

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28786 of 2016**

Arising Out of PS. Case No.-452 Year-2013 Thana- MUNGER COMPLAINT CASE
District- Munger

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Sri Abdul Samee Siddiqui @ Abdul Samee Abdul Gani Siddiqui, Son of Abdul Ganj Siddique A-111 Royal Sand, Behind Fae, Adlab Road, P.S. - Shashtri Nagar, Andheri, (West) Mumbai - 40053

... .. Petitioner/s

Versus

1. State of Bihar
2. Shyam Bahadur Singh, Proprietor of Sharda Chitra, Son of Late Shiv Barai Singh, Resident of Kala Niketan, Chhoti Kelawari, P.O- Munger, P.S.- Kotwali, District – Munger.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Nirbhay Prashant, Adv.
For the State	:	Mr. M.K. Gautam, APP
For the O.P. No. 2	:	Mr. Rajesh Kumar, Adv.

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**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT**

Date : 27-03-2025

Heard Mr. Nirbhay Prashant, learned counsel appearing for the petitioner, Mr. M.K. Gautam, learned APP appearing for the State and Mr. Rajesh Kumar, learned counsel for the O.P. No. 2.

2. The instant petition has been filed with a prayer to quash the entire criminal proceeding having arisen out of Complaint Case No. 452(C) of 2013 pending in the court of learned Judicial Magistrate, 1st Class, Munger.

3. Mr. Nirbhay Prashant, learned counsel appearing for the petitioner submitted that it is an admitted position that the petitioner had taken Rs. 20,00,000/- (rupees twenty lakhs)



from the complainant/O.P. No. 2 on different dates as a loan and in this regard, an agreement dated 19.10.2006 was also made in between both the parties, of which copy has been filed before this Court. As per the allegation made by the O.P. No. 2 in his complaint, the accused person including the petitioner did not repay the loan amount of rupees twenty lakhs as per the terms and conditions of the agreement and two cheques vide cheque Nos. 698674 dated 15.02.2013 and 698675 dated 05.03.2013 were issued by the petitioner for returning the loan amount as well as part payment of compensation, which were drawn at Bombay Mercantile Co-operative Bank Ltd., Bandra (West) Branch, Mumbai and it is also an admitted position that both the said cheques were dishonoured. The complainant/O.P. No. 2 initially attempted to lodge the FIR but when the police refused to accept his case on account of the nature of allegation then the O.P. No. 2 proceeded to file two Complaint Cases bearing Nos. 452(C)/2013 and 921(C)/2013 by taking an advantage of dishonourment of two cheques which related to the same loan amount of rupees twenty lakhs and same cause of action. Thereafter, well-wishers of both the parties brought the parties on a table for compromise talk and succeeded to settle their dispute and in this regard, three Memorandum of



Understandings (in short 'MOU') vide Annexure 'R/1', 'R/2' and 'R/3' filed with the counter affidavit, were prepared and according to the terms and conditions of the first two MOUs, the complainant agreed to accept rupees ten lakhs for the settlement of complaint Case No. 921(C)/2013 and the same amount was also accepted by him for the settlement of the Complaint Case No. 452(C)/2013 which relates to the present matter and accordingly, agreed to receive rupees twenty lakhs as full and final settlement in both the Complaint Cases and thereafter, the petitioner issued two demand drafts of rupees ten lakh each, total amounting to rupees twenty lakhs in favour of the O.P. No. 2 which were encashed by the said O.P. and in this regard, sufficient proof has been filed by the petitioner with his reply to the counter affidavit of O.P. No. 2 which is also an admitted position and regarding the terms and conditions of the compromise, the first two MOUs were executed on the same day i.e. on 01.09.2015 which may be perused and on the very same day i.e. 01.09.2015, the third MOU was also prepared which contained an agreement between both the parties to appoint one Mr. Rajkumar Pyarelal Santoshi as an arbitrator to decide the issue of compensation which was being claimed by the O.P. No. 2, though as per the allegation, the claimed



