

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1460 of 2023

Arising Out of PS. Case No.-91 Year-2023 Thana- CHAKIA District- East Champaran

Rajesh Kumar Shrivastava Son Of Late Ramanand Prasad Resident Of
Village- Mansi Chapra Ward No. 11, Ps- Chakia, Dist- East Champaran

... .. Petitioner

Versus

1. The State of Bihar
2. The Superintendent of Police, East Champaran At Motihari
3. The Deputy Superintendent of Police, Chakia East Champaran
4. The Officer-In-Charge Chakia Police Station Distt- East Champaran
5. The Investigating Officer of Chakia Police Station Case No. 91/2023, Distt- East Champaran
6. Narendra Prasad Singh Son of Late Matuk Singh Resident Of Village- Professor Colony Ward No. 21, Post Bara Chakia, PS- Chakia, Distt- East Champaran

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Vijay Shankar Shrivastava, Advocate
For the Respondent/s : Mr. Ruchikar Jha, AC to SC-8

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 30-10-2023 Heard learned counsel for the petitioner and learned
A.C. to learned S.C.-8 for the State.

2. Petitioner in the present writ application is seeking quashing of the First Information Report being Chakia P.S. Case No. 91 of 2023 dated 05.03.2023 instituted for the offences under Sections 420, 406, 467 and 504 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act. A prayer has also been made to direct the respondent no.5 not to arrest the petitioner, who is an accused in the said Chakia P.S. case.



3. Learned counsel for the petitioner submits that Chakia P.S. Case No. 91 of 2023 has been instituted on the basis of a written report of respondent no.6 who has alleged that for purpose of purchase of piece of five *katthas* of land, he has given a sum of Rs. 34,76,000/- to the petitioner but after receiving the money, the petitioner indulged in dealing with the land with other persons which was objected to by the informant. It is alleged that the petitioner offered to return the consideration amount of Rs. 34,76,000/- and for this purpose he issued four cheques for different amounts but when those cheques were presented for encashment, the banker of the petitioner dishonoured the same for want of sufficient funds. The informant claimed that the petitioner has prepared a document on a stamp paper in which he has acknowledged taking of money and the said document has been witnessed by some of the witnesses.

4. Learned counsel for the petitioner submits that admittedly the petitioner received money from the informant but then the entire money was returned to the informant. It is submitted that despite return of money the informant did not return the stamp paper and the cheques which were handed over to the informant by way of security. For this reason, the



petitioner has filed a complaint case against the informant in which cognizance has been taken and the informant has been summoned. A copy of the complaint petition has been brought on record as Annexure '3' to the writ application.

5. Learned counsel submits that it is a case of purely civil dispute and on a bare reading of the First Information Report, no offence, as alleged, is made out. It is further submitted that the First Information Report would not lie for an offence alleged under Section 138 of the Negotiable Instruments Act.

6. To support his contentions, learned counsel for the petitioner has relied upon some of the judgments of the Hon'ble Apex Court and this Court which are as follows:-

(i) Dalip Kaur & Ors. v. Jagnar Singh and Anr. reported in **(2009) 14 SCC 696;**

(ii) Vishwanath Chaudhary @ Vishwanath Prasad Chaudhary & Ors. v. State of Bihar & Anr. reported in **(2017) 2 PLJR 871;**

(iii) Murari Lal Gupta v. Gopi Singh reported in **(2005) 13 SCC 699;**

(iv) Hemant Kumar Das & Anr. Vs. The State of Bihar reported in **(2018) 4 PLJR 725;**

(v) Akhouri Gopal v. State of Bihar & Anr. reported in



(2010) 3 PLJR 209.

7. Learned counsel for the State has, however, opposed this writ application. It is submitted that on a bare reading of the First Information Report it would appear that the informant is alleging that he has been duped by the petitioner who after receiving Rs. 34,76,000/- did not provide the land to the informant and later on the cheques, which he had issued towards refund of the amount, stood dishonoured for want of sufficient funds. It is submitted that the case is still under investigation and there is specific allegation of cheating and misappropriation of money against the petitioner. Learned counsel further submits that presently the case is under investigation, therefore it cannot be said that the court has taken cognizance of offence under Section 138 of the Negotiable Instruments Act on the basis of a police report, therefore that contention of the petitioner is not fit to be accepted at this stage.

8. Having heard learned counsel for the petitioner and learned counsel for the State as well as on going through the First Information Report, this Court finds that there is specific allegation that the petitioner had received Rs. 34,76,000/- from the informant towards sale of a piece of land but later on the land was not provided to the informant and the petitioner intended to return the entire amount for which he had issued



cheques. Those cheques stood dishonoured on presentation. The matter is still under investigation. This Court is of the considered opinion that in such circumstance it cannot be safely said at this stage that it is a case of purely civil dispute. In the case of **Rajesh Bajaj Vs State NCT of Delhi and Ors.** reported in **(1999) 3 SCC 259**, the Hon'ble Supreme Court has held that in appropriate cases civil as well as criminal proceeding can go together.

9. So far as judgments cited on behalf of the petitioner are concerned, this Court is of the considered opinion that the ratio of those judgments would not apply in the facts of the present case. In the case of **Bharat Petroleum Corporation vs. N.R. Vairamani and Anr.** reported in **(2004) 8 SCC 579**, the Hon'ble Supreme Court has put a word of caution saying that the judgments of the Court should not be cited like an Euclid's theorem as a slight change in the facts of the case would make a sea difference in the opinion of the Court.

10. This Court, therefore, finds no merit in this application. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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