

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68834 of 2021

Arising Out of PS. Case No.-81 Year-2021 Thana- RAMNAGAR District- West Champaran

RANJEET KUMAR DWIVEDI @ RANJEET KUMAR Son of Arun
Dwivedi @ Arun Kumar Dwivedi R/o Village- Harsari, P.S.- Shikarpur,
District- West Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Avinash Raj, Advocate
For the Opposite Party/s	:	Mr. Umesh Lal Verma, A.P.P.
For the Informant	:	Mr. Nikesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 27-07-2022 Heard learned counsel for the petitioner, the informant
and learned A.P.P. for the State.

Let the defect(s), if any, be removed within a period
of four weeks.

The petitioner apprehends his arrest in a case
registered for the offences punishable under Sections 406, 504,
506 of the Indian Penal Code and Section 138 of the N.I. Act.

Learned counsel for the petitioner submits that
petitioner has antecedent of one case.

The informant alleges that he was working as
Manager with Ajay Prakash Pathak, the former Deputy Director
General, Govt. of India from whom Ranjeet Kumar Dwivedi
took Rs.7,00,000/- as loan with promise to return within six
months for doing business of medicine. It is alleged that after



expiry of six months, the informant asked the petitioner to return back the money then he issued a cheque of Canara Bank for Rs.7,00,000/- as detailed in the FIR.

Learned counsel for the petitioner submits that petitioner has been falsely implicated in the present case and the present FIR has been instituted by the informant only to coerce the petitioner into submission so that he may return the money fearing arrest at the hand of the police. It is next submitted that the law is very clear that whenever cheque bounces a complaint has to be filed. It is next submitted that complaint had been defined in Section 2(d) of the Cr.P.C. and Section 142(a) of the Negotiable Instrument Act, which read as under:- notwithstanding anything contained in the Code of Criminal Procedure, no Court shall take cognizance of any offence punishable under Section 138, except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque. Thus, it is clear that whenever a cheque is issued and the same bounces for any reason the remedy is of filing a complaint. Learned counsel next submits that no doubt petitioner had taken loan of Rs.7,00,000/- from the informant for doing business but then he also returned the same by issuing a cheque. It is next submitted



that when the cheque was presented, it bounced on account of insufficient fund in the account for which the informant ought to have resorted in terms of the Negotiable Instrument Act but informant instead of resorting to remedy available to him under the law has filed the present FIR. It is next submitted that since the petitioner had issued the cheque that in itself shows that he had intention to return the money and if for any reason the cheque bounced that by no stretch of imagination in absence of any proceeding under Section 138 of the Negotiable Instrument Act can be construed that petitioner had no intention to return the money. Learned counsel next submits that since the police is investigating a case instituted under Section 138 of the Negotiable Instrument Act that in itself shows that even the police is not aware of the law. It is also submitted that in the nature of allegation as alleged no offence under Sections 406 or 420 of the Indian Penal Code is, prima facie, made out.

Learned A.P.P and the informant opposed the anticipatory bail application. Learned counsel for the informant submits that in the event, if the petitioner returns the due amount then no grievance would be raised against him but is not able to meet the submission of the learned counsel for the petitioner that for an offence of cheque bouncing FIR is not maintainable



and also that since the petitioner had issued a cheque in lieu of the loan which he had taken that amply demonstrates that he had intention to return the same, as such, no offence under Sections 420 and 406 of the Indian Penal Code is made out.

Considering the submissions made by the learned counsel for the petitioner, the petitioner above-named, in the event of his arrest or surrender before the learned Court below within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned court below where the case is pending/successor court in connection with Ramnagar P.S. Case No. 81 of 2021, subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

(Satyavrat Verma, J)

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