

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61772 of 2019

Arising Out of PS. Case No.-289 Year-2017 Thana- PURNIA COMPLAINT CASE District-
Purnia

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Tuntun Kumar, Male, aged about 26 years, son of Sri Shankar Singh @ Shankar Singh, resident of Village Milki Dumri, Nayagaon @ Milki Nayagaon, PS Nayagaon, District Saran (Chapra).

... .. Petitioner/s

Versus

1. The State of Bihar
2. Pradip Kumar Singh (Complainant), Male, Aged about 37 years, son of Late Dhaneshwar Singh, resident of Village-Gurudwara Road, PS K. Hat Sahayak, District Purnia.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Arun Kumar Rai, Advocate
For the State	:	Dr. Rabindra Kumar, APP
For the O.P. No. 2	:	Mr. Nadimul Hasan, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 06-03-2020

Heard learned counsel for the petitioner; learned APP for the State and learned counsel for the opposite party no. 2, who has *suo motu* appeared.

2. The petitioner apprehends arrest in connection with Complaint Case No. 289 of 2017 dated 20.02.2017 instituted under Sections 325/420/406/409/323/379/34 of the Indian Penal Code, 27 of the Arms Act and 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act')

3. The allegation against the petitioner is that he was paid Rs. 21,00000/- and upon request to return the same, it



was not given and later on cash of Rs. 5,000/- and one mobile phone worth Rs. 7,000/- was also taken by the petitioner and the cheque issued by the petitioner for Rs. 5,50,000/- dated 20.10.2016 was also not honoured.

4. Learned counsel for the petitioner submitted that admittedly the complainant-opposite party no. 2 has alleged that he had given the money which was not returned and even the cheque was not honoured, for such non-honour of cheque, there could be charge under Section 138 of the 'NI Act' but cognizance has not been taken under such section by the Court. It was submitted that the Court had rightly not taken cognizance under Section 138 of the NI Act as the complaint was filed four months after the cause of action due to which such complaint could not be filed. Learned counsel submitted in any view of the matter, it is a pure money dispute and if at all the petitioner had taken any amount, and the opposite party no. 2 is aggrieved by its non-return, the only course available to the opposite party no. 2 was to move before the Civil Court of competent jurisdiction in a money suit for recovery of the amount.

5. Learned APP submitted that the allegation against the petitioner is of not getting the cheque honoured.

6. Learned counsel for the opposite party no. 2



submitted that as per the agreement the petitioner had taken money and, thus, he is liable to return the same and further that when the opposite party no. 2 had gone to the petitioner, he was assaulted and Rs. 5,000/- cash, one mobile phone worth Rs. 7,000/- and earrings of his wife worth Rs. 18,000/- were snatched.

7. At this juncture, on a query of the Court to learned counsel for the opposite party no. 2 as to how criminal case is maintainable as it is a pure money dispute for which the complainant had to file a suit before the Civil Court of competent jurisdiction, learned counsel could not give any satisfactory reply.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within six weeks from today, the petitioner be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the concerned Judicial Magistrate 1st Class, Purnia in Complaint Case No. 289 of 2017, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973. One of the bailors shall be a close relative of the petitioner.



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

(Ahsanuddin Amanullah, J)

Anjani/-

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