

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15937 of 2015

Arising Out of PS. Case No.-26078 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

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Bluearth Energy Private Limited having its registered office at F-152, S.K. Puri, Patna through its Managing Director Mukul Milind Ojha son of Sri A.B. Ojha, resident of F-152, S.K. Puri, P.S. S.K. Puri, Town and District Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Smt. Kumari Jolly wife of Sharda Kumar Chaudhary proprietor of M/s Damodar Filing Agency, Rampur More, Tarapur, District Munger.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Kamal Nayan Choubey, Sr. Advocate Mr. Nitesh Kumar, Advocate Mr. Bharat Bhushan, Advocate
For the Opposite Party/s :		Mr.Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 28-03-2019

Heard Mr Kamal Nayan Choubey, learned senior counsel along with Mr. Nitish Kumar and Mr. Bharat Bhushan, learned counsel for the petitioner and Mr. Jharkhandi Upadhyay, learned A.P.P for the State.

2. Despite service of notice on opposite party no.2, nobody appeared when the matter was taken up and heard.

3. The petitioner has moved under section 482 of the Code of Criminal Procedure, 1973 for following relief:-

4. The petitioner had filed Complaint Case No. 26078 C of 2014 before the Chief Judicial Magistrate, Patna alleging non-encashment of cheques issued by opposite party no.2 in his favour



amounting to Rs 4,60,000/-. The Judicial Magistrate, Ist Class, Patna vide order dated 02.02.2015 has directed for return of the complaint case to the complainant for being filed before the Court of competent jurisdiction, on the ground that the issue does not fall within the territorial jurisdiction of the Court, after referring to the judgment of the Hon'ble Supreme Court in **Dashrath Rupsingh Rathod v. State of Maharashtra**, reported as **(2014) 9 Supreme Court Cases 129**.

5. Learned counsel for the petitioner submitted that the order impugned is without application of mind and in fact contrary to both the statutory law as well as law laid down by the Courts. It was submitted that jurisdiction of the Court where a complaint can be filed with regard to any cheque being dishonoured vests in both the Courts which have jurisdiction over the bank on which the cheque was drawn or the bank where the cheque was presented by the person in whose favour it was issued. Learned counsel submitted that this is the mandate of section 142(A) read with section 142(2) of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act'). Learned counsel referred to the decision of the Hon'ble Supreme Court in **Bridgestone India (P) Ltd v. Inderpal Singh** reported as **(2016) 2 Supreme Court Cases 75**. It was submitted that in the said case, cheque issued in August, 2006



at a bank at Chandigarh was presented at Indore and in that context, the Court of Indore was held to have jurisdiction. Learned counsel submitted that the Hon'ble Supreme Court in **Dashrath Rupsingh Rathod** (supra), referred in the order impugned, has been noticed in the judgment in **Bridgestone India (P) Ltd** (supra) and thus, reliance by the Court on such decision of the Hon'ble Supreme Court is no more a good law on the point of jurisdiction. Learned counsel submitted that even on facts, five cheques which were issued by the opposite party in favour of the petitioner having not been encashed shows the intent to cheat. It was submitted that it was not a solitary and lone cheque which was given and dishonoured but five cheques in a row, which shows the *mala fide* intention and *mens rea* to defraud and cheat the petitioner, which clearly makes out ingredients of Sections 406 and 420 of the Indian Penal Code, which also has erroneously been overlooked by the Court below. Learned counsel submitted that in any view of the matter such order for return of complaint being based on an erroneous presumption in law and as of today, when both the statute as well as the decision of the Court clearly provide for lodging the complaint at both places i.e. where the cheques have been drawn or when the cheques were presented, the



complaint filed by the petitioner is fit to be entertained and proceeded in accordance with law.

6. Learned A.P.P does not dispute the legal and factual position.

7. Having considered the facts and circumstances and submissions of the learned counsel for the parties, the Court finds that a case for interference has been made out.

8. Further, the finding of the Court below in the impugned order that only case under section 138 of the Act is made out also appears to be erroneous. However, this Court is not expressing its opinion with regard to other sections, along with section 138 of the Act, which may be made out against opposite party no. 2, which the Court below would be in a better position to consider.

9. This Court also finds the judgment relied upon by learned counsel for the petitioner covers the issue involved in the present application.

10. For reasons aforesaid, the application is allowed. The order dated 02.02.2015 passed by the Judicial Magistrate, Ist Class, Patna in Complaint Case No. 26078 C of 2014 is quashed. The same is restored to its original file and number. The petitioner-company shall enter appearance in the case before the Court



concerned and proceeding shall be revived and taken to its logical conclusion on merit, in accordance with law. This Court would only indicate that the concerned Court shall proceed to dispose off the matter expeditiously. All issues on merit, including the offences which may be made out in terms of inquiry conducted by the Court, shall be decided by the Court concerned while dealing with the matter.

(Ahsanuddin Amanullah, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.3.2019
Transmission Date	29.3.2019

