

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.71 of 2025

Arising Out of PS. Case No.-5 Year-2019 Thana- SC/ST District- Kishanganj

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1. Rafiqul Islam S/O Abdul Hakim R/o - Mohiuddinpur, Patharbasti, P.S And District - Kishanganj, Pin - 855107. At Present Ward No.13, Ghoramora, Chakla, Kishanganj, District - Kishanganj, Pin - 855107
 2. Ful Begum @ Phulwaa Wife of Rafiqul Islam R/o - Mohiuddinpur, Patharbasti, P.S And District - Kishanganj, Pin - 855107. At Present Ward No.13, Ghoramora, Chakla, Kishanganj, District - Kishanganj, Pin - 855107

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dinesh Ram Son of Shri Parmeshwar Ram R/o- Motibagh, Ward No.-07, P.S.and Distt.-Kishanganj, Pin Code-855107.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Alok Ranjan
For the Respondent/s : Mr. Binay Krishna

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

- 3 24-06-2025 The petitioners are accused persons in connection with Kishanganj ST/SC P.S. Case No. 05/2019 registered under Section 420/406/409/341/323/504/506/34 of the IPC and Section 138 of the N.I. Act and Section 3(1)(e)(R)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. In the said case, the accused persons/petitioners were granted bail on the condition that the petitioners would deposit the first installment of Rs. 30,000/- within 15 days from the date of the order, i.e., from 10th February, 2020, and the rest of the amount of Rs. 60,000/- in two installments within 45 days from



the date of the first installment. It is pertinent to mention here that the said amount of Rs. 90,000/- is the cheque amount which was allegedly accepted by petitioners, and they subsequently failed to honour the said cheques. At the time of granting bail, without considering the case of the parties, the bail court directed the accused persons to pay the said amount of Rs. 90,000/- in three installments.

2. The I.O. did not know that no prosecution can be launched in the form of a charge sheet under Section 138 of the N.I. Act. The concerned judicial officer does not know that no cognizance can be taken on a charge sheet on offense under Section 138 of the N.I. Act.

3. Learned Advocates, appearing in the trial court as well as in this Court, do not know that the said order imposing a condition for bail by payment of a cheque amount which was allegedly dishonoured cannot be passed by the learned trial judge. Surprisingly enough, the said order was not challenged before this Court in Revision on behalf of the petitioners, but in a subsequent order dated 22nd July 2024, it was challenged when the petitioners were not permitted to be represented under Section 317(1) of the CrPC on the ground that the accused persons failed to make conditional payment for their bail. On



20th November 2024, which order is also impugned in this case, the learned Special Judge passed an order against the petitioner no. 1 directing the officer-in-charge to execute process under Section 83 of the CrPC, and if the said process is not executed, necessary departmental action would be taken against him by the Principal Secretary, Education Department.

4. I failed to understand as to whether such an order can be passed in a criminal case directing the departmental authority of a government employee to initiate departmental proceedings under any of the provisions of Articles 309 to 311, or any other statutory provision operating in this field. The learned Special Judge does not know that the amount of bounced cheque cannot be realised as a condition for bail. He does not know that no departmental proceeding can be directed in the manner as aforesaid against the accused, and he does not know that no cognizance can be taken on the charge sheet under Section 138 of the N.I. Act along with other penal provisions.

5. The learned Advocate on record on behalf of the petitioners also does not know that any order passed by the Special Judge under the SC/ST Act is appealable under Section 14A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.



6. For the reasons stated above, this Court finds that the instant revision is not maintainable and, accordingly, is summarily dismissed. Moreover, this Court is of the considered view that this is a fit case to hold that the learned Special Judge, SC/ST Act, Kishanganj, namely, Shri Kumar Gunjan, does not know the basic tenets of criminal law, and he does not have any right to discharge his duties as an Additional Sessions Judge, Kishanganj. This Court thinks it fit and proper to take away the sessions power of the said learned Additional Sessions Judge. The Registrar General, Hon'ble Patna High Court be informed accordingly to pass necessary order immediately on the basis of this judicial order, and the concerned judge be placed only in the civil side to dispose of civil cases and appeals. Further, he should also be under the scrutiny of the Hon'ble Patna High Court, Administration about his judicial work for the next six months.

7. With the above order, the instant revision is disposed of.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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