

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50371 of 2018

Arising Out of PS. Case No.-2334 Year-2013 Thana- Gaya Complaint Case District- Gaya

Ribha Sharma Wife of Sushil Kumar Proprietor of Sindhuja Engineer and Construction Firm at Godawari Road, Chand Chaura, Gaya, Resident of Village- Mau, Police Station- Tekari, District- Gaya, Bihar, At Present House No. 1208, Sultanpur Colony, M.g. Road, New Delhi-110030

... .. Petitioner/s

Versus

1. The State of Bihar
2. Mukesh Kumar Son of Baijnath Sharma Resident of Mohalla- Near Bikaneri Dharamshala, Godawari Road, Chand Chaura, Police Station- Civil Line, District-Gaya.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manish Kumar No-2, Advocate
For the Opposite Party/s : Mr. Nagendra Prasad, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 08-05-2024 The petitioner is the accused in a case under Section 138 of the Negotiable Instrument Act, the cognizance of which was taken by the learned Judicial Magistrate, 1st Class, Gaya vide order dated 28.09.2015.

2. The petitioner has challenged the said order of taking cognizance on the ground that on 28.10.2013 a general diary was lodged in the outpost of Chakia Police Station by one Chandan Kumar stating inter-alia that on 25.10.2013 it was noticed that a cheque book of ICICI Bank containing cheques bearing Nos.28551 to 28600 were missing from the office of the opposite party no.2. The said blank cheques were signed by the



account holder.

3. It is submitted by the learned advocate for the petitioner that it is revealed subsequently that out of the said missing cheques one cheque was used by the complainant and a false case under Section 138 of the Negotiable Instrument Act was instituted against the petitioner.

4. The submission made by the learned advocate for the petitioner reveals a disputed question of fact which cannot be adjudicated upon in a proceeding under Section 482 of the Cr.P.C. Section 482 of the Cr.P.C. is a saving clause which saves the inherent power of this Court to prevent abuse of the process of the Court or to give effect of any order passed by the Court or to secure ends of justice. Disputed question of fact as to whether impugned cheque was stolen and used by the opposite party no.2 to implicate the petitioner in a case under Section 138 of the Negotiable Instrument Act falsely can only be determined on the basis of evidence adduced by the parties. Therefore, the issue cannot be determined at this stage following the provision contained in Section 482 of the Cr.P.C.

5. At this stage, the learned advocate for the petitioner submits that the petitioner may be given some time to consider as to whether the dispute can be settled amicably.



6. Section 147 of the Negotiable Instruments Act provides for compounding the offences under Section 148 of the said Act. The complaint can be compounded in the Trial Court itself.

7. For this reason, I find no justification to keep the instant matter pending. Moreover, when this Court has come to the conclusion that the dispute raised by the petitioner cannot be decided upon an application under Section 482 Cr.P.C. There is no other alternative but to reject the application under Section 482 of the Cr.P.C.

8. Accordingly, the instant application is rejected and the Criminal Miscellaneous case is dismissed.

(Bibek Chaudhuri, J)

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