

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2301 of 2018

Arising Out of PS. Case No.-137 Year-2018 Thana- SHRIKRISHNAPURI District- Patna

Lalan Kumar, son of Late Kamleshwari Prasad Yadav, Resident of House No.
239 Hira Lal Lane Lodipur Chhajubag, P.S. Gandhi Maidan, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Director General of Police, Bihar, Patna.
3. The Additional Director General C.I.D., Bihar, Patna.
4. The Inspector General of Police, Patna Zone, Bihar, Patna.
5. The Dy. Inspector General of Police Central Range, Bihar, Patna.
6. The Senior Superintendent of Police, Patna.
7. The Superintendent of Police City (Madhya), Patna.
8. The Deputy Superintendent of Police, Town, Patna.
9. The Station House Officer, Kotwali Police Station, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Jitendra Kumar Singh, Sr. Advovate Mr. Nagendra Kumar Singh, Advocate
For the State	:	Mr. Saroj Kumar Sharma, AC to AAG-3
For the Informant	:	Mr. Samrendra Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 08-05-2019

Heard Mr. Jitendra Kumar Singh, learned
senior advocate appearing for the petitioner, Mr. Saroj Kumar
Sharma, learned advocate for the State and Mr. Samrendra Kumar
Jha, learned advocate appearing for the informant.

2. This application under Articles 226 and 227 of
the Constitution of India has been filed by the petitioner for
quashing the FIR of Sri Krishnapuri P.S. Case No. 137 of 2018
registered on 04.06.2018 for the offences punishable under



Sections 406, 420 and 506 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act (for short 'N.I. Act').

3. It is submitted by the learned senior advocate for the petitioner that the instant case has been instituted by the informant in retaliation to Gandhi Maidan P.S. Case No. 150 of 2018 registered inter alia under Section 13 (1) (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and Sections 406, 420 and 467 of the Indian Penal Code against the informant and his brother. He contended that even otherwise the offences alleged are not made out on the facts and in the circumstances of the case. He also pleaded that a police case under Section 138 of the N.I. Act would be impermissible in law.

4. Per contra, learned advocate appearing for the State and learned advocate appearing for the informant submitted that the allegations made in the FIR do attract ingredients of the offences alleged. The FIR instituted by the petitioner against the informant and his brother is mala fide. The petitioner has taken advantage of acquaintance from before and has cheated the informant to the tune of Rs.79,51,775/-. The mens rea on the part of the petitioner in committing the offence is apparent from the allegations made in the FIR. They further contended that as far as the offence under Section 138 of the N.I. Act is concerned, it is



true that in view of Section 142 of the N.I. Act cognizance of the offence cannot be taken except on a complaint. However, the case is still under investigation. The said point can be taken by the petitioner only after the investigation is over and a report is submitted before the court under Section 173 (2) of the Cr.P.C..

5. I have heard learned counsel for the parties and carefully perused the materials available on record.

6. The informant Dheeraj Kumar, one of the partners of M/S Navratan Jewellers, situated at Bhagwati Sharan enclave near J.P. Hospital, Boring Road, Patna alleged in the FIR that he deals with business of jewelleries i.e., Gold, Silver and Diamond. The petitioner was a regular customer of the shop and had developed good relation with him. On 07.03.2018, he along with two other unknown persons came at his shop, purchased the jewelleries worth Rs.79,51,755/- vide Bill No. 359 dated 07.03.2018 and paid the bill through Cheque No.200170 dated 07.03.2018 with a request to present the cheque for encashment after ten days. When he contacted the petitioner after 10 days before presenting the said cheque, he told that he was busy celebrating honeymoon and requested to present the said cheque after 10th April. On 12th April 2018 when he again approached the petitioner over phone his attitude had changed. He said not to



disturb him. When the informant told that 18th April is Akashay Tritiya and he has to make payment to the parties with whom he deals. When he again called the petitioner, he started threatening him and said that if he would show haste, he would get his shop closed and would not pay a single farthing. Suspecting the approach of the petitioner, he deposited the cheque in his account. On 30.04.2018 vide memo dated 02.05.2018, he came to know that the cheque issued was of an account which had already been closed. Thereafter, a legal notice was sent to the petitioner on 10.05.2018 which was never replied.

7. On the basis of the aforesaid allegations the FIR of Sri Krishnapuri P.S. Case No. 137 of 2018 was registered against the petitioner under Sections 406, 420 and 506 of the Indian Penal Code and Section 138 of the N.I. Act.

8. The allegations made in the FIR would certainly attract ingredients of a cognizable offence. In that view of the matter, no illegality can be found in the action of the police whereby they instituted the FIR. The case instituted by the petitioner cannot be made a ground for quashing the FIR of the present case. The FIR by the petitioner was instituted on 20.04.2018 with an allegation over which I would refrain for the present to make any comment as the investigation of the case is



still going on. However, it would be apparent from the allegations made in the FIR that from before 20.04.2018 informant was requesting the petitioner to pay the payment for which he had issued cheque in favour of the petitioner's firm. Whether the FIR instituted by the petitioner was bona fide or was filed in a planned manner to create defence would be seen by the court at an appropriate stage. As far as the contention of the learned senior advocate appearing for the petitioner that an FIR for the offence under Section 138 of the N.I. Act is impermissible on the basis of police report is concerned, the same can be seen by the court of Magistrate at the stage of taking cognizance, as the provisions prescribed under Section 142 of the N.I. Act, bar taking cognizance of an offence punishable under Section 138 of the Act except upon a complaint. The said argument of the learned senior advocate for the petitioner would have been considered by this Court at this stage, if the case would have been instituted only for an offence under Section 138 of the N.I. Act. Since apart from the offence prescribed under Section 138 of the N.I. Act, the case has also been instituted under Sections 406 and 420 of the Indian Penal Code and the offences alleged under these sections are also attracted, the FIR can not be quashed.



9. In view of the discussions made above, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md. S/R.Ranjan

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.05.2019
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