

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8203 of 2016

Arising Out of PS. Case No.-395 Year-2012 Thana- PATNA COMPLAINT CASE District-
Patna

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SAYED MASOOM RAZA @ S.M. RAZA @ S.N. RAJA S/O Late Syed Musi Raza Authorized Person (Sales Unit), ACC Limited Second Floor, Samridhi Complex, S.P. Verma Road, Patna -800001 At Present Senior General Manager, ACC Limited, Infinity Think Tank, 14th Floor, Salt Lake, Sector 5, Kolkata.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Mira Devi, W/o Harendra Singh, R/o Village- Karnauti P.S.- Bakhtiarpur, District- Patna, Proprietor of Mira Trading Thana Road, Harnaut, District- Nalanda.

... .. Opposite Party/s

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Appearance :

For the Petitioner : Mr. Dayanand Singh, Advocate
For the State : Mr. Pradeep Narain Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

7 22-10-2024 Heard Mr. Dayanand Singh, learned counsel for the petitioner and Mr. Pradeep Narain Kumar, learned APP for the State.

2. The instant Criminal Miscellaneous Petition has been filed for quashing the order dated 03.09.2013 passed by the then Judicial Magistrate, 1st Class, Barh, Patna in connection with Complaint Case No. 395(C) of 2012 whereby the cognizance of the offence punishable under Section 138 of the Negotiable Instruments Act (in short 'N.I. Act') has been taken against the petitioner.



3. Learned counsel appearing for the petitioner submits that it is an admitted position that petitioner was not the person who issued the alleged cheque in favour of O.P. No. 2. It is further submitted that at present petitioner is working as Senior General Manager posted at Kolkata and he has been wrongly summoned by the learned trial court for the offence under Section 138 of N.I. Act and further, the mandatory notice under N.I. Act was not issued in the name of the petitioner by the complainant. In actual, the alleged cheque was issued from the Head Office of the petitioner's company and at that time, the petitioner was sales Head of Patna Unit and posted at Patna and he had no concern with the process of issuance of cheque in favour of the parties including the O.P. No. 2 who made business with the petitioner's company. It is further submitted that after getting the information regarding the dishonouring of the alleged cheque, the petitioner's company again issued a fresh cheque bearing no. 022617 dated 09.03.2015 in favour of the complainant (O.P. No. 2) amounting to Rs. 23,993.01/- which was duly received by the complainant and accordingly, the matter was settled by both the parties outside the court thereafter, the complainant (O.P. No.2) filed a petition before the trial court to withdraw her complaint under Section 257 of the



Code of Criminal Procedure (in short 'Cr.P.C.') but the learned trial court dismissed that petition in mechanical manner without considering the relevant facts and in this regard, relevant papers by way of Annexures have been filed with this petition. It is further submitted that the O.P. No. 2 has no interest in this case as well as before the trial court as she has not appeared before this Court despite having received the notice.

4. No one appears on behalf of O.P. No. 2 despite the notice sent to her having been served validly.

5. Heard both the sides and perused the relevant materials. I find force in the submissions made by the petitioner's counsel as it is an admitted position that petitioner is not said to have issued the alleged cheque which was allegedly dishonored by the bank concerned and further, the petitioner's company issued a fresh cheque for the payment of dues in favour of the complainant (O.P. No.2) and the same was encashed by O.P. No. 2 and in this regard, specific statement has been made by the petitioner. The learned trial court has acted in haste manner while rejecting the complainant's petition to withdraw her complaint. In view of these facts as well as in the light of the materials available before this Court, this Court is of the opinion that the continuance of the criminal proceeding



against the petitioner is complete abuse of the process of the court and if the petitioner is subjected to trial for the alleged offence, it will not serve the ends of the justice. Accordingly, the order impugned taking cognizance of the offence under Section 138 of N.I. Act against the petitioner by the learned trial court in Complaint Case No. 395(C) of 2012 is hereby set aside and the entire criminal proceeding having arisen before the trial court after the cognizance, stands quashed.

6. In the result, the instant Criminal Miscellaneous Petition stands allowed.

(Shailendra Singh, J)

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