

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19971 of 2015**

Arising Out of PS. Case No.-29 Year-2011 Thana- KASIMBAZAR District- Munger

Chandra Shekhar Prasad @ Chandra Shekhar Pratap @ Shekhar Sinha, son of
Nawal Kishore Prasad, resident of Lal Darwaja, P.S.- Kotwali, District-
Munger

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shubhechhu Kishore, Son of Late Radha Kant Ambastha, resident of Radha
Vatika, N.C.C. Road, Mundichak, P.S.- Tilkamanjhi, District- Bhagalpur

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Advocate
For the Opposite Party/s : Mr. Shailendra Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 15-02-2024

The present application has been filed by the petitioner for quashing of the order dated 24.05.2011 passed by the learned Chief Judicial Magistrate, Munger in Kasim Bazar P.S. Case No.29 of 2011, G.R. No.226 of 2011 whereby the cognizance against the petitioner has been taken under Section 420 of the Indian Penal Code (for short 'IPC) and section 138 of the Negotiable Instruments Act (for short 'NI Act').

2. The case of prosecution, in brief, as it appears from the written information which is the basis of Kasim Bazar P.S. Case No.29 of 2011 as lodged by informant/O.P. No.2 that he was working as a tutor of Chemistry in Q.S.P. Coaching



Centre, which was running by petitioner at Munger. An amount of Rs. 30,000/- was paid to O.P. No.2 in capacity of professional charge being tutor, for which, two separate cheques, for amount of Rs. 30,000/- and 23,000/- were respectively issued in favour of O.P. No.2, where the cheque bearing amount of Rs.30,000/- was dishonoured due to insufficient fund.

3. After investigation, the Investigating Officer submitted charge-sheet under Section 420 of IPC and Section 138 of the NI Act for which the cognizance has also been taken by concerned Judicial Magistrate as discussed above.

4. It is submitted by learned counsel appearing on behalf of the petitioner that from the plain reading of FIR, this case is related with dishonour of cheque for which no FIR to be lodged rather it was initiated by registering a complaint as per provisions laid down under Section 142 of the NI Act. It is further submitted that only to create police pressure, the present FIR was lodged against the settled principles of law, where cognizance taken apparently bad on face of law.

5. It would be appropriate to re-produce Para-14 of the judgment rendered by the Hon'ble Supreme Court in case of **G. Sagar Suri and Anr. vs. State of U.P. and Ors. [(2000) 2 SCC 636]** which is as under:-

“14. We agree with the submission of the



appellants that the whole attempt of the complainant is evidently to rope in all the members of the family particularly those who are the parents of the Managing Director of Ganga Automobiles Ltd. in the instant criminal case without regard to their role or participation in the alleged offences with the sole purpose of getting the loan due to the Finance Company by browbeating and tyrannising the appellants with criminal prosecution. A criminal complaint under Section 138 of the Negotiable Instruments Act is already pending against the appellants and other accused. They would suffer the consequences if offence under Section 138 is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under Sections 406/420 IPC and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed, which we do”.

6. In view of aforesaid factual and legal discussions, as the cognizance in this case was taken on police report, which is not permissible under law, where procedures are duly provisioned under Section 142 of the NI Act for the offence alleged to be committed under Section 138 of NI Act.

7. Accordingly, the order dated 24.05.2011 passed by the learned Chief Judicial Magistrate, Munger in Kasim



Bazar P.S. Case No.29 of 2011, G.R. No.226 of 2011 with all its consequential proceedings is quashed and set aside *qua* petitioner.

8. Accordingly, application stands allowed.

9. Let a copy of this order be communicated to the concerned Trial Court.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.02.2024
Transmission Date	21.02.2024

