

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 31676 of 2020**

Arising Out of PS. Case No.-2848 Year-2017 Thana- VAISALI COMPLAINT CASE
District- Vaishali

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Kaushal Kishore Pandey, aged about 47 years, Gender-Male Son of Chandra Dev Pandey, Resident of Village- Brahrup, PS- Bhagwanpur, District- Vaishali, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ranjeet Kumar, aged about 40 years, Gender-Male, Son of Late Kapil Deo Singh, Resident of Village- Brahrup, PS- Bhagwanpur, District- Vaishali, Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ambuj Nayan Choubey, Advocate
For the State	:	Ms. Sucheta Yadav, APP
For the Complainant	:	Mr. Manish Chandra Gandhi, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

Date : 29-07-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Ambuj Nayan Choubey, learned counsel for the petitioner; Ms. Sucheta Yadav, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State and Mr. Manish Chandra Gandhi, learned counsel for the complainant.

3. Learned counsel for the petitioner submitted that there is some typographical error in paragraph no. 20 and the



prayer portion with regard to the case details. It was submitted that the same should be Complaint Case No. C1-2848 of 2017, as has been stated in paragraph no. 1, which has wrongly been typed at paragraph no. 20 as Complaint Case No. C1-1171 of 2018, which mistake has been repeated in the prayer portion and further that the anticipatory bail petition number should be 103 of 2020 instead of 104 of 2020. Thus, prayer was made to rectify the said mistakes.

4. In view thereof, let the number of the complaint case be corrected to read as Complaint Case No. C1-2848 of 2017 instead of Complaint Case No. C1-1171 of 2018 in paragraph no. 20 as well as the prayer portion and further the number of the anticipatory bail petition be corrected as 103 of 2020 instead of 104 of 2020.

5. The petitioner apprehends arrest in connection with Complaint Case No. C1-2848 of 2017 dated 09.11.2017, instituted under Sections 420 of the Indian Penal Code and 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act').

6. Earlier, the Court had granted time to the learned counsel for the complainant to file a counter affidavit which was done. Thereafter, in view of the stand taken by learned counsel for



the petitioner that for Rs. 16 lakhs for which the cheques in question were said to have issued, he had already arranged for transfer of a piece of land in favour of the wife of the complainant.

7. In such a situation, when the Court called upon learned counsel for the complainant to explain the position, he submitted that it was a separate transaction and has nothing to do with the present case in which, the money taken by the petitioner from the complainant was neither returned nor adjusted. Thus, the Court had called upon learned counsel to explain as to how Rs. 16 lakhs was shown to have been paid in cash to the vendor of the land in favour of the wife of the complainant, on which the petitioner was a signatory by way of a witness, and also to bring on record the Income Tax returns for the relevant period to indicate that such money was available with the complainant/his wife in order to be paid in cash to the concerned vendor. Today, learned counsel for the petitioner submitted that he has not filed such affidavit as many documents have still not been made available to him.

8. The Court finds that despite sufficient indulgence having been given to the complainant even earlier, with regard to filing of counter affidavit and after that also, the matter has to be finally heard on merits.



9. Learned counsel for the petitioner submitted that he being a broker had arranged for transfer of a land for the money taken by him in favour of the wife of the complainant for which no extra money was given to any party and it was the petitioner who had paid the amount to the vendor for purchase of such land. Thus, it was submitted that the cheques which were given to the complainant were at an earlier point of time when the complainant was wanting to buy a flat from the petitioner but later, the amount having been adjusted towards payment to the vendor of the land which was transferred in favour of the wife of the complainant, who is totally dependent on the complainant and does not have any separate source of income, the cheques given to the complainant by the petitioner by way of security had to be returned but the same was not done and the petitioner also in good faith never could imagine that it would be misused, more so after the land in favour of the wife of the complainant had been transferred. Thus, it was submitted that there was some error in judgment by the petitioner with regard to not informing the concerned Bank to stop payment of those cheques, but the same was due to the petitioner not suspecting that the complainant would commit such dishonesty with him and would present the cheques to the Bank for encashment. Learned counsel submitted



that even if, for the sake of argument and without admitting the same, it is accepted that the petitioner had a liability to pay the amount through a cheque, as per the instrument, the same would constitute an offence only under Section 138 of the NI Act, which is bailable, but no ingredient of Section 420 of the Indian Penal Code with regard to cheating is made out as the amount taken by the petitioner from the complainant has been fully adjusted by the transfer of another piece of land in favour of the wife of the complainant, on which document the petitioner is a witness. It was submitted that another complaint case, with similar allegation, was filed against the petitioner by the opposite party no.2 and he was granted anticipatory bail by a coordinate Bench by order dated 05.02.2021 in Cr. Misc. No. 26960 of 2020, though upon depositing Rs. 60,000/- in the Court below.

10. Learned APP submitted that the petitioner having given the cheques was required to ensure their encashment which has not been done.

11. Learned counsel for the complainant submitted that the cheques have been returned unpaid with the endorsement that the funds were insufficient, which clearly makes out an offence under the NI Act and further that the transfer of land in favour of the wife of the complainant was another transaction unconnected



to the present case. Further, it was submitted that the flat for which the money was taken by the petitioner has been sold to another person.

12. At this stage, when the Court reiterated its query as to how Rs. 16 lakhs was paid in cash and whether the same was disclosed before the taxing authorities, learned counsel for the complainant could not give any reply.

13. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, and in light of the discussions made hereinabove, 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 learned Judicial Magistrate-II, Vaishali at Hajipur in Complaint Case No. C1-2848 of 2017, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further, and further, (i) that one of the bailors shall be a close relative of the petitioner and (ii) that the petitioner shall co-operate with the police/prosecution and the Court. Failure to co-operate shall lead to cancellation of his bail bonds.



14. It shall also be open for the prosecution to bring any violation of the foregoing conditions of bail by the petitioner, to the notice of the Court concerned, which shall take immediate action on the same after giving opportunity of hearing to the petitioner.

15. The petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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