

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55531 of 2016

Arising Out of PS. Case No.-2841 Year-2015 Thana- SIWAN COMPLAINT CASE District-
Siwan

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Manish Priyadarshi SON OF SRI K.B.P. SINHA RESIDENT OF
PRIYADARSHI FORD SHOW ROOM, SAGUNA MORE, P.S.- DANAPUR,
DISTRICT- PATNABIHAR

... .. Petitioner/s

Versus

1. State Of Bihar
2. AJAY KUMAR YADAV SON OF SHRI INDRADEO PRASAD
RESIDENT OF MOHALLAH- MISSION COMPOUND MAHADEVA,
P.S.- SIWAN MIFFASSIL, DISTRICT- SIWANBIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Dhanendra Chaubey
For the Opposite Party/s : Mr. Umesh Lal Verma

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 6 06-10-2023 1. The present application has been filed for quashing the
order of cognizance, dated 12.05.2016, passed by the
learned Chief Judicial Magistrate, Siwan, in Complaint
Case No. 2841(C) of 2015, under Section 138 of the
Negotiable Instrument Act and Sections 406/420 Indian
Penal Code.
2. The Opposite Party No. 2 filed Complaint Case No.
2841(C) of 2015, alleging herein that he had deposited a
sum of Rs. 11,86,010/- with the Priyadarshi Ford, a dealer
of Ford Motors, for purchasing one while-coloured Eco
Sport Titanium O Diesel car. The Managing Director of



Priyadarshi Ford, namely, Manish Priyadarshi, assured the Opposite Party No. 2-complainant to deliver the vehicle within one or two days. It has further been alleged that the vehicle was not delivered within time and the petitioner took excess amount towards the price of the vehicle. Upon enquiry and asking by the Opposite Party No. 2, the petitioner returned a sum of Rs. 69,400/-, through cheque, dated 26.06.2015, which was presented by the Opposite Party No. 2 before his banker, namely, I.D.B.I. Bank, Siwan, for its encashment, but the said cheque got dishonoured on 29.06.2015, due to insufficient fund.

3. Admittedly, a legal notice was sent to the petitioner on 03.09.2015, i.e. much after the expiry of one month's period, by the Opposite Party No. 2.
4. Learned Counsel for the petitioner submits that before the cognizance of the offence was taken by the learned Chief Judicial Magistrate, Siwan, on 12.05.2016, the amount, equivalent to the cheque amount, was transferred in the bank account of the Opposite Party No. 2 through NEFT by the petitioner on 10.12.2015, which would be evident from the statement of account (Annexure 3). The



Opposite Party No. 2-complainant did not disclose this fact before the learned Chief Judicial Magistrate before the order taking cognizance and accordingly cognizance has been taken for the offences punishable under Section 138 of the Negotiable Instrument Act and Sections 406/420 of the Indian Penal Code.

5. He further submits that the timeline for an offence under Section 138 of the Negotiable Instrument Act has also not been followed inasmuch as from the date of knowledge of dishonouring of the cheque, the notice was not given within one month. As such, no offence is made out under Section 138 of the Negotiable Instrument Act. He further submits that the intention of the petitioner was not to deceive or cheat the Opposite Party No. 2-complainant; rather, on demand, the petitioner was given the car of Ford Company of different model (Eco Sport) because the model, which was booked by the complainant, was not available and as such, the difference price was returned to the Opposite Party No. 2-complainant by the petitioner, amounting to Rs. 69,400/-.
6. On the other hand, learned Counsel for the Opposite Party No. 2 submits that even if Section 138 of the Negotiable



Instrument Act is not made out, Sections 406/420 of the Indian Penal Code are made out inasmuch as the petitioner, while delivering the vehicle of the Ford Company, charged excess amount from the Opposite Party No. 2 with an intention to cheat him.

7. I have heard learned Counsel for the parties concerned and have gone through the materials available on record.
8. From perusal of the complaint, it appears that the timeline for constituting an offence under Section 138 of the Negotiable Instrument Act has not been followed by the complainant. Further, it appears that before the order taking cognizance, the difference amount of the price of the car was already returned by the petitioner to the Opposite Party No. 2-complainant through NEFT, which is apparent from the statement of account (Annexure 3) and has not been denied by the Opposite Party No. 2.
9. From the materials on record, it does not appear that the intention of the petitioner was to cheat the complainant-Opposite Party No. 2 from the very beginning inasmuch as the case of the petitioner is that due to the unavailability of the model booked by the complainant, the vehicle of another model of ECO Sport was provided



to the complainant, the price of which was less than the model earlier booked by the Opposite Party No. 2 and the difference of the amount of the vehicle has already been paid to the Opposite Party No. 2 by the petitioner.

10. Taking into consideration the totality of the facts and in order to ensure the ends of justice, in my opinion, the order taking cognizance needs to be quashed.

11. Accordingly, the order of cognizance, dated 12.05.2016, passed by the learned Chief Judicial Magistrate, Siwan, in Complaint Case No. 2841(C) of 2015, under Section 138 of the Negotiable Instrument Act and Sections 406/420 Indian Penal Code, is hereby quashed.

12. This application is allowed.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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