IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26504 of 2025

Arising Out of PS. Case No.-1984 Year-2021 Thana- PATNA COMPLAINT CASE District- Patna

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Neelam Sahu Wife of Prabhat Kumar Sahu village- House No. B 179, Sri Krishnapuri, Ps- S.K. Puri, Dist- Patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. Daya Shankar Tiwari son of Late Baidnath Tiwary village- Flant No. 303, Veena Place, Shekhpura, Raja Bazaar, Ps- Shastri Nagar, Dist- Patna

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Rohan Verma, Adv
For the Opposite Party/s : Mr. Pawan Kumar, APP
Mr. Raghav Vats, APP

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CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL ORDER

2 24-07-2025 Heard learned counsel for the petitioner and learned APP for the State.

2. The present application has been preferred by the petitioner for quashing of the order dated 21.01.2022 passed by S/C.J.M. (N.I. Act), Patna in Complaint Case No. 1984 of 2021 by which the Court below has come to the conclusion that a prima facie case is made out against the petitioner under Section 138 of the N.I. Act.

3. Learned counsel for the petitioner submits that the present application arises out of a complaint case bearing Complaint Case No. 1984 (c) of 2021 whereby the complainant has alleged that the petitioner along with her husband wanted to start a restaurant business in the year 2017 namely Indian Summer Cafe at Exhibition Road Patna, and had sought a friendly loan of Rs. 12,00,000/- (Twelve Lakh) from the informant assuring repayment within 3 to 4 years and also promise the informant to make him a partner in the said business. The complainant further alleged that he had given Rs. 12,00,000/- (Twelve Lakh) in installments between May, 2017 to Dec 2017, however, the accused persons neither made the complainant a partner nor repaid the loan. The complainant further alleged that on repeated demands, the petitioner *Neelam Sahu* issued a cheque of Rs. 12,00,000/- (Twelve Lakh), however, the same when presented before the Bank was dishonored with the remark "cheque destroyed" and thereafter the complainant/ O.P. No. 2 informed the accused about the same and demanded cash in lieu thereof, however, the accused persons denied, upon which a complaint was filed against the accused persons including the petitioner.

4. Learned counsel for the petitioner submits that the complaint is based on frivolous allegations and from mere reading of complaint along with the solemn affirmation and various statements recorded by the learned Court below, it would be evident that the story of forwarding loan to the petitioner and her husband was concocted and a false complaint has been filed against the petitioner. Learned counsel next submits that the present complaint case has been lodged to tarnish the image of the petitioner and also to harass and extort money from the petitioner and her husband who are well reputed business persons and it would be clear from the following submissions that the continuation of the criminal proceeding against the petitioner shall be an abuse of the process of the law.

5. The learned Counsel for the petitioner raises a question of law stating that under the provision of Section 138 of the N.I. Act, the cheque has to be issued against the enforceable debt or liability but from the perusal of the complaint it would be clear that the complainant/ O.P. No. 2 has not provided any documentary proof of lending Rs. 12,00,000/- (Twelve Lakh) such as loan agreement, bank transfer or acknowledgment receipts and barring verbal claims there is nothing to show the forwarding of such huge amount to the petitioner or her husband. The leaned counsel at this juncture refers to a judgment passed by the Hon'ble Supreme Court in the case of **Krishna Janardhan Bhat vs. Dattatraya G. Hegde** reported in **2008 (4) SCC 54** wherein the Hon'ble Supreme

Court had stated that mere issuance of a cheque does not create a presumption of the existence of a legally enforceable debt and the burden of proof shifts to the complainant.

6. Learned counsel further submits that in the case of **Basalingappa Vs. Mudibasappa** reported in **2019 (5) SCC 418** wherein the Hon'ble Supreme Court had also laid emphasis that in such cases the complainant must prove his financial capability to lend a huge amount in cash without documentation.

7. Learned counsel for the petitioner draws attention of this Court towards Annexure 3 wherein the license certificate dated 23.12.2024 has been brought on record which would suffice that the business which the complainant has alleged in his complaint petition that the petitioner and her husband were going to start in the year 2017 was, in fact, running since 23.12.2014 and thereby it *prima facie* falsifies the prosecution story.

8. Learned counsel for the petitioner has further pointed out that the complainant has stated that he had good friendship and family relationship with the petitioner and her husband and on account of such relationship he had forwarded the loan of Rs. 12,00,000/- but the said fact is also falsified from perusal of Annexure-P/4 series wherein the previous complaint case filed by the complainant against the petitioner and her husband in the year 2016 bearing Complaint Case No. 1369 (c) of 2016 and also another Complaint Case No. 1162 (c) of 2016 regarding theft and assault against the petitioner has been brought on record, which goes on to show that the relationship between the complainant and the petitioner had gone sour and therefore there was no occasion for the complainant to forward a loan of Rs. 12,00,000/- to the petitioner and her husband subsequently in the year 2017.

9. Learned counsel for the petitioner draws the attention of this Court towards Annexure-5 wherein the statement of Account for the period from 01.07.2015 to 30.09.2015 has been annexed and from perusal of the same it would be evident that the series of the cheque, which the complainant has stated was given to him by the accused persons on 22.02.2021, belonged to a series of cheques which were used in the year 2015 and thus it would suffice that in all possibilities, cheque of that series which was being used in the year 2015 could not have been handed over to the complainant in the year 2021, a fact which also goes on to prove that the cheque has been misused by the complainant to his benefit and there was no transfer made by the petitioner in favour of the complainant/

O.P. No. 2.

