

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.3312 of 2018

Arising Out of COMPLAINT CASE No.-228 Year-2015 District- Saharsa

M/s. National Spot Exchange Limited, A company incorporated under the Companies Act, 1956 having its registered office at 6th Floor, Chintamani Plaza, Chakala, Andheri Kurla Road, Andheri (East), P.S. Andheri, Mumbai through its authorised signatory Sudhanshu Pandey son of Shri Panth Narayan Pandey, Manager, Resident of 372, Chauhan Mohalla, Madanpur Khadar, P. O. Sarita Vihar, P.S. Sarita Vihar, South Delhi, Delhi.

... .. Petitioner

Versus

1. The State of Bihar through the Law Secretary, Department of Law, Govt. of Bihar, Patna
2. M/s Ayush Sales Pvt. Ltd. having its office at Urvashi Apartment 4th Floor, 1/2a/1a Ramkrishna Nagar Lane, Beliaghata, Kolkata- 700010 and Branch Office at Ganpatganj, P. O. & P.S. Ganpatganj, District- Supaul.
3. Mr. Raj Kumar Agarwal, son of Shri Phul Chand Agarwal, resident of village- Dharahara, P.S. Raghapur, District Supaul working as Director & Authorised Signatory of M/s Ayush Sales Pvt. Ltd. 101B, Gaon Dharahara Thana No. 12 Town/Village-Dharahara, P.S. Raghapur, District- Supaul.
4. Mr. Pushpa Devi wife of Shri Raj Kumar Agarwal, resident of village- Dharahara, P.S. Raghapur, District Supaul, working as Director of M/s Ayush Sales Pvt. Ltd. 101B, Gaon Dharahara Thana No. 12 Town/Village- Dharahaa, P.S. Raghapur, District- Supaul.

... .. Respondents

Appearance :

For the Petitioner	:	Mr.Rajesh Ranjan, Advocate Mr. Shakti Suman Kumar, Advocate
For the Respondent-State:		Mr. Binay Kumar, AC to SC-10
For private respondents	:	Mr. Tuhin Shankar, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 04-11-2019

Heard learned counsel for the petitioner and



learned counsel for the respondents.

2. By way of the present application preferred under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for issuance of a direction for transfer of records of Complaint Case No. 228(C) of 2015 from the court of Sri P. K. Jha, Judicial Magistrate, 1st Class, Saharsa to the court at Andheri, Mumbai in the light of ordinance dated 15.06.2015 and amendment dated 29.12.2015 in the Negotiable Instruments Act, 1881 (for short 'NI Act') whereby the jurisdiction of the court trying the case has been shifted to the place where the bank account of the payee of the cheque is situated.

3. Learned counsel for the petitioner submitted that respondents no. 2 to 4 used to give post dated cheques to the petitioner with instruction to deposit them as and when the amount is due as per the dates appearing on the cheques. It placed a procurement request for one rake of sugar containing 25,500/- quintals at the rate of Rs.3548/- per quintal. It placed another procurement request on 01.11.2012 for 26000 quintals of sugar at the rate of



Rs.3363/- per quintal. Thereafter, the petitioner procured sugar for respondent no. 2 from different sugar factories. He has issued tax invoice in the name of respondent no. 2. Since respondent no. 2 had incurred a liability of Rs.17,03,19,542.00/- payable to the petitioner, respondent no. 3 on behalf of respondent no. 2 signed and issued post dated cheque for total amount of Rs.17,03,19,542.00/- drawn on State Bank of India, Saharsa in due discharge of liability to the petitioner. The petitioner deposited the said cheque with the banker HDFC Bank Ltd on 28.10.2013 which was returned unpaid for the reasons 'insufficient funds' vide bank memo dated 30.10.2013. He sent a demand notice on 19.11.2013 by speed post calling upon respondents no. 2 to 4 to pay the amount as per dishonoured cheque within 15 days from the date of receipt of the notice. Since the amount was not paid, he filed a complaint in the court of Metropolitan Magistrate, 44th Court, Andheri, Mumbai. However, in view of the directions of Supreme Court in **Dashrath Rupsingh Rathod vs. State of Maharashtra & Anr.** since reported in **(2014) 9 SCC**



129, the Court at Mumbai had no jurisdiction to try the case and, therefore, the learned Metropolitan Magistrate vide order dated 28.10.2014 ordered to return the complaint to the complainant to file the same in the court having territorial jurisdiction to try the same. Pursuant to the direction of the learned Metropolitan Magistrate, the petitioner filed Complaint Case No. 228(C) of 2015 before the learned Chief Judicial Magistrate, Saharsa wherein vide the order dated 26.05.2015, cognizance of the offence was taken under Section 138 read with 141 of the NI Act against respondents no. 2 to 4.

4. He has further contended that during pendency of the trial of the case, the Central Government made amendment in the principal Act and after sub-section (1) of Section 142 of the NI Act, sub-section (2) was inserted and, after Section 142, Section 142 A was inserted.

5. Pursuant to the aforesaid amendments, the petitioner filed an application dated 30.05.2016 for transfer of the record of the case to competent court in Mumbai. The respondents filed their reply to the aforesaid petition.



However, the said petition dated 30.05.2016 filed by the petitioner before the Judicial Magistrate, Saharsa is still pending.

6. He contended that the manner in which the court of Magistrate is sitting tight over the application of the petitioner has compelled the petitioner to approach this Court in its supervisory jurisdiction for the prayer made in the present application.

7. Learned counsel appearing for the private respondents submitted that as far as pendency of the application is concerned, he has nothing to say. However, on merits, the respondents would like to contest the matter. He has further contended that the application dated 30.05.2016 filed by the petitioner is not for transfer of the records of the complaint case to the Court at Andheri, Mumbai rather the same has been filed with a prayer to return the copy of the complaint in order to file the same before the Court at Andheri, Mumbai.

8. Be that as it may, there can be no justification in keeping an application filed by the complainant in a



complaint case pending for over three years. The Jurisdictional Magistrate can not sit tight over an application filed by the complainant.

9. In that view of the matter, I direct the Jurisdictional Magistrate, 1st Class, Saharsa, who is in seisin of Complaint Case No.228(C) of 2015 to dispose of the application dated 30.05.2016 filed on behalf of the petitioner by a reasoned order on merit after hearing the parties on the next appointed date in the case.

10. With the aforesaid observation and direction, the application is disposed of.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.11.2019
Transmission Date	06.11.2019

