

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.360 of 2019

Arising Out of PS. Case No.-147 Year-2018 Thana- PAHARPUR District- East Champaran

MANISH KUMAR Son of Late basudeo Prasad Jaiswal Resident of Village -
Ward No. 09, Bajajpatti, P.o., P.s.- Motihari, Distt.- East Champaran.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Pappu Singh, Son of Shri Ratan Singh Resident of Village - Bharwalia, P.S.-
Pahadpur- malahi (OP), Distt.- East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Atal Bihari Pandey, Advocate Mr. Alok Kumar Jha, Advocate Mr. Mukund Kumar, Advocate Mr. Akash Kumar, Advocate
For the Respondent/s	:	Mr. Sunil Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 12-12-2023 Heard the learned counsel for the petitioner and
the learned Additional Public Prosecutor for State.

2. The instant revision speaks of a strange
circumstances where on the basis of a police report, the
learned Magistrate took cognizance of offence under
Section 138 of the Negotiable Instruments Act, 1881.

3. It appears from the record that on the basis of
written complaint, police registered Pahadpur-Malahi (OP)
P. S. Case No. 147 of 2018, dated 3rd of June, 2018, under
Sections 406 and 420 of the Indian Penal Code and Section



138 of the Negotiable Instruments Act against the petitioner. On completion of investigation, charge-sheet was submitted under the aforesaid sections. When charge-sheet was placed before the learned Magistrate, he, by an order dated 23rd of July, 2018, by an elaborate order, recorded that from the charge-sheet, case under Section 406 and 420 of the Indian Penal Code could not be made out and, therefore, he took cognizance of offence under Section 138 of the Negotiable Instruments Act against the petitioner.

4. Needless to say that Section 138 of the Negotiable Instruments Act provides the procedure in case of dishonour of cheque for insufficiency of funds in the Account. Proviso to Section 138 clearly states that nothing contained in Section 138 was applied unless- (a) the cheque has been presented to the Bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier; (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque within 30 days of the receipt of information by him



from the Bank regarding the return of the cheque as unpaid; and (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque within 15 days of the receipt of the said notice.

5. Therefore, cause of action to file appeal under Section 138 of the Negotiable Instruments Act arises only where the drawer of the cheque fails to make payment of the cheque amount to the payee within 15 days of the receipt of the said notice. Section 142(1)(a) of Negotiable Instruments Act clearly states that 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. Sub-section (b) of Section 142 states that such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138.

6. The above-mentioned provisions of the Negotiable Instruments Act clearly suggests that the Magistrate of the First Class or the Metropolitan Magistrate can take cognizance of an offence under Section 138 of the



Negotiable Instruments Act only upon a complaint filed by the payee or the holder of the cheque in due course, when the cheque amount is not paid in pursuance of the notice within the stipulated period of time as mentioned in Section 138(b) of the Negotiable Instruments Act.

7. Cognizance of Section 138 of the Negotiable Instruments Act cannot be taken on police report.

8. For the reasons stated above, the impugned order, dated 24th of December, 2018, cannot be sustained as it is illegal, inoperative and *de hors* the specific provisions of the Statute.

6. Accordingly, the order dated 24th of December, 2018 be set aside and Pahadpur-Malahi (OP) P. S. Case No. 147 of 2018, giving rise to G. R. No. 3402 of 2018, be quashed.

With the aforesaid observations/directions, the instant criminal revision is allowed.

(Bibek Chaudhuri, J)

skm/-

U			
---	--	--	--

