

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61737 of 2023

Arising Out of PS. Case No.-233 Year-2018 Thana- RAXAUL District- East Champaran

SANJEET KUMAR SON OF PARMA PRASAD KUSHWAHA @
PRAMANAND MAHTO RESIDENT OF RAXAUL MAUJE WARD NO 20,
PS- RAXAUL, DIST- EAST CHAMPARAN

... .. Petitioner/s

Versus

1. The State of Bihar
2. Samsuddin Alam s/o Reyajuddin Mian R/o Chawal Bazar Raxaul, PS-
Raxaul, District- East Champaran

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anuj Kumar, Advocate

For the Opposite Party/s : Mr. Chandra Bhushan Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

5 17-05-2024 1. Heard learned counsel for the petitioner, Mr.

Chandra Bhushan Prasad learned A.P.P. for the State and learned
counsel appearing on behalf of the opposite party no. 2.

2. Learned counsel for the petitioner submits that the
instant quashing application has been filed seeking quashing of
the part of the order dated 28.03.2023 in B.P. No. 487 of 2023
whereby a condition was imposed upon the petitioner that he
shall be released on bail only after he makes the payment of
Rs.6,75,000/-. It is further submitted that the condition was
onerous and as such the petitioner was not in a position to pay
the amount of Rs.6,75,000/- to the opposite party no. 2, as such,
the petitioner could not be released and remained in custody,
necessitating filing of the instant quashing application. It is next



submitted that petitioner and the opposite party no. 2 are friends and the opposite party no. 2 alleges that he had given a friendly loan of Rs.7 lakhs to the petitioner out of which he returned an amount of Rs.25,000/- and since he was not able to return rest Rs.6,75,000/- as such the instant FIR was instituted under Sections 406 and 420 of the Indian Penal Code read with Section 138 of the Negotiable Instrument Act.

3. Learned counsel for the petitioner further submits that the law is well settled that with respect to bouncing of cheque a complaint is to be filed and not an FIR but then the Courts in mechanical manner proceed and take cognizance even under Section 138 of the Negotiable Instrument Act. It is next submitted that the order of cognizance in itself is bad for the reason that cognizance has been taken under Sections 406 and 420 of the Indian Penal Code read with Section 138 of the Negotiable Instrument Act. It is also submitted that the learned District Court while considering the bail application of the petitioner was of the prima facie view that petitioner was entitled to his liberty but then with a condition which was onerous as recorded hereinabove. It is further submitted that petitioner will contest the allegation of the informant in the trial.

4. Learned A.P.P. and learned counsel appearing on



behalf of the opposite party no. 2 opposed the quashing application but then are not in a position to rebut the submissions of the learned counsel for the petitioner that an FIR is not maintainable with respect to an offence under Section 138 of the Negotiable Instrument Act.

5. At this stage, learned counsel for the petitioner submits that since an FIR is not maintainable for an offence under Section 138 of the Negotiable Instrument Act then the allegation that the petitioner had issued the cheque which on presentation for encashment bounced does not survive.

6. Be that as it may, the part of the order dated 28.03.2023 in B.P. No. 487 of 2023 arising out of Raxaul P.S. Case No. 233 of 2018, whereby a condition has been imposed that petitioner shall be released on bail only after he makes the payment of Rs.6,75,000/- is hereby quashed.

7. Accordingly, the instant quashing application is disposed of.

8. The provisional bail granted to the petitioner stands confirmed.

(Satyavrat Verma, J)

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