10. Learned counsel for the petitioner in sum and substance has submitted that from perusal of the complaint it would be evident that it is not a case where there was an intention of the petitioner to defraud or cheat the complainant/ O.P. No. 2 and even the bank remark on the cheque return memo, stating "cheque destroyed/ unusable", does not indicate insufficiency of funds or intention of dishonor and, therefore, no case under Section 138 of N.I. Act is made out.

11. Learned Counsel next submits that the dispute is pre-dominantly civil in nature which has been given a criminal colour which amounts to a malicious prosecution and abuse of the process of the law. The learned counsel therefore submits that the order taking cognizance is bad on both facts and on law and thus may be quashed on account of the complaint being a malicious prosecution.

12. Learned counsel appearing on behalf of O.P. No. 2 on the contrary has stated that the petitioner and her husband have cheated the petitioner and have issued a cheque of Rs. 12,00,000/- which was returned without being honored. Learned counsel further submits that it was the petitioner who had approached the complainant and had requested for a friendly loan and had assured and promised to return the said amount within 3-4 years and in the alternative had also promised to make him a partner in the said business, however, they back-tracked from his promise and ultimately the petitioner and her husband had cheated the complainant of his valuable earnings.

13. Learned counsel for the O.P. No. 2 states that the petitioner and the complainant were having very good terms and they used to make financial transactions regularly and on account of the same there were some previous disputes with the petitioner, however, the matter was resolved and thereafter on the good relationship being restored, the fresh loan of Rs. 12,00,000/- was given to the petitioner and her husband in the year 2017.

14. Learned counsel for the informant thus summarized that admittedly a cheque issued by the petitioner had bounced and therefore a *prima facia* case is being made out against the petitioner and hence the present application is devoid of any merit and the same should be dismissed with cost.

15. Having heard the parties and on perusal of the material available on the record it is evident that the complaint was filed alleging that the complainant had forwarded a loan of

Rs. 12,00,000/- to the petitioner and her husband, however, from perusal of the complaint, there is no averment with regard to the mode and manner the said transfer was made in favour of the petitioner and her husband. This Court on careful analysis has also found that the relationship between the complainant and the petitioner were not conducive on account of the fact that there were criminal cases pending between the parties in the year 2016 and despite such pendency of criminal cases between the parties, which were lodged by the complainant, a friendly loan is stated to have been given to the petitioner and her husband in the year 2017 i.e., during the pendency of the previous criminal cases.

16. This Court has also taken into account the fact that the cheque which is stated to have been issued to the complainant in the year 2021 belonged to the series which the petitioner was using during 2015 which forces this Court to take an adverse view of the fact that the said series cheque could have been issued to the complainant in the year 2021.

17. This Court would like to refer to the judicial pronouncements on the issue of the issuance of cheque for a legally enforceable debt in the case of **K.N Bina Vs. Muniyappapan** reported in **(2001) 8 SCC 458** wherein the

Court has held that for an offence under Section 138 of N.I. Act, the complainant must show that the cheque was issued for a legally enforceable debt and if the complainant fails to establish any debt or liability, the case may not hold.

18. This Court finds that the complainant has not been able to show any evidence of the amount given, for example, there is no loan agreement, any bank transaction and acknowledgment and therefore the complaint lacks specific fact about the debt or liability and therefore a *prima facie* offence cannot be made out from the complaint.

19. This Court, therefore, finds that the complaint lacks essential details or evidence to establish a *prima facie* case of a debt or liability. The allegations are vague and contradictory and therefore are covered under the guidelines as enshrined in the case of **State of Haryana vs. Ch. Bhajan Lal & Ors., 1992 Supp (1) SCC 335.** For better appreciation it would be apposite to reproduce para 102 of the aforesaid case which read as follows:-

> *'102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers*

under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
>
> *(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
>
> *(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate*

as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

20. Thus this Court holds that absence of any material to substantiate the alleged debt renders the complaint an abuse of the process of law. The presumption under Section 138 of the N.I. Act is rebuttal and the complainant has failed to provide any foundational evidence of a debt therefore continuation of criminal proceedings would result in grave injustice to the petitioner.

21. The Court taking the guidelines from the case of

State of Haryana vs. Ch. Bhajan Lal & Ors (Supra) which permits quashing of such proceedings where the allegations do not disclose a *prima facie* offence or are frivolous and vexatious and this Court has seen that in the present case the complaint lack specificity and absence of evidence regarding the alleged debt and, therefore, the complaint fails on these grounds.

22. In view of the above this Court finds that the continuation of the criminal proceeding in the Complaint Case No. 1984 of 2021 would constitute an abuse of the process of law and would not serve the ends of justice.

23. Accordingly, the order dated 21.01.2022 passed by S/C.J.M. (N.I. Act), Patna in Complaint Case No. 1984 of 2021 is bad in the eye of law and the same cannot be sustained and is hereby quashed.

24. The application stands allowed.

(Sourendra Pandey, J)

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