

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8424 of 2023

Arising Out of PS. Case No.-1028 Year-2018 Thana- PATNA COMPLAINT CASE District-
Patna

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AJAY CHATTERJEE S/O LATE PRIYABRATA CHATTERJEE Resident of
Bratalaya, Rajendra Path, P.S.- Gandhi Maidan, District- Patna- 800001

... .. Petitioner

Versus

1. The State of Bihar
2. Pramod Gupta S/O Late Harinandan Gupta Resident of Village-
Maharajganj, Bari Devijee, P.S.- Alamganj, P.O.- Gulzarbagh, District-
Patna.

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Mr. Sahil Kumar, Advocate Mr. Shashwat Pratyush, Advocate Mr. Ahirvan Chaudhuri, Advocate
For the State	:	Mr. Ram Bilash Roy Raman, APP
For the Complainant/O.P. No.2	:	Mr. Y.C. Verma, Senior Advocate Mr. Gajanand Mishra, Advocate Mr. Adarsh Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 04-05-2023

On 03.05.2023, this matter was heard by this Court

and the following order was passed:-

“During the course of hearing of this case, the learned counsel for the opposite party no.2 was asked to give the details of the criminal cases filed by opposite party no.2 against different persons apart from this petitioner.

On 29.04.2023, the opposite party no.2 has filed a counter affidavit in the matter. Paragraph no.8 of the said counter affidavit reads as under:-

“8. That this deponent humbly states apart from present case, this deponent lodged a



complaint case bearing C.A. No.236 (C) 10 against one Mukesh Mishra for the offence committed by said Mukesh Mishra under Section 420 of IPC and 138 of N.I. Act and said case is pending for appearance of accused in the court of Sri Vivek Kumar J.M. 1st Class, Patna City, apart from said case there is no other case filed by this deponent for the offence under section 138 of N.I. Act.”

On 01.05.2023, the opposite party no.2 was present in Court and has submitted that only one case has been filed by him under Section 138 of the Negotiable Instruments Act against one Mukesh Mishra apart from this case filed by him against the petitioner.

This Court has called for a report from Alamganj Police Station, Patna through learned APP for the State regarding the list of cases filed by the opposite party no.2 against different persons.

The Officer-in-Charge of Alamganj Police Station, Patna has submitted his report and has given the list of criminal cases as well as civil cases filed by the opposite party no.2 against different persons. The total list of cases is 14 and out of which, there are 11 criminal cases filed by the opposite party no.2 against different persons. Out of 11 criminal cases, six criminal cases have been filed under Section 138 of the Negotiable Instruments Act which includes the case against the petitioner also.

From the above facts, it appears that the opposite party no.2 has filed a false affidavit on



29.04.2023.

Today, an affidavit has been filed by opposite party no.2. In the affidavit, the opposite party no.2 has mentioned that five criminal cases have been filed by him against different persons and has also mentioned that two criminal cases have been lodged by him when the people have tried to kill him. So, in this affidavit also, the opposite party no.2 has given a false statement.

In these circumstance, this Court is inclined to pass an order for registration of the F.I.R. against the opposite party no.2 for filing false affidavits and making false statements before this Court, however, Sri Yogesh Chandra Verma, learned senior counsel for the opposite party no.2 prays for one day's accommodation to take instructions from the opposite party no.2.

On the request of learned senior counsel for the opposite party no.2, list this case on 04.05.2023 (tomorrow) for further hearing.

On the next date of hearing, the opposite party no.2 shall again appear in Court.

This case has already been heard on merits."

2. Pursuant to last order dated 03.05.2023, today, Sri Yogesh Chandra Verma, learned senior counsel for the opposite party no.2 has tendered unqualified apology on behalf of opposite party no.2 and has submitted that the false affidavits filed by opposite party no.2 are unintentional and the opposite party no.2 may not be proceeded against by this Court.



3. It would be pertinent to mention here that on 01.05.2023 the opposite party no.2 had appeared in person and submitted that only one case has been filed by him under Section 138 of the Negotiable Instruments Act against one Mukesh Mishra apart from this case filed by him against the petitioner. Thereafter, a report was called for from the concerned Police Station regarding the list of cases filed by opposite party no.2 against different persons. Accordingly, the list was furnished by the concerned S.H.O. which showed that 11 criminal cases have been filed by opposite party no.2 against different persons and out of 11 criminal cases, six criminal cases have been filed under Section 138 of the Negotiable Instruments Act. Yesterday, the opposite party no.2 filed a second counter affidavit. In the said counter affidavit also, the opposite party no.2 did not disclose the true facts rather it has been mentioned that five criminal cases have been filed by the opposite party no.2 against different persons.

4. It seems that the opposite party no.2 is involved in illegal business of money-lending and is forcing the people/borrowers to pay huge amount to him. This kind of person who files false affidavits in Court and tries to mislead the Court should not be let off by this Court.



5. In these circumstances, this Court directs the Registrar General to lodge an F.I.R. against the opposite party no.2 in Kotwali Police Station for filing two false affidavits in this Court. The F.I.R. must be filed by the Registrar General within one week from the date of receipt of a copy of this order.

6. After registration of the F.I.R., the Kotwali Police will investigate the matter and conclude the investigation expeditiously preferably within three months from the date of registration of the F.I.R. so that this kind of persons do not try to cheat the Courts.

7. Heard learned counsel appearing for the parties on merits of the present case.

8. This application has been filed for quashing of the order dated 05.07.2019 passed by learned A.C.J.M.-II, Patna City, in C.A. No. 1028 of 2018, by which the learned Magistrate has found *prima facie* case under section 504 of the Indian Penal Code and under Section 138 of the Negotiable Instruments Act against the petitioner and issued summon against the petitioner.

