

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.732 of 2017

Arising Out of PS. Case No.-1451 Year-2011 Thana- ROHTAS COMPLAINT CASE
District- Rohtas

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Ashutosh Kumar Bhaskar @ Pappu S/O of Shiv Muni Singh Kushwaha ,
Resident of Village - Arjun Bigha , P.O. - Darihat , Police Statio - Darihat ,
District- Rohtas Sasaram, Bihar.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Heera Kumar Son of Late Shiv Mohar Ram Resident Of Village - Telari, P.O.-
Telari , Police Station - Chenari , District- Rohtas

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Tej Narayan Singh, Adv. Mr. Jai Prakash Singh, Adv
For the State	:	Mr. Sujit Kumar Singh, APP
For the Opposite Party No.2:	:	Mr. Raghunandan Kr. Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 25-01-2019 Heard learned counsel for the petitioner, learned
counsel for OP No.2 as well as learned APP.

2. As required, the stage of the case has been reported
by the learned lower court wherefrom, it is evident that three
witnesses have already been examined and for the examination
of remaining witnesses, if any, the next date has been advanced
on 14.02.2019.

3. O.P. No.2, Heera Kumar filed a complaint petition
against the petitioner for an offence having been committed at
his end under Section 323, 420 and 468 IPC putting an
allegation that both the parties were known to each other and in
the aforesaid background, the accused succeeded in procuring



Rs. 4,50,000/-. After coming in need of money complainant demanded whereupon accused issued two cheques, one dated 22.06.2009 bearing Cheque No. 19167 of Rs. 40,000/- and another dated 23.06.2009 bearing Cheque No. 191675 of Rs. 20,000/- which were presented before the Bank and were dishonoured on the ground of insufficient fund. The aforesaid refusal of the bank was communicated to the complainant on 30.06.2009. During midst thereof, accused on demand assured to make payment. On 30.11.2009, when the complainant demanded the money, he was abused by calling his caste name and then was assaulted with a threatening of dire consequences. On 08.12.2009, the complainant served Vakalatnama notice without any fruitful result whereupon case has been instituted.

4. On the basis of aforesaid complaint petition, the matter was inquired into and vide order dated 11.02.2014 the learned lower court took cognizance of an offence punishable under Section 138 of the NI Act whereunder, summoned the petitioner to face trial.

5. Petitioner sat idle for quite a long time allowing the proceeding to sail by way of having his appearance examination of witnesses and then in the year 2017, challenged the order of cognizance on the ground that it happens to be



contrary to the mandate of provision of Section 138 as well as 142 of the NI Act.

6. At the present moment, learned counsel for the OP No.2, has submitted that from the evidence whatsoever been adduced before the learned lower court, it is evident that offence under Section 420 along other allied Sections of the IPC, is made out and for that, necessary steps are being taken at the end of his client in terms of Section 216 as well as 217 CrPC for amendment of the charge, so now, in the changed circumstance, the infirmities whatsoever persisting since before, on account of own option of the court as the complaint petition was not filed under the NI Act and further Vakalatnama Notice which was served upon the petitioner was not in accordance with Section 138 of the NI Act rather, it was mere acknowledging the activity of the petitioner whereunder, in the background of intimacy duped the OP No.2 and succeeded in procuring Rs. 4,50,000.

7. The Court after analyzing the materials having placed during course of inquiry has to infer whether prima facie case is made out and if so, attracting what Section. Though there was deficiency persisting on the record, but the same was allowed to persist as the order of cognizance was not challenged. Now, after examination of three witnesses, the



situation has changed and as the learned counsel for the petitioner did not resist the evidence as disclosed by the learned counsel for OP No.2, speaks otherwise, whereupon, the plea of petitioner is found non entertainable.

8. However, it is made clear that if within a month, no such step is taken at the end of the complainant, then in that circumstance, the prosecution will certainly fail. Otherwise, the proceeding will sail in accordance with amended charge, if any.

9. The instant petition is disposed of in light of observation made above.

(Aditya Kumar Trivedi, J)

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