compensation has not been decided till date but merely due to this reason, the O.P. No. 2 can not be absolved from his liabilities having arisen on his part on account of fulfillment of the terms and conditions of the first two MOUs which clearly shows that after receiving full and final settlement amount as per the first two MOUs, there would be no civil claim or liabilities or any criminal claim against or in between both the parties, so, in such situation, the O.P. No. 2 was bound with the said terms and conditions and he had to withdraw the Complaint Case Nos. 452(C)/2013 & 921(C)/2013 as all the alleged offences are compoundable. Learned counsel further submits that the alleged offences under sections 406 and 420 of IPC, criminal breach of trust and cheating, do not even *prima facie* attract against the petitioner in view of the nature of allegation and the filing of the complaint under section 138 of the Negotiable Instruments Act (in short 'NI Act') in the court of C.J.M., Munger is also bad in the eye of law as admittedly both the alleged cheques were drawn on Bombay Mercantile Co-operative Bank Ltd, Bandra (West) Branch, Mumbai, at where they were dishonoured, so, the C.J.M. court, Munger lacks the jurisdiction to entertain the complaint of the O.P. No. 2 for the said offence and in this regard, the observations made by the



Hon'ble Apex Court in several cases are relevant. In support of this contention, learned counsel has referred the following judgments of the Hon'ble Apex Court : -

(i) **Dashrath Rupsingh Rathod vs. State of Maharashtra and Another** reported in (2014) 9 SCC 129 and the relevant paragraph No. '58', upon which reliance has been placed, is being reproduced as under : -

“58. To sum up:

58.1. An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.

58.2. Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee or holder under clause (c) of proviso to Section 138.

58.3. The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if

(a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue,

(b) if the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour



of the cheque, and

(c) if the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.

58.4. The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act.

58.5. The proviso to Section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the court till such time cause of action in terms of clause (c) of the proviso accrues to the complainant.

58.6. Once the cause of action accrues to the complainant, the jurisdiction of the court to try the case will be determined by reference to the place where the cheque is dishonoured.

58.7. The general rule stipulated under Section 177 CrPC applies to cases under Section 138 of the Negotiable Instruments Act. Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under Section 138 is committed along with other offences in a single transaction within the meaning of Section 220(1) read with Section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 220 thereof.”

(ii) Vinay Kumar Shailendra vs. Delhi High Court Legal Services Committee and Another reported in **(2014) 10 SCC 708** and the relevant paragraph No. ‘9’, upon which reliance has been placed, is being reproduced as under :-



“9. In the light of the above pronouncement of this Court in Dashrath case [Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129 : (2014) 3 SCC (Cri) 673 : (2014) 4 SCC (Civ) 676 : (2014) 9 Scale 97] we have no hesitation in holding that the issue of a notice from Delhi or deposit of the cheque in a Delhi bank by the payee or receipt of the notice by the accused demanding payment in Delhi would not confer jurisdiction upon the courts in Delhi. What is important is whether the drawee bank which dishonoured the cheque is situate within the jurisdiction of the court taking cognizance. In that view, we see no reason to interfere with the order passed by the High Court which simply requires the Magistrate to examine and return the complaints if they do not have the jurisdiction to entertain the same in the light of the legal position as stated in Harman case [Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd., (2009) 1 SCC 720 : (2009) 1 SCC (Civ) 332 : (2009) 1 SCC (Cri) 610] . All that we need to add is that while examining the question of jurisdiction the Metropolitan Magistrates concerned to whom the High Court has issued directions shall also keep in view the decision of this Court in Dashrath case.”

