

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37888 of 2016

Arising Out of PS.Case No. -29817 Year- 2014 Thana -PATNA COMPLAINT CASE District -
PATNA

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Nikhil Kumar Jha, Son of late Uday Kant Jha, Resident of Flat No. 402D,
Ashirwad Enclave, Anandpuri West, Boring Canal Road, P.S.-S.K. Puri,
District Patna. Petitioner

Versus

1. The State of Bihar
2. Amrit Kaushal, Son of Sri Chandra Sekhar, Director Concur
Pharmaceuticals Private Ltd. RZ- 32/33 Matiala Extension P.S.-Uttam
Nagar, New Delhi-110059, Present Address- C/o Sri Harendra Prasad, B-
06, Housing Colony, Lohia Nagar, Kankarbagh, P.S.-Kankarbagh, Patna-20
.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Gyanendra Kumar Singh, Advocate

For the Opposite Party/s : Mr. Jharkhandni Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

3 27-07-2018 Heard learned counsel for the petitioner and learned
counsel for the State.

2. This application under Section 482 of the Code of
Criminal Procedure has been filed by the petitioner for quashing
the order dated 29.06.2015 passed in Complaint Case No. 29817
(C) of 2014 by the learned Judicial Magistrate-1st Class, Patna
whereby and whereunder learned Magistrate has summoned the
petitioner to face the trial for the offence punishable under
Section 138 of the Negotiable Instruments Act, 2002 (for short



‘N.I. Act’).

3. It is submitted by the learned counsel for the petitioner that the petitioner had issued the cheque not in lieu of any debt or liability. The cheque was issued in the name of company. There was also sufficient fund in the account of the petitioner when the cheque was issued before the bank but the same was dishonoured because the petitioner had issued instruction to the bank not to honour the cheque. It is contended that a pure civil dispute has been given colour of a criminal case by the complainant.

4. Having heard learned counsel for the petitioner and perused the record, I see no illegality in the order impugned. The petitioner is not denied that he is not the drawer of the cheque. Once the cheque is issued by the drawer, a presumption under section 139 of the N.I. Act arises. Merely because the drawer issues a notice to the bank for stoppage of payment, it will not preclude an action under section 139 of the N.I. Act by the drawee of the cheque on holder in due course. The defence as to whether the cheque was issued against any debt or liability or not is to be considered by the court at appropriate stage during trial. No other ground has been raised by the petitioner.

5. In that view of the matter, I see no merit in this



application. The application is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/SkSuman.

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