

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 47204 of 2014

Arising Out of Complaint Case No.-852 Year-2014 Thana- NAWADA COMPLAINT CASE
District- Nawada

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1. Rajesh Kumar Hembram, Son of Sone Lal Hembram.
 2. Mrs. Luvly, W/o Rajesh Kumar Hembram.
Both residents of House No. 3, Road No. 11, P.S. Shastri Nagar, Patel Nagar
- 800023, Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Maheshwar Prasad Sinha, S/o Late Ragho Lal, R/o Village Samaay, P.S. Mufassil, District - Nawada, presently residing at Village - Gonawa, Near Nibha Cinema, P.S. Nawada, District – Nawada.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Avanish Kumar Singh, Advocate
For the Opposite Party No. 2	:	Mr. Sunil Kumar and Mr. Navin Sharma, Advocates
For the State	:	Mr. B. N. Pandey, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 26-02-2019

Heard learned counsel for the petitioners; learned A.P.P.

for the State and learned counsel for the opposite party no. 2.

2. The petitioners have moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the ‘Code’), for the following relief:

“That this application is being filed for quashing the order dated 30.06.2014, passed by the learned Chief Judicial Magistrate, Nawada, in Complaint Case No. 852 of 2014, (C.R. No. 852/2014), whereby the learned CJM was pleased to take cognizance of the offences alleged under



section 138 of the Negotiable Instruments Act, herein after referred to as the N.I. Act, against the petitioners and order for the issuance of summons to them. The petitioners humbly seek consequential and further reliefs, final as well as interim, in the petition.”

3. The allegation against the petitioners is that they had induced the opposite party no. 2 to invest Rs. 11,00,000/- in their business and the same was to be repaid for which a post dated cheque of Rs. 11,00,000/-, dated 21.02.2014 was given to the opposite party no. 2.

4. It is alleged that despite the cheque being presented on the Bank, the same was returned uncashed due to insufficiency of funds and even when legal notice was sent to the petitioner no. 1, the amount was not paid to the opposite party no. 2.

5. Learned counsel for the petitioners submitted that though the complaint was filed indicating offences under Sections 420/120B of the Indian Penal Code and 138 of The Negotiable Instruments Act, 1881 (hereinafter referred to as the ‘N.I. Act’), but cognizance has been taken by the Court below after enquiry only under Section 138 of the Act. Learned counsel submitted that in the present facts of the case, such taking of cognizance is beyond jurisdiction as the complaint case itself is non-est in the eyes of law being not maintainable. Learned counsel submitted that the admitted factual position is that the cheque dated



21.02.2014 was returned by the Bank on 21.05.2014 and the legal notice was sent on 26.05.2014. It was submitted that law requires minimum 15 days of time for the party in default, from the date of receipt of the notice, for making good the amount. It was submitted that in the present case, from the endorsement of the post office itself, it is apparent that the legal notice was received by the petitioners on 30.05.2014. Thus, the present complaint case being filed on 09.06.2014, was clearly short of the 15 days requirement before which such complaint could be filed. It was submitted that even if the date of the notice is taken, which was 26.05.2014, the complaint has been filed on the 14th day and not after 15 days, which is the requirement of law. Learned counsel submitted that the law on the issue stands settled by the decision of the Hon'ble Supreme Court in **Yogendra Pratap Singh v. Savitri Pandey** reported as **(2014) 10 SCC 713**.

6. Learned A.P.P. submitted that though the conduct of the petitioners of not paying Rs. 11,00,000/- to the opposite party no. 2 is clear, but in view of the strict provisions of law relating to filing of complaint and taking of cognizance under Section 138 of the N.I. Act, the same does not seem to have been followed in the present case.



7. Learned counsel for the opposite party no. 2 submitted that the petitioners had taken huge amount for him and despite the cheque given by them being presented in the Bank, the same was not encashed and notice also did not result in the petitioners paying the money due to the opposite party no. 2. However, with regard to the settled law especially in **Yogendra Pratap Singh** (supra), learned counsel could not distinguish or counter the same.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that on a purely technical point, the matter requires interference. On the basis of the admitted position, the minimum period which is required to be given to a party who is alleged to have issued a cheque which was not encashed, being 15 days and in the present case, the complaint being filed prior to the minimum waiting period, clearly has rendered the complaint itself not maintainable. The ratio and the judgment of the Hon'ble Supreme Court in **Yogendra Pratap Singh** (supra) being directly on the point and in favour of the petitioners also supports such view.

9. For reasons aforesaid, Complaint Case No. 852 of 2014 (C.R. No. 852/2014) and also subsequent proceedings/orders passed, stand quashed.



10. However, before parting, since the Court is dealing with the matter under Section 482 of the Code, which also requires it to pass order for securing the ends of justice, the Court finds that when admittedly, a cheque was issued by the petitioner no. 1 in favour of the opposite party no. 2 and the same has not been honoured and moreso, when interference has been made by the Court on a technicality, which may be mandatory, in essence, the cause of action of the opposite party no. 2, against the petitioners cannot be lost sight of. Thus, as the judgment of the Hon'ble Supreme Court in **Yogendra Pratap Singh** (supra), itself lays down, there is a remedy to file a fresh complaint and if the same could not be filed within the time prescribed under Section 142 (b), of the N.I. Act, the recourse is to seek benefit of the proviso by satisfying the Court of sufficient cause. In the present case, as the opposite party no. 2 was under *bona fide* impression that the complaint filed by him was in terms of the requirement of law, which has now been held to be erroneous, if a fresh complaint is filed by the opposite party no. 2, for the same cause of action, within one month from today, the Court concerned would be required to proceed on the same on merits, without dismissing it on the ground of limitation.



11. The application stands disposed off in the
aforementioned terms.

(Ahsanuddin Amanullah, J.)

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