

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50551 of 2018

Arising Out of PS. Case No.-248 Year-2018 Thana- SITAMARHI COMPLAINT CASE
District- Sitamarhi

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Krishna Kumar Thakur, s/o late Bindeshwari Prasad Thakur, resident of Holding No. 106/518, Khabra Road, Pandey Sadan, P.S. Kazi Mahmmodpur, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Shivesh Kumar, s/o Shri Jaykaran Singh, resident of village Manchi, P.S. Belsand, District - Sitamarhi.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Amit Narayan, Adv., Mr. Abhigyan Kumar, Adv., Ms. Sneha Kumari, Adv., Mr. Praveen Kumar, Adv.
For the State	:	Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 08-05-2024

Heard learned Advocate for the petitioner as well as learned APP for the State.

2. The petitioner is an accused in a case under Section 138 of the Negotiable Instruments Act filed by the opposite party no. 2 before the learned Judicial Magistrate, Ist Class, Sitamarhi. The said complaint case is registered as Complaint Case No. 248 of 2018. The learned Magistrate took cognizance of the offence under Section 138 of the Negotiable Instruments Act vide order dated 16th May, 2018.

3. It is submitted by the learned Advocate on behalf of the petitioner that cause of action to file a complaint under Section



138 of the Negotiable Instruments Act accrues on compliance of Clauses (a), (b) and (c) of the said Section. Section 138 of the Negotiable Instruments Act stipulates that when a cheque is dishonoured, it is incumbent upon the holder of the cheque or the payee to issue notice demanding the cheque amount to the accused within 30 days from the date on which the cheque was dishonoured. If the petitioner fails to make payment of the cheque amount within 15 days from the date of receipt of the demand notice, the petitioner is entitled to file a complain under Section 138 of the Negotiable Instruments Act.

4. It is contended on behalf of the petitioner that the complainant/opposite party no. 2 did not make any averment about the dates when demand notice was issued, when the said notice was received by the complainant and whether within the period of limitation the complainant has filed the complaint or not. The learned Magistrate cannot took cognizance of the offence under Section 138 of the Negotiable Instruments Act without considering the issue of limitation under Section 138 of the Negotiable Instruments Act.

5. Moreover, it is submitted by the learned Advocate for the petitioner that prior to lodging of the complaint, the petitioner filed an F.I.R. before the jurisdictional Police Station alleging inter



alia that the opposite party no. 2 snatched away some signed blank cheques from his possession on gun point. On the basis of said F.I.R. Police submitted charge-sheet against the opposite party no. 2. The opposite party no. 2 filed complaint under Section 138 of the Negotiable Instruments Act after three and half months of the lodging of the F.I.R. by the petitioner against the opposite party no. 2 regarding theft of blank cheque books.

6. It is also contended that in the F.I.R., opposite party no. 2 alleged that 11 numbers of cheques were forcibly taken away by the petitioner and the petitioner subsequently filed 11 numbers of complaints under Section 138 of the Negotiable Instruments Act stating different dates of issuance of those cheques which were forcibly taken by him.

7. I have heard the learned Advocate on behalf of the petitioner, I have also perused the entire materials on record, the issue relating to service of notice and lodgement of the complaint within the period of limitation is the mixed question of fact and law. The question of fact as to whether the notice was served within due time as mentioned in Clause A, Sub-section 1 of Section 138 of the Negotiable Instruments Act:- whether it was received by the petitioner within due time:- and whether the petitioner filed a case within the period stipulated in Section 138



of the Negotiable Instruments Act can be decided by the trial court on the basis of evidence that may be adduced by the complainant. At the stage of cognizance the complaint cannot be quashed for non submission of the copy of the notice and receipt of A.D. card etc.

8. Moreover, the issue relating to theft of 11 numbers of cheques leafs are also question of fact which appears to be a plausible defence of the accused in the Complaint Case under Section 138 of the Negotiable Instruments Act. On the defence of the accused which he might have taken at the time of trial of the case, an order of cognizance cannot be set aside and quashed.

9. For the reasons stated above, I do not find any ground to allow the application under Section 482 of the Cr.P.C.

10. Accordingly, the application is rejected and the instant Cr. Misc. case is dismissed.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

