

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14220 of 2015

Arising Out of PS. Case No.-26395 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

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Praveen Kumar Son of Sri Tara Nand Siha, aged 44 years Resident of Village-
Holding no. 118, Sindhu Babu Tola, Sisya, p.s- Korha District and Town-
Katihar, Pin- 854108

... .. Petitioner/s

Versus

1. The State of Bihar
2. Uday kumar Sharma Son of Shri Rup lal Sharma aged 30 years, Resident of
Mohalla-A.G. Colony, Near- Shiv Temple, under Shastrinagar Police
Station, Town and District- Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner	:	Mr. Chiranjiva Ranjan, Advocate
For the Opposite Party	:	Mr. Aslam Ansari APP
For the Opposite Party No. 2	:	Mr. Sandip Kumar Gautam, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 20-06-2019

Heard the parties.

2. The petitioner along with another person was made accused in a complaint case bearing Complaint Case No. 26395(C) of 2014. In the aforesaid complaint, it was alleged that Rs. 10 lakhs was given to the petitioner and another and a cheque was issued by co-accused Praveen Kumar/the petitioner dated 10.10.2013. It is the case of the complainant/opposite party no. 2 that the cheque in question was deposited in the bank on the same day. The



notice to the accused was sent by the complainant/opposite party no. 2 on 17.02.2014. From the annexure of the complaint petition, it appears that the notice of the bouncing of the cheque was received by the complainant/opposite party no. 2 on 23.10.2013 only. Seeing this aspect of the matter, the revisional court allowed the petition preferred on behalf of one Bibhash Chandra/co-accused but dismissed the case of the petitioner as he was the signatory to the cheque.

3. Learned counsel appearing for the petitioner has drawn the attention of this Court to the fact that the revisional court perhaps committed a mistake of fact in recording that the complainant/opposite party no. 2 received the notice of the bouncing of the cheque on 15.02.2014. It was on this ground alone that the order of cognizance under Section 138 of the Negotiable Instruments Act, 1881 was sustained as being within time. Such order of cognizance as against co-accused Bibhash Chandra but was set aside.



4. The petitioner has challenged the revisional order dated 11.12.2014 passed in Criminal Revision No. 7785 of 2014 on the plea that no cognizance could have been taken under Section 138 of the Negotiable Instruments Act, 1881 as more than 30 days had elapsed when notice was sent to the petitioner for returning the amount.

5. Section 138(b) of the Negotiable Instruments Act, 1881 clearly mandates that a demand notice is required to be sent to the signatory of the cheque within 30 days of the receipt of the notice of bouncing of such cheque.

6. In that view of the matter, the order of the revisional court with respect to the charge under Section 138 of the Negotiable Instruments Act, 1881 is not sustainable in the eyes of law and hence it is set aside.

7. This Court clarifies that the cognizance order against the petitioner under Sections 406 and 420 of the Indian Penal Code has not been interfered with.



8. The arguments advanced on behalf of the learned counsel for the petitioner that the entire gamut of allegation in the complaint petition borders on monetary transaction and that there is no evidence of any guilty intention right from the inception, are required to be tested in trial.

9. This Court therefore set aside the revisional order so far as the offence under Section 138 of the Negotiable Instruments Act, 1881 is concerned.

10. The proceedings in the complaint petition with respect to offences under Sections 406 and 420 of the Indian Penal Code is revived with respect to the petitioner.

11. With the aforesaid direction/observation, the petition is disposed of.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
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