

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.11084 of 2020**

Arising Out of PS. Case No.-1356 Year-2012 Thana- PATNA COMPLAINT CASE District-  
Patna

SANJAY KUMAR Son of Lakhpati Singh Resident of 113, Dulhin Mandir,  
P.S-Sher Ghati, District-Gaya, Pin-824211, at present resident of -Flat-4E,  
Nishtha Residency Apartment, near Mehandi Utsav Hall, North Anandpuri,  
West Boring Canal Road, P.S-S.K.Puri, District-Patna.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Subodh Kumar Son of Late Harish Chandra Prasad Singh Resident of  
Mohalla-F-257, HUDCO Colony, Bihar Electricity Board Colony, Rajbanshi  
Nagar, P.S-Shastri Nagar, District-Patna Pin-800023.

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr.Jitendra Kumar, Advocate  
For the Opposite Party/s : Mr.Nawal Kishore Prasad, APP

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**  
**ORAL ORDER**

4      22-06-2023                      Heard learned counsel for the petitioner and learned  
counsel for the State.

None appears for the opposite party no. 2 despite  
service of notice.

This application has been filed for quashing of order  
dated 06.05.2013 passed by learned Judicial Magistrate-1st  
Class, Patna in Complaint Case No. 1356C of 2012 by which  
learned Magistrate has taken cognizance against the petitioner  
for the offence under Section 138 of Negotiable Instrument Act,  
1881.

It is alleged that the petitioner took a loan of Rs.  
5,00,000/- from complainant. When complainant demanded



said money from the petitioner, the petitioner gave a cheque bearing Cheque No. 587862 to the complainant. Thereafter, the complainant deposited the said cheque in the Punjab National Bank, R.C.C Branch, Sanjida Imarat, Bank Road, Patna but it was returned as dishonored due to insufficient balance as a result the complaint has been filed.

It has been submitted by learned counsel for the petitioner that the proceeding cannot continue in view of the legal infirmity. He has further submitted that the notice was not given in time. He has further submitted that the complaint filed by the complainant is not maintainable as the requirement of proviso (b) to Section 138 of the Negotiable Instruments Act, 1881 regarding sending of notice within 30 days of receipt of information regarding dishonor of cheque, is not fulfilled. It has further been submitted that complainant has not mentioned in the complaint petition, either the date on which he allegedly received the information regarding the dishonor of the cheque or the date on which he sent the notice to the petitioner. However, in his Examination on Solemn Affirmation, the complainant has stated that he received the information of dishonor of the cheque on 20.04.2012 and served a legal notice 15 days thereafter. Moreover, the complainant has claimed to have advanced a loan



of Rs. 5 Lacs to the petitioner, while the cheque allegedly issued by the petitioner was for an Amount of Rs. 4,85,000/-. These facts stated above make the whole prosecution story concocted.

I have heard the submissions of learned counsel for the petitioner and the learned counsel for the State.

It is an admitted fact that the notice issued for initiating a proceeding under Section 138 N.I. Act has been given after a period of one month has lapsed after the cheque had bounced. Moreover, in the notice, the demand made by the complainant is of Rs. 5,00,000/- whereas a cheque in question of Rs. 4,85,000/-.

The Hon'ble Supreme Court in the case of ***Kamlesh Kumar Vs. State of Bihar and Anr*** reported in ***AIR 2014 SC 660*** has held as under:-

*“12. Applying the aforesaid principles, in the present case, we find that cheque was presented, second time, on 10.11.2008. The complainant, however, sent the legal notice on 17.12.2008 i.e. much after the expiry of the 30 days. It is clear from the complaint filed by the complainant himself that he had gone to the bank for encashment the cheque on 10.11.2008 but the cheque was not honoured due to the unavailability of the balance in the account.*

*14. It is, thus, apparent that he received the information about the dishonour of the cheque on 10.11.2008 itself. However, he did not send the legal notice within 30 days therefrom. We, thus,*



*find that the complaint filed by him was not maintainable as it was filed without satisfying all the three conditions laid down in Section 138 of the N. I. Act as explained in para 12 of the Judgment in the case of MSR Leathers, extracted above.”*

In view of the aforesaid facts and also considering the law laid down by the Hon'ble Supreme Court in the case of ***Kamlesh Kumar Vs. State of Bihar and Anr (supra)***, this application is allowed. The impugned order dated 06.05.2013 passed by learned Judicial Magistrate-1st Class, Patna in Complaint Case No. 1356C of 2012 is hereby quashed in the interest of justice.

**(Sandeep Kumar, J)**

Harsh/

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