

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.917 of 2021

Arising Out of PS. Case No.-32 Year-2021 Thana- DIGHALBANK District- Kishanganj

Anil Kumar Niraj Son of Hare Ram Jha, Resident of Village - Belbari, P.S. - Tarabari, District - Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Home Department, Govt. of Bihar Patna, Bihar
2. Superintendent of Police, Kishanganj.
3. Officer – In-Charge, Dighalbank Police Station, Kishanganj.
4. Kranti Kumar Das Son of Shri Malchand Harijan, Resident of village - Hadva Danga, P.S. - Dighalbank, Dist. - Kishanganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar, Advocate
For the State	:	Mr. Saroj Kumar Sharma, AC to AAG-3
For the Respondent	:	Md. Mushtaque Alam, Advocate

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 16-03-2023

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the respondent no.4.

The petitioner has filed the present application for quashing the F.I.R. Dighalbank P.S. Case No. 32 of 2021 registered under Sections 420 and 406 of the I.P.C. read with Section 138 of N.I. Act.

Counsel for the petitioner submits that upon bare reading of the F.I.R., it transpires that main allegation is relating to bouncing of cheque. He further submits that it is crystal clear under section 142(1) (a) of the N.I. Act 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;”

Counsel for the State submits that after going through the content of the F.I.R., it transpires that there are ingredients of sections 420 and 406 of I.P.C. as well as section 138 of the N.I. Act.

Counsel for the informant submits that the petitioner was granted bail vide order dated 02.07.2021 in A.B.P. No. 265 of 2021 on the conditions that he shall pay 20% of the cheque bounce amount to the informant. He further submits that a petition for extension was also filed and period for payment of 20% of cheque bounce amount has been extended for further 15 days but instead of fulfilling the conditions, the petitioner has opted to file the present criminal writ petition with a view to evade the process of criminal law.

From the record annexed, it transpires that final report has not received till 09.05.2022.

In the opinion of the Court due to presence of sections 420 and 406 of the I.P.C. read with Section 138 of N.I. Act, this F.I.R. cannot be quashed and therefore, prayer for quashing the F.I.R. is hereby rejected and the present Cr. Writ petition is

hereby dismissed.

So far as the applicability of Section 142(1)(a) is concerned that cognizance shall not be taken of an offence under section 138 of N.I.Act, except upon complain is the law of the land. Therefore, even after rejection of this case, the petitioner shall be at liberty to raise the plea of Section 142(1) (a) of the N.I.Act at appropriate stage before appropriate forum and not at this stage.

(Dr. Anshuman, J.)

ravishankar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	