby he has not taken cognizance of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act').

From the pleading of the petitioner and the order impugned, it would be evident that the petitioner had received information regarding dishonour of cheque on 23.11.2015 but he made a demand for payment of the amount mentioned in the cheque by giving notice in writing on the drawer of the cheque on



04.01.2017.

Considering the statutory provision prescribed under Section 138(b) of the N.I. Act, the learned Magistrate while taking cognizance of the offence under Section 417 of the Indian Penal Code did not summon the accused under Section 138 of the N.I. Act.

Learned counsel for the petitioner submitted that the order impugned is bad in law as the court failed to take into consideration that due to unavoidable and compelling circumstances some delay occurred in sending the notice. The learned Magistrate also failed to appreciate the fact that instead of written notice the petitioner had intimated the accused orally regarding return of the cheque within thirty days.

Having heard learned counsel for the petitioner, I see no merit in his submission. In order to attract the offence punishable under Section 138 of the N.I. Act, the law mandates that notice must be sent within thirty days of the receipt of information from the bank regarding return of the cheque. When the admitted case of the petitioner is that no such notice was sent to the accused within thirty days, the court below has rightly refused to take cognizance of the offence punishable under Section 138 of the N.I. Act.



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

(Ashwani Kumar Singh, J)

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