(iii) Shivgiri Associates and Others vs. Metso Mineral (India) Private Limited reported in **(2014) 12 SCC 366** and the relevant paragraph No. ‘5’, upon which reliance has been placed, is being reproduced as under : -

“5. It is in these circumstances that we allow the appeal, as the courts at Gurgaon do not possess territorial jurisdiction to entertain the present proceedings under Section 138 of the NI Act solely because, on the instructions of the respondent, a legal notice of demand has



emanated from that city. The complaint be returned to the respondent complainant for refiling in the appropriate court at Bangalore, Karnataka. As mentioned in Dashrath Rupsingh [Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129] , if the complaint is refiled in the appropriate court in Bangalore within 30 days, it shall be deemed to have been filed within limitation. The interim orders [Shivgiri Associates v. Metso Minerals (India) (P) Ltd., (2014) 12 SCC 366 (F5)] stand recalled, accordingly. The parties shall bear their respective costs.”

4. On the other hand, Mr. Rajesh Kumar, learned counsel appearing for the O.P. No. 2 has argued that admittedly the O.P. No. 2 gave a sum of rupees twenty lakhs on different dates to the petitioner, who was the Director of *Sunrise Picture Pvt. Ltd.* at that time and the said amount was given on believing the petitioner that the same would be returned to the O.P. No. 2 with discounting commission and compensation within the stipulated period but the petitioner and his company failed to repay the loan amount along with commission and compensation and finally to discharge the liabilities, the petitioner issued two cheques in favour of the O.P. No. 2 for the payment of loan amount of rupees twenty lakhs along with compensation and commission amount and both the said cheques were presented for encashment but admittedly, the same were dishonoured with an endorsement ‘fund insufficient’ by the



bank concerned, which is sufficient to attract the offence under section 138 of NI Act and in this regard, cause of action arose in Munger district as the cheques were presented by the O.P. No. 2 at ICICI Bank, branch at Munger, and on that very day when the cheques were returned by the said bank, the cause of action arose in favour of the O.P. No. 2 at the place where the said branch of ICICI bank is situated, however, the jurisdictional issue should be left for the trial court to decide. So far as the execution of MOUs is concerned, no doubt all the said MOUs were prepared and executed in between both the parties and a total twenty lakhs rupees, in two parts of ten lakhs rupees, was given to the O.P. No. 2 by the petitioner in respect of first two MOUs but as per the terms and conditions of said MOUs, the compensation amount payable to the O.P. No. 2 by the petitioner and his company was to be decided by an arbitrator appointed by both the parties by the third MOU but after the execution of the 3rd MOU, no attempt was made by the appointed arbitrator to decide the compensation amount as he was interested in the petitioner and the liabilities of the O.P. No.2 to end all the litigations including the complaint case of the present matter will arise only after the fulfillment of all the terms and conditions of all MOUs which are interconnected to each other



and executed on the same day and in this regard, the terms and conditions of the third MOU relating to appointment of an arbitrator to decide the compensation is very important and the same must be read with the first two MOUs and it is clearly mentioned in the third MOU that the first party, petitioner, shall pay the compensation amount decided by the arbitrator to the second party, O.P. No. 2, within a period of six months from the date of deciding of the compensation amount but in this regard, no step was taken by the petitioner and the arbitrator, who was completely interested in the petitioner and his company, and from the contents of the agreement deed, it can be easily inferred that the entrustment of rupees twenty lakhs to the petitioner and his company on different dates was for the purpose of getting commission but neither the original amount was returned by the petitioner nor any compensation or commission was paid and then finally at the repeated requests of the O.P. No. 2, two cheques were issued by the petitioner but the same were dishonoured, which shows that the petitioner had dishonest intention from the very beginning of the transaction of taking rupees twenty lakhs from the O.P. No. 2. and further, he did not take an attempt to get the terms and conditions of the third MOU, relating to the compensation, complied which also



shows the dishonest intention on his part and the same is sufficient to attract the offence of cheating on his part. It has been lastly submitted by learned counsel that the cognizance and summoning order passed in complaint case No. 921(C)/2013 carrying similar nature of allegation was first challenged by the petitioner before this Court by way of Cr. Misc. No. 25620/2014 though the same was allowed with quashing the said complaint case but the O.P. No. 2 challenged that order before the Hon'ble Apex Court by way of Cr. APP No. 1308/2018 and the same was allowed by the Hon'ble Apex Court.

