

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 9792 of 2015**

Arising Out of Complaint Case No.-2399 C Year-2013 Thana- WEST CHAMPARAN
COMPLAINT District- West Champaran

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Bidhu Shekhar Pandey, Son of Sh. Janardan Pandey, resident of village-
Mathiya Brit Baithania, P.S.- Majhaulia, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shambhu Prasad, Son of Late Mohan Prasad, resident of Mohalla- Kali
Bagh, near Western side of Naka No. 3, Police Station- Bettiah Town,
District- West Champaran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar, Advocate
For the State	:	Mr. Atul Chandra, APP

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 06-05-2019

Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner has moved the Court under Section
482 of the Code of Criminal Procedure, 1973 (hereinafter referred
to as the 'Code') for the following relief:

*“That this application is being filed for
quashing the Order dt. 04/12/2014/4.01.2015
passed by the Court of Sessions Judge, West
Champaran, Bettiah in Cr. Revision No. 214 of
2014 whereby and whereunder learned Judge has
been pleased to confirm the Order dt. 9/07/2014
passed by Sri Ajay Kumar-I, Judicial Magistrate,
1st Class, Bettiah (West Champaran) in Complaint
Case No. 2399C of 2013 as well as the said order
dated 9/07/2014 under which the cognizance was
taken by learned court of Sri Ajay Kumar-I,*



Judicial Magistrate, 1st Class, Bettiah (West Champaran) against the accused/Opposite party no. 2, Under Sections 323 and 504 of the Indian Penal Code and not under Sections 323, 406, 420, 504 & 506 of the Indian Penal Code read with 138 of the Negotiable Instrument Act.”

3. The grievance of the petitioner, who has filed Complaint Case No. 2399C of 2013, relates to non encashment of two cheques issued by the opposite party no. 2 in favour of the petitioner and of assault and threatening by the accused. The Court below had taken cognizance only under Sections 323 and 504 of the Indian Penal Code though the complaint case was filed citing Sections 406, 420, 506 of the Indian Penal Code as well as 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the ‘NI Act’). The challenge to the same by the petitioner in Cr. Revision No. 214 of 2014 was also rejected by order dated 04.12.2014 passed by the Sessions Judge, West Champaran, Bettiah.

4. Learned counsel for the petitioner submitted that the intention was to cheat and commit fraud right from the beginning as the cheques in question were returned without encashing the first time and subsequently, on the assurance of the opposite party no. 2 when it was again presented by the petitioner, it met the same fate and thus, there was clear cut intention to commit fraud



and cheat and cognizance not being taken under Sections 406 and 420 of the Indian Penal Code is bad in law.

5. Learned APP submitted that there is a special law i.e., the NI Act with regard to non encashment of cheque and once there is a special law, there cannot be any cognizance or charge under a general law on the same facts. It was submitted that the NI Act lays down a specific and fixed time schedule with regard to the cheque being returned from the Bank, notice being issue to the person who has issued the cheque and thereafter for the accused person to file a complaint case, which in the present case, has been done much beyond the said period and rightly the Court has not taken cognizance under Section 138 of the NI Act. It was further submitted that the Court has taken cognizance under two sections of the Indian Penal Code and during trial, it is always open for the Court to alter the charge if materials coming during trial to justify the same, as has been provided under Section 216 of the Code. Thus, learned counsel submitted that the petitioner has a remedy available to him, if according to him, his stand is correct, by producing sufficient materials/witnesses before the Court for getting the charge altered.

6. At this stage, learned counsel for the petitioner submitted that as per his up-to-date instructions, the Court has



finally consigned the case and sent the records to the record room. Though, learned counsel for the petitioner was not in a position to explain the circumstances leading to the records being consigned by the Court below, but once the same has been done, the present case has become infructuous as there is a fresh cause of action for the petitioner to agitate.

7. In view thereof, the application stands disposed off with liberty to the petitioner to move before the appropriate forum, in accordance with law, with regard to the grievance which may exist as on date.

8. If the petitioner does so, the same shall be considered on its own merits, without being prejudiced by the present order.

(Ahsanuddin Amanullah, J.)

P. Kumar

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