

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10745 of 2022

Arising Out of PS. Case No.-174 Year-2020 Thana- KHAJEKALA District- Patna

RAJ KUMAR S/o Jamuna Prasad R/o Mohalla- Gurhatta in front of Sanjay Press, P.S.- Khajekalan, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. AMAL KUMAR SINHA S/o Ashwini Kumar Sinha Resident of Rathi Ji ki Gali, Gurhatta, P.S.- Khajekala, District- Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Harish Kumar
For the Opposite Party/s : Mr.Sanjay Kumar Singh

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 20-02-2023 Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

Learned counsel for the petitioner is permitted to remove defect(s), as pointed out by the office, if any, within a period of four weeks from today.

This petition is for quashing of the order dated 11.01.2021 passed by Susmita Kumari, learned Judicial Magistrate-1st Class, Patna City in connection with Khajekala P.S. Case No. 174 of 2020 whereby/whereunder the learned Magistrate has taken cognizance for offence punishable under Sections 406,420,506/34 of Indian Penal code and 138 N.I. Act which is in contravention of section 142 N.I. Act.

The cognizance of the offences has been taken and at the stage of cognizance this Court cannot enter into the merits of



the case. The petitioner has challenged the order taking cognizance in 11.01.2021. The cheque of a huge amount of Rs. 31,00,000/- and odd has bounced.

In the opinion of this court, offences under 406, 420, 506/34 Indian penal Code is made out. The contention of the petitioner is that a complaint case will be made out should have been registered for the offence under section 138 can be considered at the stage of framing of charge by the Court below and if the Court below finds that cognizance has been taken under Section 138 without filing of the complaint then it may drop the charge of 138 Cr.P.C. and proceed to the offence under Section 420 of Indian Penal Code.

With the aforesaid observation and direction, this application is dismissed.

The stay order is vacated, the Court below is directed to proceed further expeditiously.

Let a copy of the order be communicated to the District Judge, Patna City through FAX and e-mail forthwith.

(Sandeep Kumar, J)

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