9. As per the complaint petition, the petitioner had taken a loan of Rs.16,00,000/- from the complainant and had executed a deed of loan in judicial stamp on 15.10.2011. It is



alleged that the petitioner assured the complainant that he would return the entire loan amount within five years. It is also alleged that on 03.08.2018 the petitioner had handed over a cheque to the complainant and when the complainant placed the said cheque in the Bank for encashment, the same was dishonoured with an endorsement that the account was closed earlier. It is also alleged that when the complainant informed this fact to the petitioner, the petitioner said that as and when money will be available, he will repay his loan amount. Thereafter, the complainant sent a notice to the petitioner. It is also alleged that on 25.08.2018 the petitioner along with some unknown persons came and threatened the complainant of dire consequences and also abused him.

10. Learned counsel for the petitioner submits that in fact the petitioner had taken a loan of Rs.5,00,000/- from the complainant in three installments and has never taken loan of Rs.16,00,000/- as has been alleged in the complaint petition. He further submits that an amount of Rs.9,21,000/- has already been transferred in the account of the complainant and Rs.7,31,000/- has been given to the complainant by cash, thus a total amount of Rs.16,52,000/- has already been paid by the petitioner to the complainant against the loan amount of Rs.5,00,000/-.



11. Learned counsel for the petitioner also submits that at the time of giving loan in September, 2009, the complainant had taken signature of the petitioner on a blank stamp paper, which was converted into a false agreement, which is evident from the fact that the stamp paper is of 2009. Similarly, the complainant had taken a blank cheque from the petitioner as security at the time of giving loan and since the petitioner superannuated from the service in the year 2014, the said bank account was closed and the complainant got the blank cheque of the petitioner filled up and used the same in lodging the false case against him.

12. It has also been submitted by the petitioner that the petitioner had filed a petition dated 04.01.2020 in the Court below and the complainant filed a reply to the said petition and in the reply there was no denial of the facts mentioned by the petitioner in the petition. The petitioner has also filed an application under Section 340 of the Cr.P.C. on 15.11.2022 for initiation of proceeding against the complainant, which was dismissed by the learned Magistrate on the ground that the same may cause delay in the proceeding.

13. In nutshell, it is the case of the petitioner that complainant is a money-lender and against the loan of



Rs.5,00,000/- taken by the petitioner, the complainant had already received an amount of Rs.16,52,000/- in installments as principal amount and interest but, he misused the blank cheque given by the petitioner at the time of loan, as security, and lodged this false case and therefore, no offence, as alleged in the complaint petition, is made out against the petitioner.

14. Learned counsel for the petitioner has relied upon a decision of the Hon'ble Supreme Court in the case of ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel and Ors.***, reported in ***(2023) 1 SCC 578 : 2022 SCC OnLine SC 1376***. Paragraph no.34 of the aforesaid decision reads as under:-

“34. In view of the discussion above, we summarise our findings below:

34.1. For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation.

34.2. If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque.

34.3. When a part or whole of the sum represented on the cheque is paid by the



drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted.

34.4. The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the “legally enforceable debt” on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds.

34.5. The notice demanding the payment of the “said amount of money” has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the validity of the form of the notice need not be decided.”

15. It is the contention of the petitioner that legal



notice should have mentioned the amount to be recovered by the complainant after bouncing of the cheque and not the entire amount. It is the further contention of the petitioner that in view of the observations made in paragraph nos.34.3 and 34.4 of the aforesaid judgment, the prosecution against the petitioner cannot continue.

16. Learned senior counsel for the complainant has supported the case, as has been made out in the complaint petition, but he has no answer to the argument of the petitioner that the amount has been repaid through bank account and he simply says that this amount is due to the petitioner as the petitioner has issued the cheque.

17. I have considered the submissions of learned counsel for the parties and also perused the records of the case. From perusal of the record, it appears that the opposite party no.2 is a money-lender and has been harassing the borrowers by filing frivolous criminal cases against borrowers. In the present case also, it is apparent that the opposite party no.2 has filed false case against the petitioner who was the borrower and the case was filed even after the entire principal amount along with heavy rate of interest has been paid back to the opposite party no.2. The conduct of the opposite party no.2 is also malicious and he is in



habit of filing criminal cases against the borrowers by misusing the cheques which have been given by borrowers at the time of giving loan as security. Further, in the affidavits there is no mention about the outcome of the cases filed by the opposite party no.2.

18. This Court finds force in the argument of learned counsel for the petitioner that the prosecution has been launched *malafidely* by misusing the documents and the cheque issued by the petitioner at the time of taking loan from the opposite party no.2. The present case is also squarely covered by the law laid down by the Hon'ble Supreme Court in the case of ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel and Ors., (supra)*** and the amount of Rs.16,00,000/- was not the legally enforceable debt on the date on which it was presented. Thus, the petitioner cannot be held to have committed offence under Section 138 of the Negotiable Instruments Act when the cheque was dishonored for insufficient funds. Moreover, in the legal notice the opposite party no.2 ought to have mentioned the part or whole of the sum represented on the cheque was paid by the drawer of the cheque and the same should have been endorsed on the cheque as prescribed under Section 56 of the Negotiable Instruments Act.



19. In view of the above discussions and also the law laid down by the Hon’ble Supreme Court in the case of *Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel and Ors., (supra)*, this application is allowed. Accordingly, the Complaint Case No.1028 of 2018 and all consequential proceedings arising out of the aforesaid Complaint including the order dated 05.07.2019 passed by learned A.C.J.M.-II, Patna City, are hereby quashed in the interest of justice.

(Sandeep Kumar, J)

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AFR/NAFR	A.F.R.
CAV DATE	N/A.
Uploading Date	28.06.2023
Transmission Date	28.06.2023

