

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8033 of 2023

Arising Out of PS. Case No.-1616 Year-2016 Thana- PURNIA COMPLAINT CASE District-
Purnia

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Sudhir Kumar Son Of Kameshwari Prasad R/V- Gulabbagh, P.S.- Sadar,
District- Purnia Petitioner

Versus

1. The State of Bihar
2. Amit Kumar @ Banti Singh Son Of Harendra Kumar Singh Proprietor Of
M/S Amit Trading R/O Mohalla- Jamunghat Raniganj Mariganj, P.S.-
Raniganj, District- Araria, Presently residing at Mohalla- Hansda
Gulabbagh, P.S.- Sadar, District- Purnia

... .. Opposite Parties

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Appearance :

For the Petitioner : Mr.Manoj Kumar Jha, Advocate

For the Opposite Party : Mr.Ram Naresh Ray, Addl Public Prosecutor

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

4 08-04-2024 This application is directed against order dated 22/06/2022 passed by the Court of the Judicial Magistrate 1st class, Purnia in Complaint Case No. 1616/2016 by which the Court below has dismissed the application dated 30/05/2022 filed by the complainant-petitioner for giving direction to the opp.-party no. 2 to deposit 20% of cheque amount in the court below before starting the trial under the mandatory provision of amended section 143-A of Negotiable Instrument Act, 1881.

2. Facts giving rise to this case is that the petitioner is the proprietor of M/S Devraj Enterprises & Company who deals in wholesale business of food grains. For running the said business, petitioner had taken Cash Credit Account (in short "CCA") Loan of Rs. 95 Lacs from the Bank of Baroda, Gulabbagh branch, Purnia. Opp.- party no. 2 also does wholesale business of food grains in the name and style of M/S Amit Trading in the house of petitioner on rent. After sometime, due to family problem petitioner was not doing his business



properly and he offered a proposal to the opp.-party no. 2 to run his business in partnership with a condition that he would give the details of accounting of income and expenditure of the business to the petitioner regularly. Thereafter, both the petitioner and the opp-party no. 2 entered into a written agreement of partnership dated 06/08/2015. As per the terms and conditions of the said agreement of partnership, the opp. party no 2 had right to withdraw the money upto Rs. 95 Lacs from the cash credit account of petitioner for the purpose of said business for which petitioner gave several blank cheques of said loan account with his signature to the opp party no. 2 so that as per the requirement, the opp.-party no. 2 could withdraw the money for the purpose of purchasing food grains for running the business of the petitioner. After sometimes, petitioner came to know that the opp party no- 2 withdrew entire loan amount Rs. 95 Lacs from his CCA account and has expended in his personal use and has not given any details of said expenditure and misappropriated the said loan amount of the petitioner. Further case of the petitioner is that upon making pressure upon the opp-party no 2, he assured the petitioner to pay Rs. 50 Lacs as compensation of loss and issued a cheque bearing Cheque No. 000070 dated 11/02/2016 of worth Rs. 50 Lacs. Thereafter petitioner deposited the said cheque in his account in Bank of Baroda, Purnia on the same day i.e., on 11/07/2016 but same became dishonoured on 12/07/2016 due to insufficient fund which was informed to opp party no. 2. However, opposite party no.2 did not respond and fled away after locking his rented house.

3. On 30/07/2016 petitioner sent a legal notice to the opp-party no. 2 through registered post and requested to pay the



cheque amount within 15 days from the service of said notice but despite service of notice the opp party no. 2 did not pay the said amount within the stipulated period as a result, petitioner has to file the present complaint against the opp party no 2 for committing offence bar misappropriation of money of petitioner as well as for cheating him and also for committing offence under the N.I.Act.

4. On filing of the aforesaid complaint, the learned C.J.M., Purnia transferred the case record in the court of Judicial Magistrate 1st class, Purnia for enquiry and trial u/s 202 of Cr.P.C. Thereafter SA. (solemn affirm) of the complainant-petitioner and two inquiry witnesses were examined and after proper enquiry, the learned court below vide order dated 28/04/2017 took cognizance for the offence under section 138 N.I. Act against the opp, party no-2. On 09/05/2017 notice/summon was issued upon the on 09/05/2017 for his appearance but despite service of notice, opp-party no 2 did not choose to appear before the learned court below. Hence on 12/07/2017 court below issued bailable warrant against opposite party no.2. Vide order dated 31/08/2017 non-bailable warrant (NBW) was also issued against the opp-party no. 2 and ultimately on 27/02/2018 process of 82 Cr.P.C. was also issued. The trial court vide order dated 10/02/2021 granted bail to the opp party no-2. On 30/05/2022 petitioner filed a petition praying therein that as per the amended section 143-A of N.I. Act, opp. party no 2 may be directed to deposit 20% of cheque amount in the court below before recording of evidence on 08/06/2022 which petition was dismissed by the court of Judicial Magistrate 1st class vide order dated 22/06/2022 dismissed the petition as not maintainable as amended section 143-A of N.I. Act has



come into force on 01/09/2018 and the same is prospective and as such, petitioner cannot be given benefits of the said amendment.

5. Learned counsel for the petitioner submits that no doubt from 01/09/2018, section 143A was inserted in the Act by Amendment Act 20 of 2018 but on bare reading of section 143A of the Act, it would be clear that when the Court is trying an offence u/s 138 of N.I. Act, may order the drawer of the cheque to pay interim compensation to the complainant in a summary trial or a summons case, where the accused pleads not guilty to the accusation made in the complaint and in any other case, upon framing of charge. Therefore, the learned trial court ought to have given direction to the opp. party no. 2 to deposit 20% of cheque amount but he has completely failed to do so. More so, in several similarity situated cases, court has directed for depositing 20% of the cheque amount to the other side vide annexures 5 and 6 to this quashing application. Learned counsel for the petitioner has relied upon a decision of the Hon'ble Supreme Court in case of **G.L. Raja Vs. Trraj Surana** passed in **Criminal Appeal No. 1160 of 2019 @ SLP (Cr.L.) No 3342 of 2019**.

6. Learned counsel for the State submits that in case of the petitioner, cause of action arose in 2016, whereas section 143 A of the NI Act was inserted in 1918 prospectively, as such, petitioner cannot take help of the said prospective amended section 143-A of N.I. Act. Learned counsel submits that as there is no illegality and irregularity in the impugned orders dated 22.6.2022 & 30.5.2022, present quashing application is fit to be dismissed.

7. On perusal of materials available on the record, it



reflects that the petitioner sent legal notice to opposite party no.2 (for dishonour of cheque issued by him) on 20.7.2016 and present complaint was filed on 23.8.2016. Hence, cause of action arose in 2016. However, section 143 A was inserted by the Act of 2018 amendment in the Negotiable Instrument Act, 1881. With the amendment, new provision entitles any Court while trying a cheque dishonour offence, to order the drawer of the cheque to pay interim compensation to the complainant, where the drawer pleads not guilty to the accusation made in the complaint and in any other case, upon framing of charge. Section 143A of Negotiable Instrument Act came into force with effect from 01.09.2018. Hon'ble Supreme Court in case of **G.L. Raja (supra)**, has held that since section 143A of the Negotiable Instrument Act 1881, is prospective in operation, provisions of said section 143A can be applied or involved only in cases where the offence under section 138 of the Act was committed after the introduction of said section 143A in the statute book.

8. Having heard learned counsel for the rival parties and on going through materials collected on the record and the pronouncement of law cited herein above, I do not find any irregularity or illegality in the impugned order.

9. Accordingly, this quashing application is dismissed.

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(Prabhat Kumar Singh, J)

