

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1315 of 2016

Arising Out of PS. Case No.-50 Year-2016 Thana- BETTIAH CITY District- West
Champaran

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Birendra Kumar S/o Gaurishankar Prasad R/o Mohalla Ganj No. 2
Goldarpatti Bettiah P.S. Bettiah Town, Distt West Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar Through D. G. P. , Govt. Of Bihar and Ors
2. The Superintendent of Police W. Champaran.
3. The Officer Incharge Bettiah town Police Station S.H.O W. Champaran.
4. The Investigating Officer S.I Bettiah, Police Station Distt W. Champaran.
5. Jitendra Kumar S/o late Fulena Prasad Lal R/o Near Power House P.S.
Bettiah town Distt. E. Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dhannjay Kumar No 2, Adv.
For the Respondent/s : Mr.Md. Irshad, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 04-07-2022 Heard learned counsel for the petitioner and learned
counsel for the State.

Petitioner in the present case is seeking quashing of
the FIR being Bettiah Town P.S. Case No.50 of 2016 registered
for the offences under Sections 406 and 420 of the Indian Penal
Code and Section 138 of the N.I. Act.

The prosecution story as disclosed in the FIR is that
the informant had given Rs. 5 lacs to the petitioner for carrying
on business. An agreement is said to have been executed on
paper and the petitioner had issued some post-dated cheques to



ensure the refund of the amount but when those cheques were presented to the banker of the informant, all the cheques stood dishonoured on presentation for want of sufficient funds.

The solitary argument of learned counsel for the petitioner is that an FIR cannot be instituted for an offence alleged under Section 138 N.I. Act. In order to strengthen his argument, learned counsel relies upon a judgment of the learned coordinate Bench of this Court in the case of **Hemant Kumar Das & Anr. Vs. The State of Bihar** reported in **2018 (4) PLJR 725**. Attention of this Court has been drawn towards the discussions made from paragraph '51' onwards by the learned coordinate Bench. No other argument has been made to assail the FIR.

Learned counsel for the State submits that the police has investigated the matter and finally a charge-sheet has been filed showing the offence true under Sections 406 and 420 of the Indian Penal Code and Section 138 of the N.I. Act. It is, however, not known either to learned counsel for the petitioner or learned counsel for the State as to whether the learned Judicial Magistrate has taken cognizance of the offence under Section 138 of the N.I. Act based on the said police report.

To this Court it appears that this writ application, as



framed, cannot proceed at this stage. In case the learned Magistrate has proceeded to pass any order taking cognizance and issuance of summons based on the police report, the petitioner, if so advised, may challenge the order taking cognizance in an appropriate proceeding before the competent court of law.

Let it also be recorded that in the judgment of the **Hemant Kumar Das** (supra) it was the order taking cognizance and issuance of summon which was under challenge before the learned coordinate Bench of this Court. In the present case, however, neither the charge-sheet has been challenged nor there is any information as to whether the order taking cognizance and issuance of summons has been passed.

This writ application, therefore, cannot proceed. It is disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

