

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21671 of 2021

Arising Out of PS. Case No.-1149 Year-2020 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

=====

Deepak Kumar Son Of Birendra Prasad R/o village- Kamal Pipra, P.S.-
Paharpur, District- East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Anil Kumar Pandey Son Of Sri Sakaldeo Pandey R/o Mohalla- Balua Tal
Ward No. 28, P.S.- Town Motihari, P.O.- Motihari, District- East Champaran

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar No.III, Advocate
For the State	:	Mr. APP
For the Opposite Party No.2	:	Mr. Dhannjay Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

6 23-08-2024 Heard Mr. Sunil Kumar No.III, learned Advocate for

the petitioner and Mr. Dhannjay Kumar, learned Advocate for

the opposite party No.2. The Additional Public Prosecutor for

the State is also present.

2. The petitioner seeks quashing of the order dated
25.11.2020 passed by the learned Judicial Magistrate 1st Class,
Motihari(East Champaran) in Complaint Case No. Cri. Comp.
(P)1149/2020b whereby and whereunder the learned Court has
taken cognizance for the offence under Section 138 of the
Negotiable Instruments Act, 1881 against the petitioner.

3. Shorn of unnecessary details, the relevant facts are
that the prosecution case is based upon a Complaint bearing



Complaint Case No. Cri. Comp.(P)1149/2020 filed before the learned Chief Judicial Magistrate, Motihari, East Champaran, alleging therein that the accused person was known to the complainant and on account of cordial relationship, they were separately executing work of Nal Jal scheme. It is further alleged that the complainant had purchased a boring plant machine in the year 2018 to perform his work. On 21.12.2018 accused petitioner contacted to complainant and requested for a Boring Plant Machine for which an agreement was executed on non-judicial stamp and he agreed to pay Rs.20,000/- per month as a rent and promised to return the machine, as it was; with certain stipulation made in the agreement and in the order to take in confidence gave a cheque of Rs.4,00,000/- (Rupees Four Lakh) payable to Allahabad bank Branch bearing A/c No.50436774364 with cheque No.002939. Despite the lapse of stipulated period, when the complainant contacted with the accused person, on one pretext or other he avoid to return the Boring Plant Machine and neither he returned the machine nor paid the agreed rented money. In such circumstances, the complainant presented a cheque to the Union Bank, Motihari on 27.08.2020 but the same was returned unpaid on account of insufficient fund. It is further alleged that the complainant gave



legal notice through his Advocate on 08.09.2020, but no reply was given by the accused, thereafter, the complaint has been filed.

4. Learned Advocate for the petitioner referring to the averments made in the complaint as well as solemn affirmation contended that in fact the entire matter appears to be predominantly civil in nature, however, only on account of the fact that the petitioner had given a cheque for security, the same has been presented to the Bank knowing fully well that at that point of time the petitioner was not having sufficient money. It is further contended that the petitioner has always been ready to return the Boring Plant Machine but the complainant knowingly refused to accept. From the date of disorder of the Machine, the complainant himself was avoiding to take away Boring Machine with *mala fide* intention. It is also contended that the petitioner has always been ready to compromise the matter but the complainant is knowingly avoiding for the same.

5. On the other hand learned Advocate for the Opposite Party as well as Additional Public Prosecutor for the State while refuting the contention of the petitioner has submitted that issuance of the cheque presupposes that the same has been issued in order to discharge of debt or the liability. It is



not in dispute that the provisions as required under Section 138 of the N.I. Act, had not been complied and on being satisfied, that the materials available on record, *prima facie*, case is made out; accordingly, the learned court has taken cognizance of the offence under Section 138 of the N.I. Act. The object of the provision prescribed as both punitive and compensatory. Nature of offence under Section 138 of the N.I. Act, primarily related to a civil wrong and it was, thus, specifically made compoundable.

6. Once the cheque is drawn and issued to the payee and the payee has presented the cheque, and thereafter, if any instructions are issued to the Bank for non-payment or not honoured because of insufficient fund, it amounts to dishonour of cheque comes within the meaning of Section 138 N.I. Act, 1881.

7. Regard being had to the submissions advanced on behalf of the petitioner and taking note of the fact that at the time of cognizance or summoning the accused, Magistrate is required to consider as to whether on the materials available on record, *prima facie*, an offence is made out or not. The learned Magistrate is not required to look into the defence or the evidences on the basis of which conviction can be made or not. In such circumstances this Court does not find any merit in the



present quashing application.

8. Accordingly, the same stands dismissed.

(Harish Kumar, J)

durgesh/-

U		T	
---	--	---	--

