

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.35511 of 2011**

- 
1. Magadh Coloniser Pvt. Ltd. , R/O 201, Above Punjab And Sindh Bank , Fraser Road, P.S- Kotwali, Distt- Patna.
  2. Mrs Ranjana Das W/O Late Prakash Chandra Das, R/O Tubewell No.2 Sheikhpura, P.S- Shastrinagar, Patna- 14, At Present Posted As Assistant Teachjer, Dav Public School, At & Po Distt- Jhanjharpur.
  3. Subhash Chandra Das S/O Shyam Ballabh Das R/O Tubewell No.2 Sheikhpura, P.S- Shastrinagar, Distt-Patna- 14,

... .. Petitioner/s

Versus

1. The State of Bihar
2. Mr. Bimal Kumar, S/O Late Jamuna Prasad, R/O Gurudwara Road, Danapur Cantt, Distt- Patna.

... .. Opposite Party/s

---

**Appearance :**

For the Petitioner/s : Mr. Jagannath Singh

For the Opposite Party/s : Mr. M.N.Jha (App)

---

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR**

**ORAL JUDGMENT**

**Date : 13-08-2018**

Heard learned counsel for the petitioners as well as learned counsel for the State.

2. The application of quashing has been filed by the petitioners, under Section 482 of the Criminal Procedure Code 1972, seeking for setting aside the cognizance order dated 05.09.2006 passed by learned Judicial Magistrate, 1<sup>st</sup> Class, Patna in Complaint Case No. 1957 (c)/2006 whereby taking cognizance of offence under Section 406 of I.P.C. as well as Section 138 of N.I. Act.

3. The case of the complainant in factual matrix is as



follows:

Mr. Vimal Kumar, complainant, filed a complaint case against all three accused persons, who are petitioners in this application, namely petitioner no. 1, M/s Magadh Coloniser Pvt. Ltd, a construction company, petitioner no. 2, Mrs. Ranjana Das Director of the company and Petitioner no. 3, Subhash Chandra Das, elder brother of husband of petitioner no. 2. The accused persons approached the complainant to purchase a flat in S.G. Tower on paying consideration amount of Rs. 5,50,000/-, accordingly, they entered into an agreement for sale on 18<sup>th</sup>, January, 2001 and entire consideration money was paid by the complainant and acknowledgment receipt of money was also issued in favour of the complainant but neither the possession of the flat was given nor money was refunded back. On repeated persuasion, petitioner no. 2 issued a cheque of Rs. 6,00,000/-in favour of the complainant but the same got bounced/dishonoured on 07.04.2016, as the fund was insufficient. A legal notice dated 20.04.2006 was issued seeking payment of money despite that money was not paid.

4. Learned counsel appearing on behalf of the petitioner no. 2 contends that agreement for sale as well as cheque alleged to be issued by petitioner no. 2 are the forged documents as



neither any agreement was signed by the petitioner no.2 nor the cheque was issued by her in favour of the complainant. Further submission is that the Managing Director of M/s Magadh Coloniser Pvt. Ltd, petitioner no. 1, was husband of the petitioner no. 2, who died on 15.08.2000 thereafter she was its Director. Later on, the company was winded up and she joined as a teacher in M.N. Jha D.A.V Public School. Moreover, complaint was filed after lapse of a month since cause of action as envisaged under Section 138 C of the Negotiable Instrument Act arisen so in such situation so cognizance is also barred under Section 142 of the Act.

5. Contrary to it, learned counsel appearing on behalf of the State submits that agreement for sale and cheque, both are genuine documents and up till now, no any case has been filed by the petitioner no. 2 that such documents are forged and created by the complainant or the cheque was misused by anyone. The cheque issued by petitioner no. 2 got dishonoured no for the reason that it was not signed by him rather the ground for honouring the concerned cheque was insufficient money in the account of payee.

6. Further submission is that cognizance has been taken under Section 406 of I.P.C. also besides under Section 138 of



N.I.Act and there is provision under section 142 of N.I.Act that the court can take cognizance of the offence even after delay in filing the complaint case or if the court is satisfied by the cause of delay explained by the complainant. However, there is no any requirement that specific reason is to be mentioned in the impugned order regarding the satisfaction.

7. Having consideration of the rival contentions of both sides and on perusal of record , the Court finds that only lame defence is taken by the petitioners regarding forged agreement for sale entered in between the complainant and the petitioner no. 1 and 2, as there is no complaint or case ever lodged by these two petitioners regarding committing forgery by the complainant. The reason assigned by bank for getting the cheque dishonoured is insufficient fund in the account of the petitioner no. 2. All provisions were complied like giving notice in time under Section 138 of N.I.Act, presentation of the cheque in the bank and issuance of notice but despite receipt of the notice, the money was not paid by the petitioners no. 1 and 2. The cheque was issued in discharge of the liability to return back the consideration amount earlier taken by the petitioners no. 1 and 2 from the complainant for selling the flat. Under Section 142B of the N.I. Act, a complaint is required to be filed



within a month from the date of arising cause of action under Clause(c) of Section 138 of the N.I. Act, in the present case though there is some delay despite that cognizance was taken by the court in view of proviso of Sub-Clause B of Section 142 of the N.I. Act, being satisfied regarding sufficient cause shown for such delay. The objective of the Act is to punish unscrupulous transactions, however, no specific reason is required to be mentioned in the impugned order itself while taking cognizance by the Magistrate regarding his satisfaction under Section 142 B of the N.I. Act, therefore, a *prima facie* case under Section 406 of I.P.C as well as 138 of N.I. Act is made out against Petitioner nos. 1 and 2 namely M/s Magadh Coloniser Pvt. Ltd. and Mrs. Ranjana Das respectively; accordingly, criminal proceeding will proceeded against both of them.

8. So far as petitioner no. 3 Subhash Chandra Das is concerned, he has no concern with the present transaction, neither he is functionary of M/s Magadh Coloniser Pvt. Ltd. nor signatory to the agreement for sale, moreover it is also an admitted position that cheque was issued by the petitioner no. 2, therefore, no *prima facie* case is made out against Subhash Chandra Das, petitioner no. 3, under Section 406 of I.P.C. and 138 of N.I. Act. Hence, impugned order taking cognizance dated



05.09.2006 and subsequent criminal proceeding with respect to Subhash Chandra Das, petitioner no. 3 is hereby quashed.

9. Accordingly, this application stands allowed in favour of petitioner no. 3 whereas, it stands dismissed in reference to petitioners no. 1 and 2 against whom criminal proceeding will proceed further in accordance with law.

**(Arun Kumar, J)**

Sujit/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | AFR        |
| CAV DATE          | NA         |
| Uploading Date    | 18.08.2018 |
| Transmission Date | 18.08.2018 |

