

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7870 of 2022

Arising Out of PS. Case No.-1019 Year-2016 Thana- PATNA COMPLAINT CASE District-
Patna

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SUNIL KUMAR SON OF LATE RAM NATH PRASAD RESIDENT
OF FLAT NO. 409, NAWAL KALA APARTMENT, PARK ROAD,
P.S.- KADAM KUAN, DISTRICT- PATNA- 800003.

... .. PETITIONER/S

VERSUS

1. THE STATE OF BIHAR
2. PRADEEP KUMAR SON OF LATE RAM NATH PRASAD
RESIDENT OF PROPRIETOR OF RADHY SHYAM TRADER,
SITUATED AT BAKIPUR GORAKH, SONARU ROAD, FATHUA,
P.S.- FATHUA, DISTRICT- PATNA AND RESIDENCE OF
MOHALLA STATION ROAD FATHUA, P.S.- FATHUA, DISTRICT-
PATNA.

... .. OPPOSITE PARTY/S

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Appearance :

For the Petitioner/s	:	Mr. Mithlesh Kumar Gupta, Advocate
For the Opposite Party/s	:	Mr. Pranav Kumar , APP

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 28-02-2024 Heard learned counsel for the parties.

2. This application has been filed for setting
aside the cognizance order dated 20/12/2018 in



connection with Complaint case no 1019 (C) of 2016 passed by the learned Judicial Magistrate 1st Class Patna, by which the learned Magistrate has taken cognizance against the petitioner for the offences under sections 138 N. I. Act.

3 . The prosecution case, in brief, is that the complainant runs a business in the name and style of Radhey Shyam Traders situated at Mahalla Bakipur Gorakh, Sonaru Road Fathua, and this complainant was doing wholesale business of sugar in the said shop. It is further alleged that at his said firm, the accused, namely Sunil Kumar, came and purchased 122 quintals of sugar (244 bags of sugar; one bag contains 50 kg of sugar) at the rate of 3280 (three thousand two hundred eighty) only per quintal of Rs 4,00,160 (four lacs one hundred sixty only) on January 22, 2016. It is further alleged that after purchasing 122 (one hundred twenty-two) quintals of sugar, the petitioner gave a postdated check in the name of the firm, namely Radhey Shyam Traders, bearing check no. 535996 dated January 29, 2016 for Rs



four lacs of ANDHRA Bank, South of Gandhi Madian Exhibition Road, Patna-800001, in favor of the complainant, and also paid Rs 160 in cash to the complainant, namely Pradeep Kumar. Again, the petitioner assured the complainant that the said check would be honored as there were sufficient funds in his account. The complainant agreed to the assurance of the petitioner, delivered the 122 quintals of sugar, and accepted the check on January 22, 2016, whereas the check bearing number 535996 was postdated January 29, 2016. It is further alleged that the complainant presented the said cheque in his account yes bank, exhibition road patna, on 8/2/2016 for encashment of the said cheque, but the said cheque has been dishonored by Andhra bank, south Gandhi Madian exhibition road, Patna, and returned with the said cheque with the cts return memo dated 9/2/2016 with remarks a/c closed on 9/2/2006 to yes bank limited exhibition road, Patna. The complainant received the MEMO dated 9/2/2016 through Complainant by courier



on 15/2/2016. The complainant sent a legal notice to the petitioner on February 29, 2016 and narrated that the said check had been dishonored.

4. Learned counsel for the petitioner submits that the complainant and the accused person are their own brothers and both live in the same paternal house at Station Road, Fathua, District- Patna. Due to some family disputes, the complainant has falsely lodged this complaint with wrongful and malafide intentions. He next submits that the RBI in 2013 gave a guideline that all non-CTS cheques in circulation before the extended timeline of July 31, 2013 by creating awareness among customers through SMS alerts, letters, display boards in branches/ATMs, logs on SMS in internet banking, notifications on the web site, etc., and hence making bounces of non-CTS cheques in 2016 by the complainant in collusion with YES Bank, Branch Exhibition Road, amounts to illegality and wrongful conduct by the complainant. There are guidelines from the RBI to the banks that no fresh post-dated cheque



(PDC) or equated monthly installment (EMI) cheques (either in old format or new CTS-2010 format) shall be accepted by lending banks in locations where the facility of ECS/RECS (debit) is available. The petitioner closed his account on 9/2/2006 at ANDHRA BANK Branch South Gandhi Maidan, Patna, and hence there is no occasion to issue a check to his own brother (complainant) on 29/1/2016 bearing check no. 535993 for Rs 4,00,000/- (four lakhs only) and as such no offence is made out against the petitioner and the present petition is fit to be quashed.

5 . On the other hand, learned counsel for the State opposed the submissions made on behalf of the petitioners. While supporting the order of cognizance Learned counsel for the State submits that the grounds raised by the petitioner are the defence of the petitioner which can only be looked at the stage of the trial and on these grounds, order of cognizance cannot be quashed.

6. Heard learned counsel for the parties and perused the materials available on the record, it is a



settled principle of law that neither a detailed enquiry nor a meticulous analysis of the material nor an assessment of the reliability of genuineness of the allegations in the complaint is warranted while examining prayer for quashing of order of cognizance . At this stage Court could not have gone into merit of the case and or come to a conclusion that there was existing debt or liability. Defence plea cannot be entertained in quashing proceeding. The apex Court in the case of ***Pankaj Mehra vs. State of Maharashtra AIR 2000 SC 1953***, as held that it is a legislative mandate that the court should proceed with the assumption that such cheque was received for the discharge of a legally enforceable debt or other liability until the drawer proves that it is not so. In the instant case, it is the specific case of the complainant that the cheque issued by the petitioner got bounced due to closer of the account, and, as such, I do not find any illegality or infirmity in the order of cognizance and petition is fit to be dismissed.



7. Accordingly, this quashing application is dismissed.

(Prabhat Kumar Singh, J)

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