

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30322 of 2023

Arising Out of PS. Case No.-235 Year-2011 Thana- MUFFASIL District- West Champaran

Amar nath sinha, aged about 62 years, male s/o- Late Kedar Nath Sinha,
resident of- c/55, Hanuman Nagar, k. Sector, Kankarbagh, Ps- Patrakar Nagar,
District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Kumari Kiran wife of Arun Kumar, resident of Bhagwati Nagar, Bettiah
P.S.- Muffasil, District- West Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Krishna Kant Singh, Advocate
For the Opposite Party/s	:	Mr. Jitendra Kumar Singh, A.P.P.
For the O.P. No.2	:	Mr. Sanjeev Kumar, Advocate
		Mr. Bharti Rai, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT
Date : 26-09-2023

Heard Mr. Krishna Kant Singh, learned counsel
for the petitioner; Mr. Jitendra Kumar Singh, learned A.P.P.
for the State and Mr. Sanjeev Kumar, learned counsel for
the Opposite Party No.2.

2. Learned counsel for the petitioner submits
that the present quashing application has been filed seeking
quashing of the order dated 22.06.2015 passed by the
learned C.J.M., Bettiah, West Champaran in Bettiah
Muffasil P.S. Case No. 235 of 2011, whereby cognizance



has been taken of the offences under Sections 406, 420 and 34 of the Indian Penal Code read with Section 138 of the Negotiable Instrument Act.

3. The learned counsel next submits that from bare perusal of allegation as alleged in the F.I.R., it would manifest that the Opposite Party No.2 instituted the instant F.I.R. only with a view to coerce the petitioner into submission so that he parts with the money which the Opposite Party No.2 is claiming. It is next submitted that basically the Opposite Party No.2 has used the criminal court as a tool for making recovery.

4. The learned counsel further submits that from bare perusal of the allegations as alleged in the F.I.R., it would manifest that, *prima facie*, no offence is made out under Sections 406 and 420 of the Indian Penal Code and it is settled principle of law with respect to offence under Section 138 of the Negotiable Instrument Act, no F.I.R. can be instituted rather a complaint has to be filed. It is next submitted that the present F.I.R. was instituted under Section 138 of the Negotiable Instrument Act only with a view to coerce the petitioner into submission by using the



criminal court and the police as a tool for coercing the petitioner into submission for recovering the money. The learned counsel for the petitioner next submits that it absolutely does not stand to reason that how police investigates in such mechanical manner. It is submitted that it absolutely does not stand to reason that how the Investigating Officer investigated the case and filed charge-sheet under Section 138 of the Negotiable Instrument Act which amply demonstrates that the Investigating Officer was completely unaware of the law that an F.I.R. is in respect of an offence under Section 138 of the Negotiable Instrument Act is not maintainable.

5. The learned counsel further submits that from perusal of the allegation as alleged in the F.I.R., it would manifest that the informant alleges that the petitioner and one Umesh Kumar took Rs. 2,97,000/- (Rupees Two Lakhs Ninety Seven Thousand) through draft and Rs. 28,000/- (Rupees Twenty Eight Thousand) on 30.04.2004 on pretext of executing sale deed in favour of her daughter-in-law with regard to 3 *katha* of land, thereafter, again an amount of Rs. 2,45,000/- (Rupees Two Lakhs Forty Five Thousand) was



paid on 27.06.2004 and thereafter, an amount of Rs. 62,000/- (Rupees Sixty Two Thousand) was paid. In this way an amount of Rs. 6,32,400/- (Rupees Six Lakhs Thirty Two Thousand Four Hundred) was paid to the accused persons in presence of Hari Shankar Singh and Jai Shankar Singh, further alleges that petitioner and Umesh Kumar called her daughter-in-law from Banglore for getting the sale deed registered but on pretext of illness of the land owner, the sale deed was not executed, further an amount of Rs. 30,000/- (Rupees Thirty Thousand) was spent in travelling to and fro from Banglore to Patna, further alleges that on pressure of her husband, the accused got the land of Madan Singh registered in favour of her daughter-in-law measuring 2 *katha* 5 *dhur* which included road and after deducting the road the area comes to be 2 *katha*, when the accused person had assured of registering the land of Munika Devi. It is next alleged that, thereafter, the accused persons after calculating the amount as detailed in the F.I.R., issued cheque of Rs. 5,00,000/- (Rupees Five Lakhs) dated 29.10.2011, but on presentation for encashment the cheque bounced, but the accused persons credited an



amount of Rs. 1,75,000/- (One Lakh Seventy Five Thousand) in the account of the informant, but refused to pay an amount of Rs. 3,25,000/- (Rupees Three Lakhs Twenty Five Thousand), accordingly, the F.I.R. was instituted.

6. The learned counsel submits that from bare perusal of the allegation as alleged in the F.I.R., it would manifest that the present F.I.R. has been instituted for realizing Rs. 3,25,000/- (Rupees Three Lakhs Twenty Five Thousand) which the Opposite Party No.2 claims that the same was not paid. It is next submitted that the agreement was with respect to a piece of land for which Rs. 6,32,400/- (Rupees Six Lakhs Thirty Two Thousand Four Hundred) was given by the informant and thereafter, sale deed with respect to 2 *katha* 5 *dhur* of land was also executed in favour of the daughter-in-law of the informant which she was accepted without any objection and thereafter, the entire mechanism of the Opposite Party No.2 started to coerce the accused persons including the petitioner into the submission for realizing the amount as detailed in the F.I.R. The learned counsel next submits that in the nature of



allegation, *prima facie*, no offence under Sections 420 and 406 of the Indian Penal Code is made out as the allegation does not even remotely suggest that the petitioner right from the beginning had any intention of cheating the Opposite Party No.2, further the accused persons as per their agreement also got a sale deed with respect to the land registered in the name of the daughter-in-law of the informant which ghe accepted readily with any objection. It is next submitted that, *prima facie*, no offence under Section 406 of the Indian Penal Code is also made out as it is not the case of informant that there was any entrustment of any good or money with the petitioner which he siphoned off. It is next submitted that it is settled principle of law that an F.I.R. is not maintainable with respect to an offence under Section 138 of the Negotiable Instrument Act. It is submitted that Section 142 of the Negotiable Instrument Act incorporates that no Court shall take cognizance of any offence under Section 138 of the Negotiable Instrument Act, except on a complaint, in writing made by the payee or, as the case may be, the holder in due course of the cheque, it is next submitted that Section 2(d) of the Cr.P.C. defines



complaint, which does not include a police report.

7. Learned A.P.P. for the State along with learned counsel for the Opposite Party No.2 are not in a position to rebut the submission made on behalf of learned counsel for the petitioner.

8. Considering the submission made by the learned counsel for the petitioner and the fact recorded hereinabove, the order dated 22.06.2015 passed by the learned C.J.M., Bettiah, West Champaran in Bettiah Muffasil P.S. Case No. 235 of 2011, whereby cognizance has been taken of the offences under Sections 406, 420 and 34 of the Indian Penal Code read with Section 138 of the Negotiable Instrument Act is hereby quashed.

9. Accordingly, the quashing application is thus allowed.

(Satyavrat Verma, J)

Nilmani/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

