

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20812 of 2020

Arising Out of PS. Case No.-145 Year-2018 Thana- VISHNUPAD District- Gaya

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RANJEET KUMAR Son of Shri Arjun Prasad @ Arjun Prasad Singh
Resident of C/o Anil Kumar Sinha, Road No.2, Postal Park, P.S.-Jakkanpur,
District-Patna.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Satyavrat Verma, Adv.
For the Opposite Party/s : Mr. Ram Anugrah Singh, APP
For the Informant : Mr. Rabindra Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 24-06-2020 The present petition has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

Heard the learned counsel for the petitioner, Shri Satyavrat Verma, the learned counsel for the informant Shri Rabindra Kumar Sinha and the learned APP appearing for the State, Shri Ram Anugrah Singh.

The petitioner seeks regular bail in connection with Vishnupad P.S. Case No. 145 of 2018 for the offence punishable under Sections 406, 420 of the Indian Penal Code read with Section 138 of Negotiable Instrument Act.

The case of the informant namely Raju Kumar in brief



is that he had given a sum of Rs. 10 lacs to the petitioner herein, however, after repeated reminder and pressure, the petitioner is stated to have refunded the said amount of Rs. 10 lacs by means of a cheque dated 02.07.2018, bearing No. 013940, drawn on Corporation Bank, however, it is the allegation of the informant that the cheque could not be honoured since the petitioner had blocked his account, whereafter a legal notice dated 06.07.2018 was served upon the petitioner.

The learned counsel for the petitioner has submitted that the petitioner is innocent, has been falsely implicated in the present case and he is having a clean antecedent. It is further submitted that the cheque book of the petitioner was lost on 26.06.2018, whereafter he had filed a *Sanaha* before the Officer-in-charge, Jakkanpur Police Station, Patna on 26.06.2018 itself, as would be apparent from a copy of the same annexed to the present petition and thereafter, it has transpired that the petitioner had deposited one of the lost cheque dated 02.07.2020 for a sum of Rs. 10 lacs and since the account of the petitioner had already been blocked by him due to him losing the cheque book, the said cheque dated 02.07.2020 could not be honoured. It is thus submitted that the petitioner is having no complicity in the matter and the allegations levelled by the informant are



false. In fact the informant has made false allegations and has tried to falsely implicate the petitioner herein. It is further submitted that if at all any cause of action has arisen on account of bouncing of the cheque, the appropriate remedy for the informant is to approach the competent court having appropriate jurisdiction by filing a complaint under Section 138 of the Negotiable Instrument Act. It is also the contention of the learned counsel for the petitioner that the police has filed a charge sheet under Section 406 and 420 of the Indian Penal Code and the same has not been filed under Section 138 of the N.I. Act. The learned counsel for the petitioner has relied upon a judgment dated 21.08.2018 passed by this Court in the case of **Hemant Kumar Das vs. The State of Bihar** (Cr. Misc. No. 905 of 2018), to contend that it is a well settled law that mere dispute arising out of financial transaction does not itself constitute offence of cheating and for commission of offence of cheating, mens rea should be existing from the very beginning of the commission of offence, thus such mens rea is unavailable in the present case, in order to bring home the charges. The learned counsel for the petitioner has also relied upon judgments rendered by the Hon'ble Apex Court in the case of **NTPC Ltd. . Vs. P. Sadasivan**, reported in AIR 2002 SC 1226, in the



case of **Hridaya Ranjan Pd. Verma Vs. The State of Bihar**, reported in AIR 2000 SC 2341, in the case of **Minu Kumari Vs. State of Bihar**, reported in 2006 (4) SCC 359 and the one rendered in the case of **S.W. Palanitkar & Ors. Vs. The State of Bihar**, reported in (2002) 1 SCC 241, to contend that every breach of trust may not result in a penal offence of criminal breach of trust, as the act of breach of trust involves a civil wrong in respect of which a civil action can be initiated and regarding dishonour of cheque, the informant has got the remedy of approaching the appropriate court under Section 138 of the N.I. Act, hence filing of the present FIR against the petitioner is an abuse of the process of law.

The learned A.P.P. appearing for the State as also the learned counsel appearing for the informant have vehemently opposed the prayer for bail and submitted tht the petitioner has fraudulently swindled a sum of Rs. 10 lacs from the informant, hence mercy should not be shown to the petitioner herein.

Having regard to the facts and circumstances of the case, considering the submissions made by the learned counsel for the parties and taking into account the fact that though the remedy under Section 138 of the N.I. Act is available to the informant regarding dishonour of the cheque, he has instead



filed the present FIR under Sections 406 and 420 of the Indian Penal Code, as also considering the law on the subject matter, as aforesaid, apart from the fact that the petitioner is having a clean antecedent and is languishing in custody since 05.03.2020, I deem it fit and proper to direct for release of the petitioner on regular bail.

Accordingly, the petitioner, above named, is directed to be enlarged on regular bail on furnishing bail bonds of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Gaya in connection with Vishnupad P.S. Case No. 145 of 2018.

(Mohit Kumar Shah, J)

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