

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33296 of 2018

Arising Out of PS. Case No.-601 Year-2014 Thana- KOTWALI District- Patna

Raj Kumar Agrawal son of Shri Phoolchand Agrawal R/o village Dharara P.O.
Ganpatganj, P.S. Raghopur Dist. Supaul.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Advocate with Mr. Gautam Kumar Kejriwal Advocate
For the informant	:	Mr. Jitendra Singh, Sr. Advocate
For the State	:	Mr. A.M.P. Mehta APP

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL ORDER

8 03-08-2018 Heard learned counsel for the petitioner, learned APP for the State and learned counsel for the informant.

Petitioner apprehends his arrest in **Kotwali P.S. Case No.601 of 2014** instituted for the offence under Section(s) 406, 420,468, 470,471, 506 and 120B of the Indian Penal Code.

Learned counsel for the petitioner has submitted that for the same offence one case has been registered in Mumbai under Section 138 of the Negotiable Instruments Act which is still pending. Learned counsel further submits that Arbitration proceeding is also pending between the parties and it is at the verge of completion.

Learned counsel for the petitioner has further submitted that



instant case has been filed just to harass the petitioner in the garb of criminal offence although the dispute between the parties is purely of civil nature.

On the other hand, learned counsel for the informant has appeared and submitted that due to misrepresentation and intention to commit fraud from the very beginning the petitioner has unnecessarily pushed the informant into civil dispute, and also dragged into arbitration proceeding.

It is an admitted fact that petitioner issued two cheques amounting to Rs. 17 crores in support of supply of the sugar by the informant to the petitioner who was director of M/S Ayush Sales Pvt. Limited. The payment was not made by the petitioner after receiving the aforesaid sugar. The informant insisted for payment then petitioner issued two cheques which got bounced. The petitioner instead of making payment of due amount put the informant into further litigation. The petitioner was forced to file one case in Mumbai under Section 138 of the N.I. Act for bouncing of cheque. The instant case has been filed in Patna for the criminal offence committed by petitioner.

Learned counsel for the informant has submitted that Criminal writ was also filed on behalf of the petitioner to quash the instant proceeding which was dismissed by this court by order passed in Cr.W.J.C. no. 652 of 2015 on the ground that accused persons had made the informant to believe by misrepresentation and



assertion that the invoices of N.S.E.L. towards payment of huge amount of money would be cleared within a few days but soon after placing procurement order and on receipt thereof when the petitioner issued two post dated cheques over a sum of Rs. 14 crores both the cheques stood dishonored.

In such circumstances, this Court finds that from the very beginning as alleged in detail in the F.I.R., misrepresentation has been made by the petitioner which is also apparent from fact that sugar were supplied as per agreement entered into between the parties and payment was assured to be paid within 20 days but payment was not made. Thereafter, on several demands two cheques amounting to Rs. 17 crore were issued which got bounced. The Hon'ble Supreme Court in a judgment reported in **(2012) 7 SCC 621 (Sangeetaben Mahendrabhai Patel vs. State of Gujarat and Anr.)** has held that in prosecution under Section 138 of NI Act, the mens rea i.e. fraudulent or dishonest intention at the time of issuance of cheque is not required to be proved. However, in the case under I.P.C., the issue of mens rea may be relevant. The offence under Section 420 I.P.C. is a serious one as the sentence of 7 years can be imposed. In the instant case, from conduct of petitioner as mentioned, there is mens rea to commit criminal offence.

Therefore, this Court is not inclined to grant anticipatory bail to the petitioner. Prayer for anticipatory bail of the petitioner stands rejected.



Petitioner may surrender before the Court below and make prayer for regular bail which shall be considered and disposed of on its own merit in accordance with law without being prejudiced by the present order.

(Sanjay Priya, J)

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