IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4763 of 2017

Arising Out of PS. Case No.-306 Year-2015 Thana- ROHTAS COMPLAINT CASE District-Rohtas

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Ashfaque Ahmad @ Ashif Ahmad @ Lallan Jee, son of Late Abdul Matil Ahmad, M/s Sagar Traders, resident of Village - Jamhaour, Near Govt. Hospital, P.O. + P.S. - Janhaur, District - Aurangabad Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Raj Kumar Sah, son of Late Radha Sah, resident of Mohalla - Adarsh Colony, Gali No. 4, P.O. - Sasaram, P.S. - Sasaram (T) District - Rohtas.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ramchandra Singh, Advocate
For the O.P. No. 2	:	Mr. Sushant Kumar, Advocate
For the State	:	Mr. Shyam Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 18-09-2019

Heard the parties.

2. The petitioner has challenged the order of cognizance dated 23.11.2015 passed in Complaint Case No. 306 of 2015 corresponding to Trial No. 763 of 2015 whereby the petitioner has been asked to face trial for offence under Section 138 of the Negotiable Instrument Act.

3. The challenge is on the ground that the requirement of the proviso to Section 138 of the Negotiable Instrument Act is not fulfilled, hence, criminal proceeding is an abuse of the process of the Court. Reliance has been placed on the judgment of Hon'ble

Supreme Court in **Yogendra Pratap Singh** Versus **Savitri Pandey And Another** reported in **2014(10)SCC 713**.

4. According to complaint petition, the complainant is a retailer in food-grains and the petitioner is proprietor of M/s Sagar Traders. On 15.01.2015, the petitioner purchased 195 quintals of wheat, total costing rupees two lacs and ninety-five thousand, from the complainant and at the time of purchase, the petitioner drawn a cheque of rupees one lac in the name of complainant and promised to pay the remaining amount by 10.02.2015. When the complainant produced said Cheque No. 004169 to the Central Bank of India in the referred bank account of the complainant on 07.02.2015, as agreed, the cheque bounced on 09.02.2015 due to insufficient fund in the bank account of the petitioner. Thereafter, the complainant informed to the petitioner on 10.02.2015 on telephone that the cheque has already bounced. The petitioner started abusing to the complainant and declined to make payment of the cheque amount. Thereafter legal notice was sent on 21.02.2015 which was returned by the post-office on 28.02.2015 with remark that the petitioner could not be traced out. Even thereafter the complainant contacted the petitioner on telephone on 14.03.2015 but the petitioner declined to make payment of the same. Ultimately, on 20.03.2015 complaint petition was filed.

5. On careful consideration of the date wise event, I do not find any non-compliance of the provisions of law leading to non-maintainability of the complaint petition.

6. In para 31 of the judgment in Yogendra Pratap Singh's case (**supra**), the Hon'ble Supreme Court held as follows:

> "31. Section 138 of the NI Act has been analysed by this Court in Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd, 2000(2) SCC 745 wherein this Court said that the following ingredients are required to be satisfied for making out a case under Section 138 of the NI Act: (SCC p. 753, para 10)
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> "(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;
>
> (ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
>
> (iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;
>
> (iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;
>
> (v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in

due course of the cheque within 15 days of the receipt of the said notice."

7. It is evident that the cheque was drawn by the petitioner for discharge of its liability and Section 139 of the Negotiable Instrument Act provides for presumption, unless the contrary is proved, that the holder of a cheque received the cheque, for the discharge, in whole or in part, of any debt or other liability.

8. Evidently, the cheque was presented to the bank within six months from the date, it was drawn. Hence, there is compliance of Clause (i) and (ii) above.

9. The material on the record shows that the cheque was returned by the bank unpaid as the money in the account was insufficient to honour the cheque. Hence, there is compliance of requirement of Clause (iii) above. The complainant made demand of payment of the cheque amount by sending a legal notice in writing within the statutory period as well as on telephone call after return of legal notice unserved and the complainant waited for fifteen days to get payment from the petitioner which was not done. Hence, complaint was filed on 20.03.2015. As such, there is compliance of Clause (iv) and (v) above also.

10. Therefore, in my view, there is no technical infirmity with the order of cognizance causing failure of justice, hence, the trial would going on. Accordingly, this application stands dismissed.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
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