

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.221 of 2021

Arising Out of PS. Case No.-571 Year-2020 Thana- AGAMKUAN District- Patna

1. RANJAN DEVI WIFE OF SHRI SURYADEO JHA RESIDENT OF SRI RAM BHAVAN, I.O.C. COLONY KUMHRAR, IN THE CITY OF PATNA, P.S-AGAMKUAN, DISTRICT-PATNA.

2. SURYADEO JHA S/O RAM NARAYAN JHA RESIDENT OF SRI RAM BHAVAN, I.O.C. COLONY KUMHRAR, IN THE CITY OF PATNA, P.S-AGAMKUAN, DISTRICT-PATNA. ... Petitioners

Versus

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECRETARY, HOME DEPTT., GOVT. OF BIHAR, PATNA

2. DIRECTOR GENERAL OF POLICE, BIHAR, PATNA

3. SUPERINTENDENT OF POLICE, PATNA

4. STATION HOUSE OFFICER, AGAMKUAN POLICE STATION, PATNA

5. SABITA DEVI W/O ARJUN KUMAR GUPTA RESIDENT OF TEACHER COLONY, ROAD NO.4, NEAR SHANTI MARKET, P.S.-AGAMKUAN, DISTRICT-PATNA. ... Respondents

Appearance :

For the Petitioners : Mr.Vaidehi Raman Prasad Singh, Adv.

For the Respondents : Mr.Sheo Shankar Prasad, SC VIII

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 22-03-2023 Heard learned counsel for the petitioners and the State.

Counsel for the petitioners has filed the present writ petition for quashing the first information report, namely, Agamkuan P.S. Case No. 571 of 2020 lodged under Sections 406 and 420 of the Indian Penal Code and 138 of the Negotiable Instructions Act, 1881.

Counsel for the petitioners submits that from the content of the first information report it transpires that the



genesis of the case is bouncing of cheque. He submits that under Section 142(1)(a) of the Negotiable Instructions Act, 1881, states as follows :

“142. Cognizance of offences.—2[(1)]
Notwithstanding anything contained in the Code of
Criminal Procedure, 1973 (2 of 1974),—

(a) 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

He submits that no Court shall take cognizance under Section 138 of the Negotiable Instructions Act, 1881, by virtue of first information report and filing a complaint is a legal necessity. Therefore, he prays to quash the first information report as Section 138 of the Negotiable Instructions Act, 1881, is added in the first information report.

Counsel for the State agree that yes as per Section 142(1)(a) of the Negotiable Instructions Act, 1881, cognizance has to be taken under Section 138 of the Negotiable Instructions Act, 1881, by virtue of a complaint case only.

Upon going through the bare reading of the first information report, it transpires that the allegation of breach of



trust and fraud has been made in the first information report along with the allegation of bouncing of cheque.

It is due to this reason, I am not inclined to quash the first information report, but, applicability of Section 142(1)(a) of the Negotiable Instructions Act, 1881, is necessary to be completed but cognizance order is not before this Court.

This writ application is **disposed off** with liberty to the petitioners that they shall raise the applicability of Section 142(1)(a) of the Negotiable Instructions Act, 1881, at appropriate stage of this case.

(Dr. Anshuman, J)

Shamshad/-

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