

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 6340 of 2015

Arising Out of P.S. Case No.-117 Year-2012 Thana- DIDARGANJ District- Patna

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Dinesh Kumar, Son of Late Deo Nandan Singh, Resident of Mohalla-
Gulmahiachak, Police Station- Didarganj, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Ganga Vishwakarma, Son of Ram Khelawan Mistri, Resident of Village-
Damrahi Ghat, Police Station- Malsalami, District- Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ravi Prakash, Mr. Ashok Kumar and Mr. Nawal Kishore Prasad, Advocates
For the State	:	Mr. J. N. Thakur, APP Mr. Jharkhandi Upadhyay, I/C APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 30-04-2019

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 for the following relief:

*“That this is an application for
quashing the order dated 24.11.2014 passed in
Didarganj Police Station Case No. 117 of 2012 by
the learned Sub-Divisional Judicial Magistrate,
Patna City who has dismissed the discharge
petition filed u/s 239 Cr.P.C. and has confirmed the
cognizance order dated 06.07.2013 taken U/Ss
406/341/323/504/506 I.P.C. and Section 138 of the
N.I. Act passed by himself.”*



3. The allegation against the petitioner by the informant is with regard to non-encashment of cheque of Rs. 1,75,000/-, as the Bank returned it with the note that the account has been closed and further of assault when the informant went to ask for money.

4. Learned counsel for the petitioner submitted that the impugned order taking cognizance under Section 138 of The Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act') is impermissible on the complaint to the police, as has been held by the Courts. For such proposition, he relied upon a decision of the Hon'ble Supreme Court in **N. Harihara Krishnan v. J. Thomas** reported as **AIR 2017 SC 4125**, the relevant being at paragraphs no. 23 and 24. It was submitted that the cheques of the petitioner were stolen due to which he had closed his Bank account after giving application to the Bank on 17.09.2012.

5. Learned APP submitted that though cognizance under Section 138 of the NI Act is not permissible, with regard to the other sections, at this stage, it cannot be said that the order taking cognizance is bad in law.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the application stands disposed off in the following terms.



7. With regard to the cognizance taken by the Court below under Sections 406, 341, 323, 504 and 506 of the Indian Penal Code, the Court does not find any occasion to interfere as the Court on the basis of materials before it has proceeded to take cognizance and the petitioner shall have full liberty to prove his innocence during trial.

8. However with regard to Section 138 of NI Act, in view of law laid down by the Hon'ble Supreme Court in **N. Harihara Krishnan** (*supra*), the Court finds that the cognizance based on police complaint is not contemplated under the NI Act and accordingly, cannot be sustained.

9. Thus, the order taking cognizance and subsequent framing of charge against the petitioner stands restricted to Sections 406, 341, 323, 504 and 506 of the Indian Penal Code.

(Ahsanuddin Amanullah, J.)

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