

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1109 of 2019

Arising Out of PS. Case No.-328 Year-2018 Thana- CHHATAUNI District- East Champaran

ANSHU SINGH Son of Sri Inerdeo Rai Resident of Village- Bhawanipur,
P.S.- Sangrampur, District- East Champaran.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECRETARY,
DEPTT. OF HOME, GOVT. OF BIHAR, PATNA Bihar
2. The Director General of Police, Patna, Bihar Bihar
3. The Senior superintendent of Police, East Champaran at Motihari. Bihar
4. The Officer In-Charge, chhatauni Police Station Motihari, East Champaran.
Bihar
5. Ranjit Kumar singh Son of Late Dhanushdhari Singh Resident of Mohalla
Agarwa, Ward No. 32, P.S. Motihari Town, East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shakti Suman Kumar, Advocate
For the Respondent/s : Mr. Sheo Shankar Prasad, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 20-03-2023

None appears for the petitioner.

Heard learned counsel for the petitioner, Sri Rajesh
Ranjan and learned counsel for the State, Sri Anil Kumar, AC to
SC-8.

This application has been filed for quashing F.I.R.
of Chhataunin P.S. Case No.328 of 2018 registered under
Sections 406, 420 and 506 of the Indian Penal Code and Section
138 of the Negotiable Instrument Act.

The prosecution case in “short” is that the
informant has given a sum of Rs. 15,00,000/- to the petitioner



who is his friend for his business. However, the petitioner allegedly did not return the said amount and after much persuasion he allegedly gave a cheque dated 04.06.2018 of his firm namely, Asha Enterprises of Rs. 15,00,000/- which was dishonored. The informant sent a legal notice and the informant allegedly threatened him after receipt of the said notice. It is alleged that the petitioner was associated with notorious Chhotelal Sahni and the informant feared for his life.

It has been contended by the learned counsel for the petitioner:

That the truth of the matter is that the petitioner has no concern with the informant. The cheque used by the informant was misplaced with 7 other cheques on 31/12/14 and an informatory to this effect was submitted by the petitioner to Sugauli police station on 01/01/15. Subsequently, the petitioner informed the bank about the aforesaid loss of cheques and also closed the bank account on 13/01/15. The bank vide letter dated 31/08/16 certified the aforesaid fact.

That, after more than 3 years of closure of the bank account of the petitioner, the informant used the aforesaid cheque to implicate the petitioner in the present false and fabricated case.

That the informant has suppressed the fact that prior to the institution of the present case he had filed complaint case no. 1789/18 u/s 420, 406, 506 of the Indian Penal Code and 138 of the N.I. Act with the same allegation. In the said case the informant mentioned the cheque no.50222 dated 04/08/18. However, the said case was filed after the statutory period stipulated in N.I. Act and when the informant realized the same he left the pairavi of the case. Consequently, the said complaint case was dismissed by order dated 01/11/18.

That from a bare perusal of the F.I.R. it is apparent that the allegations of payment of Rs. 15,00,000/- to the petitioner was vague and not even the date of payment of such huge amount is



mentioned. There is absolutely no reference in the F.I.R. of any evidence such as money receipt for the payment of the aforesaid sum to the petitioner.

That the legal notice dated 12/06/18 annexed with the F.I.R. further exposed the falsity of the prosecution case where it is stated that the said Rs. 15,00,000/- was given by the informant to the petitioner in lieu of his land. It is further mentioned in the said legal notice that the cheque was returned unpaid with remark "other reason refer to drawer". Thus it is apparent that cheque in question was not returned due to insufficient fund and therefore, no offence u/s 138 of the N.I. Act is made out.

Learned counsel for the petitioner has submitted that once the complaint was dismissed. The only option left to the informant was that he should have moved in revision before this Hon'ble Court against the order dismissing complaint but he has chosen to suppress the fact of dismissal of the complaint and filed a fresh F.I.R. on the same facts which is not permissible in law.

The Supreme Court in the case of ***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others (2020) 10 SCC 118.***

Paragraph 23 of the aforesaid judgment reads as follows:-

In the opinion of this Court non-interference in the present case would result in miscarriage of justice and therefore, investigation by this Court is warranted.

The petitioner cannot be prosecuted by the informant by suppression of facts and any person who wants to the law to help him to come with clean hands.

In the present case, the prosecution of the petitioner is quashed because of the suppression of the fact that the complaint on the same facts was dismissed and the informant



has suppressed the dismissal of the complaint.

***Rajiv Thapar vs. Madan Lal Kapoor 2013 (3)
SCC 330.***

(Sandeep Kumar, J)

Guddu/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	03.05.2023
Transmission Date	

