

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13459 of 2018

Arising Out of PS. Case No.-299 Year-2016 Thana- PATLIPUTRA District- Patna

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Anjani Kumar Singh Son of Late Ram Chandra Prasad Singh, Resident of Village- Havraha Hasanpur, P.O.- Hasanpur, P.S.- Mahnar, District- Vaishali, presently residing at Indrapuri, Road No. 6, House No. 6/102, P.O.- Keshari Nagar, P.S.- Patliputra, District- Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Gauri Shankar Singh, son of Sri Purushottam Prasad Singh, Resident of Village and Post- Harail, P.S.- Mohiuddin Nagar, District- Samastipur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shantanu Kumar, Advocate
For the Opposite Party/s : Mr. Chandra Bhushan Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 3 11-01-2024 1. Heard learned counsel for the petitioner, Mr. Shantanu Kumar and learned APP for the State.
2. No one appears on behalf of the O.P. No. 2.
3. The case was earlier taken up on 09.01.2024, when no one had appeared on behalf of the O.P. No. 2, today also when the case is taken up, no one appears on behalf of the O.P. No. 2, though, name of learned lawyer, Mr. Mukesh is appearing on the cause list.
4. The Court cannot wait endlessly for the learned counsel for the O.P. No. 2 to appear.
5. The learned counsel for the petitioner submits



that the present quashing application has been filed seeking quashing of the order dated 06.11.2017 passed by the learned ACJM-XII, Patna in Patliputra P.S. Case No. 299 of 2016, G.R. No. 5901 of 2016 whereby application filed on behalf of the petitioner under Section 239 Cr.P.C. seeking discharge has been rejected.

6. The learned counsel for the petitioner, at the outset, very fairly submits that he is limiting his prayer only to the extent that the order taking cognizance under Section 138 of the N.I. Act was bad for the reason that it is well settled law that an FIR is not maintainable in a case relating to bouncing of cheque under Section 138 of the N.I. Act, for the said proposition, the learned counsel for the petitioner relies on the case of ***Hemant Kumar Das & Anr. Vs. The State of Bihar reported in 2018 (4) PLJR 725*** wherein this Hon'ble Court has authoritatively held that an FIR is not maintainable with respect to an offence under Section 138 of the N.I. Act.

7. The learned counsel for the petitioner, thereafter fairly submits that no doubt charges have been framed, trial has commenced and out of 7 witnesses, 5 witnesses have



been examined but then the issue is whether this Court will allow the petitioner to face trial with respect to an offence which legally is not sustainable i.e. the trial of the petitioner under Section 138 of the N.I. Act, in absence of complaint, cannot proceed.

8. The learned APP for the State, Mr. Chandra Bhushan Prasad, rebuts the submission of the learned counsel for the petitioner and submits that since charges have been framed, trial has commenced and out of 7 witnesses, 5 witnesses have been examined, as such, the Court should be reluctant in interfering in the trial at this stage, but is not able to rebut the submission of the learned counsel for the petitioner that cognizance, based on an FIR, could not have been taken under Section 138 of the N.I. Act.

9. Considering the submissions made by the learned counsel for the petitioner and also taking into consideration the law enunciated by this Court in the case of Hemant Kumar Das & Anr. Vs. The State of Bihar (supra), the quashing application is partly allowed and the order dated 06.11.2017 passed by the learned ACJM-XII, Patna in



Patliputra P.S. Case No. 299 of 2016 to the extent it holds that there are sufficient material available against the petitioner for framing of charge under Section 138 of the N.I. Act **is hereby quashed.**

10. It is made clear that the Court has not interfered with the order dated 06.11.2017 passed by the learned ACJM-XII, Patna in Patliputra P.S. Case No. 299 of 2016 wherein it has been held that there are sufficient material for framing of charge against the petitioner under Sections 420 and 406 of the IPC.

(Satyavrat Verma, J)

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