

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77017 of 2019

Arising Out of PS. Case No.-259 Year-2018 Thana- BARGAINIA District- Sitamarhi

Arun Kumar Ray, S/o- Shivchandra Prasad Singh, Resident of Village-
Sekhauna, Ward No. 21, P.S.- Bairgania, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dhiraj Kumar, Son of- Madan Singh, Resident of Village- Shekhauna, Ward
No. 21, P.S.- Bairgania, District- Sitamarhi.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Onkar Nath
For the Opposite Party/s	:	Mr.Sanjay Kumar Tiwary

**CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA
ORAL JUDGMENT**

Date : 08-01-2020

Heard learned counsel for the petitioner and the learned
counsel for the State.

2. This application, under Section 482 of the Code of
Criminal Procedure, has been filed for quashing the order dated
18.04.2019 passed in Trial No. 7394 of 2018 arising out of
Bairgania P.S. Case No. 259 of 2018, whereby and whereunder,
the learned Chief Judicial Magistrate, Sitamarhi, on perusal of the
materials available in the case diary, took the cognizance of the
offence punishable under Sections 406 and 420 of the Indian Penal
Code against the petitioner.



3. The facts leading to the present petition is that opposite party no. 2, Dhiraj Kumar, lodged Bairgania P.S. Case No. 259 of 2018, on 18.11.2018, for the offence under Sections 406 and 420 of the Indian Penal Code with contention that petitioner had taken Rs.80,000/- in the month of January, 2018 from the opposite party no. 2 on assurance to return the same till the month of July, 2018. On 27.07.2018, petitioner handed over a cheque no. 006149 of Allahabad Bank, Pachatkidahu, to the opposite party no. 2 and thereafter, the said cheque was presented by the opposite party no. 2 in the Bank for credit in his account but the same was dishonoured due to insufficient balance. Thereafter, opposite party no. 2 informed the petitioner and made request to return the money then petitioner prayed for some time. Thereafter, after some time on the suggestion of the petitioner, opposite party no. 2 again presented the cheque in the Bank for credit the amount in his account but the same was again dishonoured due to insufficient balance. After investigation, the police submitted the charge sheet in the court of Chief Judicial Magistrate, Sitamarhi, for the offence punishable under Sections 406 and 420 of the Indian Penal Code. Thereafter, the learned Chief Judicial Magistrate, Sitamarhi, on perusal of the case diary took



cognizance of the offence in the aforesaid sections through the impugned order dated 18.04.2019.

4. Learned counsel for the petitioner submits that, in fact, the legal notice was issued to the petitioner by the informant detailing due of Rs.40,000/- but in the F.I.R., the due amount is detailed as Rs.80,000/-. It is, further, submitted that since the allegation has been made in the FIR is related to the offence under Section 138 of the Negotiable Instruments Act, 1881, hence, the court is only required to take the cognizance of the offence on the basis of complaint petition according to Section 142(A) of the Negotiable Instruments Act.

5. On perusal of the F.I.R. and the impugned order, it appears that on the basis of Fradbeyan of opposite party no. 2, Bairgania P.S. Case No. 259 of 2018 was instituted under Sections 406 and 420 of the Indian Penal Code against the petitioner and on investigation, the charge sheet was also submitted and thereafter, on perusal of the materials available in the case dairy, the learned Chief Judicial Magistrate, Sitamarhi, took cognizance against the petitioner for the offence punishable under Sections 406 and 420 of the Indian Penal Code.



6. As such, I find no illegality in the impugned for interference with same by exercising the power under Section 482 of the Code of Criminal Procedure.

7. Accordingly, this application stands dismissed.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.01.2020
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