

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35392 of 2015

Arising Out of PS. Case No.-383 Year-2013 Thana- GAYA COMPLAINT CASE District-
Gaya

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Sunil Kumar Kesari, son of Sri Dowarika Prasad Keshari, resident of Moreha
Gali, Chand Chaura, P.S.- Civil Lines, District-Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Sanjay Kumar Sinha, son of Birendra Kumar Sinha, resident of Mohalla-
Bhusunda, P.S. Mufassil, District-Gaya.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigendra Pratap Singh, Advocate
For the Opposite Party No.1	:	Mr. Prem Kr. Jha (App)

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 02-05-2018

None appears for the opposite party No.2 even though
served. None had appeared on the last date also.

Heard learned counsel for the applicant.

Seeking quashing of the proceedings initiated under
Section 138 of the Negotiable Instrument Act vide order dated
23.04.2014 by the Judicial Magistrate, 1st Class, Gaya in
Complaint Case No.383 of 2013, Trial No.2468 of 2014/2133 of
2015, this application has been filed under Section 482 of the Code
of Criminal Procedure.

Complainant had filed the case in question *inter alia*
contending that in pursuance to an agreement, certain transactions
were to take place and, therefore, the cheque was issued by the



present applicant to the complainant on 12.09.2012 to the tune of Rs.50,000/-. The cheque was presented for payment in the Bank and on 14.09.2012 it was returned back on account of insufficiency of fund. Annexure-1 is the copy of the document evidencing the aforesaid fact. After the cheque was returned on 14.09.2012, legal notice was issued on 18.12.2012, vide Annexure-2, and within a period of 15 days when the payment was not made, the proceedings were initiated, not within the stipulated period of thirty days thereof, but after more than two months on 04.03.2013.

Learned counsel for the petitioner taking through the aforesaid date argues that as the complaint has been filed beyond the statutory period prescribed under the provision of Section 138 of the Act, the complaint was not maintainable and the learned Court below in registering the complaint and taking cognizance of the matter has committed error.

As indicated hereinabove, in spite of issuance of notice, none is appearing, the matter is pending since 2015 and there is no rebuttal to the averments as is detailed hereinabove.

From the aforesaid it is clear that after the cheque was returned back on account of insufficiency of fund on 14.09.2012, the legal notice was issued on 18.12.2012 and after waiting for a period of fifteen days, the complaint should have been filed on or



before thirty days thereof. Instead of doing so, the complaint was filed after the statutory period of thirty days on 04.03.2013 and once the complaint is barred by provisions of law, the learned Court below committed an error in registering the complaint. The aforesaid grounds are sufficient enough to hold that the complaint was not maintainable.

Accordingly, finding no reason to reject the contention of the petitioner, the same is allowed. The application is allowed and disposed of. Complaint Case No.383 of 2013 and order dated 23.04.2014 taking cognizance are quashed.

Sunil/-

(Rajendra Menon, CJ)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.05.2018
Transmission Date	15.05.2018

