

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35709 of 2023

Arising Out of PS. Case No.-738 Year-2014 Thana- MUNGER COMPLAINT CASE
District- Munger

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1. GYANDEO DAS s/o LATE JUGAL DAS Resident of Mohalla 220/B4A, Sector-C Santipuram Phaphamau P.S. Prayagraj-U.P. District Prayagraj
 2. Anita Devi Gyandeo Das Resident of Mohalla 220/B4A, Sector-C Santipuram Phaphamau P.S. Prayagraj-U.P. District Prayagraj

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Akshay Kumar Das s/o Late Ganesh Das Resident of Village Ambedkar Nagar P.S. Naya Ram Nagar District Munger

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Praveen Kumar, Adv.
For the Opposite Party/s	:	Mr. Manendra Kumar Sinha, Adv
For the State	:	Mr. Jitendra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 07-01-2025 Heard Mr. Praveen Kumar, learned counsel for the petitioner and Mr. Manendra Kumar Sinha representing the opposite party no. 2 beside Mr. Jitendra Kumar Singh, learned APP.

2. The present application has been preferred for quashing of order dated 25/11/2014 passed by Shri Anil Kumar, learned A.C.J.M 1st Class, Munger in Complaint Case No.738(C)/2014 u/s 138 of NI Act, 420 of IPC whereby and whereunder the learned Magistrate has issued process against the petitioners for facing trial against the mandate of mandatory provision contained in Section 202 Cr.P.C. wherein the specific



provision has been inserted for the accused residing outside the territorial jurisdiction of the court.

3. As per the story, the complainant is cousin brother of the petitioner no. 1. The petitioner no. 2 is the wife of the petitioner no. 1. While the complainant was serving as the Branch Manager of State Bank of India at Jamshedpur having permanent residence at Munger, the petitioner approached for construction of house after which he handed over altogether Rs. 11,00,000/- in cash on different dates starting from 24 October 2007 till 2010.

4. The case of the complainant is that on 15.05.2014, when he along with his brother, Mritunjay Kumar Ranjan went to meet the petitioner at his office, the petitioner no. 1 serving with the C.R.P.F., a cheque of Rs. 10,00,000/- bearing cheque no. 580425 was handed over which was dishonored due to insufficient fund. The notice was followed by the complaint as the complainant had got the idea that the petitioners wanted to cheat him.

5. Subsequently, the concerned Court took up the matter and prima facie found the case true, issued process against the petitioners to face trial vide an order dated 25.11.2014.



6. The Co-ordinate Bench called for the Trial Court report and as per the letter no. 26 dated 30.10.2024, the accusation was explained to the accused persons on 15.02.2023 and after an order passed on 29.03.2023, the petitioners submitted a cheque of Rs. 2,00,000/- on 26.06.2023 to the complainant. The matter is pending at the stage of recording of the evidence.

7. Nine years later, the present quashing petition has been filed and a plea has been taken by the petitioners that Section 202 of the Cr.P.C has not been complied.

8. Section 202 of the Cr.P.C. read as follows:

202- Postponement of issue of process

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks



fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers



conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

9. It is the further case of the petitioners that the concerned Court was duty-bound to abide by Section 202 of the Cr.P.C. which it failed.

10. On the query made by this Court, why the petitioner took nine long years to prefer the present petition, the answer is that there is no time bar in filing quashing petition and as such, the said nine years delay has got no meaning.

11. Learned counsel for the opposite party no. 2 on the other hand, submits that the order was passed in the year 2014, lots of water has been flown down the Ganges, now when the trial is at an advance stage, only to delay the process, the present case has been filed. He has provided the order-sheet of the Trial Court to show that the petitioners have chosen to abstain themselves to stall the trial. On 20.11.2024, the accused absented themselves after which the learned Judicial Magistrate, 1st Class, Munger adjourned the matter for 05.12.2024.

12. On 05.12.2024, again the accused absented themselves and after recording that this has resulted into stalling of the proceeding, the bail bond of the accused persons were



canceled and office was directed to take appropriate steps for issuance for non-bailable warrant against them. He as such, submits for the dismissal of the petition.

13. Having gone through the facts of the case as also the materials on record and the submission of the parties, in the opinion of the Court, the present petition of the petitioners is/are abuse of the process of law. From the record sheet, it is clear that the order was passed in the year 2014. The petitioners chose not to challenge the same promptly.

14. The trial is on, they have chosen to absent themselves before the Trial Court. Instead, to stall the trial, the present petition has been filed.

15. So far as the Section 202 of the Cr.P.C. is concerned, the submission of the opposite party has force that the petitioner should have been agile and not file it when the trial is at an advance stage. Whatever facts/law the petitioners wanted to present, it should have been done before the learned Trial Court.

16. Instead, nine years later, the present petition has been filed and there is averment that they have never misused the bail. On the other hand, the record sheet clearly shows that they have chosen to abstain themselves thus stalling the trial



which resulted into cancellation of bail bond and issuance of non-bailable warrant against them, as incorporated above.

17. In that background, this Court reiterates that the present petition is complete misuse of the Section 482 of the Code of Criminal Procedure by the two petitioners.

18. In the considered opinion of the case, they are not entitled for any relief. The petition stands dismissed with a cost of Rs. 5,000/- to be deposited with the Patna High Court Legal Services Committee within a period of three months from today.

19. Failure to do so, appropriate steps should be taken for realization of the amount in accordance with law.

(Rajiv Roy, J)

Vijay Singh/-

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