

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77773 of 2019

Arising Out of PS. Case No.-4021 Year-2013 Thana- PATNA COMPLAINT CASE District-
Patna

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RAJU KUMAR YADAV Son of Late Raja Ram Yadav Proprietor M/s New Trimurti Decorators, Jahazi Kothi, Near Mahavira Apartment, P.S-Kadamkuan, Town and District-Patna Resident of Anup Lane, Raja Ram Bhawan, Mohalla-Machhuatoli, P.S-Kadamkuan, Town and District-Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sri Sanjeev Kumar Son of Sri Vishnu Sharma Proprietor M/s P.S. Electronics, Resident of Sumitra Complex, Dariyapur, P.S-Kadamkuan, Town and District-Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Madhu Prasun
For the Opposite Party/s : Mr.Jharkhandi Upadhyay

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 11-07-2024

Heard learned counsel for the petitioner, learned
APP for the State and learned counsel on behalf of O.P No.2.

2. The present application has been filed for setting aside the order dated 22.06.2019 passed by learned A.C.J.M.-VIII, Patna in Complaint Case No. 4021C/2013, whereby the learned court below had directed the petitioner to pay 20 per cent of the amount of cheque amounting to Rs. 35,27,817/-to the complainant.

3. The prosecution case as per complaint petition is that



complainant is a businessman dealing in manufacturing and supply of sound system being run in the name and style of M/s P.S. Electronics. It is alleged that in the month of January, 2013, the petitioner approached the complainant and told him that he would undertake the contract works being run in the name and style of M/s New Trimurti Decorators and induced him to become partner in the business. The complainant believed the words of the petitioner and agreed to work together under the partnership on payment of share in the profit as per ratio of work done on investment made by the complainant. The complainant completed several works under the said partnership including contracts of *Bihar Diwas*, *Patna Sahib Mahotsava* and performed the work of fixing light and sound of stages and premises with utmost sincerity and dedication and also supplied light and sound items worth several lacs of rupees under the belief that he will be given share of profit as agreed. It is further alleged that the petitioner used to keep all the accounts with him. On several requests by the complainant, the petitioner issued a Cheque bearing Cheque No. 275880 amounting to Rs. 35,27,817 (Rupees Thirty Five Lacs Twenty Seven Thousand Eight Hundred and Seventeen) to the complainant and assured that the same will be encashed on presentation in the Bank. It is



alleged that when the complainant deposited the said cheque for its encashment, it was not honoured as the petitioner had instructed the bank not to make payment of the aforesaid cheque. The complainant, thereafter, tried to contact the petitioner but he evaded himself and ultimately, a legal notice was served to the petitioner on 25.10.2013. After receiving the legal notice, the petitioner came to the business premises of the complainant on 07.11.2013 with some anti-social elements and threatened him of dire consequences. Hence, the present complaint.

4. It is submitted by learned counsel for the petitioner that the complaint petition itself suggests that complainant as well as the petitioner was in a business partnership and the dispute, if any, arises out of the same is a civil dispute, having no ingredient of any criminal offence. The petitioner denies to have issued any cheque to the complainant. Learned counsel for the petitioner also submitted from para-12 of this petition that it is established principle of law that the enacted law would be applicable prospectively and not retrospectively unless the same is provided in the enactment itself. Further, the present complaint was filed on 22.11.2013 and cognizance was taken on 07.09.2015, hence the newly inserted Section 143-A of the



Negotiable Instrument Act will have no application in the present case because the Section 143A of the Act was enacted in the status book with effect from 01.09.2018. So, the impugned order passed by the learned Court below is not sustainable, proper and totally bad in the eye of law. In such a matter, the Hon'ble Apex Court has rightly observed in the case of **G.J. Raja Vs. Tejraj Surana in Cr. APP No. 1160 of 2019**, the relevant paragraph reads as follows:-

“ 24. In the ultimate analysis, we hold Section 143A to be prospective in operation and that the provisions of said Section 143A can be applied or invoked only in cases where the offence under Section 138 of the Act was committed after introduction of said Section 143A in the statute book. Consequently, the orders passed by the Trial Court as well as the High Court are required to be set aside. The money deposited by the Appellant, pursuant to the interim direction passed by this Court, shall be returned to the Appellant along with interest accrued thereon within two weeks from the date of this order.”

5. Learned counsel appearing on behalf of the O.P. No.2 also asserted the observations made by the Hon'ble Apex Court in the aforesaid case.

6. Hence, in the light of the observations made by



the Hon’ble Apex Court, the order dated 22.06.2019 passed by learned A.C.J.M.-VIII, Patna in Complaint Case No. 4021C/2013 is not sustainable in the eyes of law and is fit to be set aside.

7. Considering the facts and circumstances of this case as well as above-mentioned observations made by the Hon’ble Apex Court, the present Criminal Miscellaneous Application is allowed and impugned order dated 22.06.2019 passed by learned A.C.J.M.-VIII, Patna in Complaint Case No. 4021C/2013 is hereby set aside.

8. Learned Trial Court is directed to expedite the trial and conclude the same as soon as possible.

(Sunil Kumar Panwar, J)

Shubham/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.07.2024.
Transmission Date	18.07.2024.