5. Heard both the sides and perused the complaint petition filed by the O.P. No. 2 against the petitioner, the agreement's copy dated 19.10.2006 and the copies of three MOUs dated 01.09.2015 which were admittedly executed in between both the parties. The agreement deed shows that the second party, who is here petitioner, was in need of financial assistance to complete and release a picture. The second party requested the first party, who is here O.P. No. 2, to lend a sum, to the extent of rupees twenty five lakhs, to meet the need of financial requirement and the petitioner agreed to pay discounting commission @ 12 % on the said sum and it was agreed that the second party/petitioner would return the sum along with the commission on or before 14.04.2007 or seven



days before the delivery of the release prints for East Punjab, whichever is earlier and in the case of delay in repayment, the first party/O.P. No. 2 was entitled to get compensation @ 12 % and they also agreed on other points relating to their transaction, of which complete details is mentioned in their agreement. It appears that before the issuance of two cheques by the petitioner in favour of the O.P. No. 2 on 15.02.2013 and 05.03.2013, no payment of any sum in the form of compensation or commission was given to the O.P. No. 2 by the petitioner and both the said cheques were dishonoured by the bank concerned. Later on, on account of the efforts made by the well-wishers of both the parties, three MOUs were executed in between both the parties on the same day having their signatures and photographs regarding which there is no dispute. If we read the contents of these MOUs together then it appears that the third MOU relating to decide the compensation by an arbitrator was interconnected with the settlement arrived at by both the parties in the first two MOUs. Though the O.P. No. 2 has filed two complaint cases on account of the dishonourment of two cheques which were admittedly issued on different dates by the petitioner in the capacity of director of his company as well as personal capacity and the instant matter relates to the Complaint Case No.



452(C)/2013 and the legality of filing of two cases for the same offence of cheating in the form of complaints by the O.P. No. 2 has not been challenged by the petitioner but one thing is quite clear that in respect of both the complaint cases, including the instant matter, the petitioner accepted his liabilities which appears from the first and second MOU and to discharge the said liabilities, the petitioner agreed to pay the ten lakhs rupees for each cash and the same was also paid by issuing demand drafts in favour of the O.P. No. 2 which have been encashed by the O.P. No. 2 regarding which there is no dispute and as per the terms and conditions of the MOUs, the O.P. No. 2 had to appear in the court of Chief Judicial Magistrate, Munger to withdraw the Complaint Cases Nos. 452(C)/2013 and 921(C)/2013 in the light of the settlement and compromise made by both the parties and now, the question is whether the O.P. No. 2 was bound with the said condition. As per the terms and conditions of third MOU relating to deciding the amount of compensation, which was to be paid by the petitioner to the O.P. No. 2 in respect of compensation and discounting commission, which became due on the part of the petitioner in the light of the terms and conditions of the agreement and the same has not been denied and the compensation was to be paid within the



period of six months from the date of the decision of the arbitrator but admittedly, no attempt was taken by the arbitrator to decide the said compensation and the petitioner has not shown any attempt on his part to pursue the matter before the arbitrator while on the other hand, the O.P. No. 2 has taken the plea that the appointed arbitrator was having interest in the petitioner, so, on account of non-compliance of the terms and conditions of the third MOU, it can be deemed that all the terms and conditions were not fulfilled by the petitioner in true spirit. Here, it is relevant to mention that the cognizance and summoning order passed in the Complaint Case No. 921(C)/2013, in which the allegation is same like in the present matter, was challenged before this Court by way of Cr. Misc. No. 25620/2014 and that summoning order was quashed but the quashing order was challenged by the O.P. No. 2 before the Hon'ble Apex Court which was allowed. The O.P. No. 2 admittedly lent rupees twenty lakhs to the petitioner in the year 2006 and as per the terms and conditions of the agreement, in the case of delay in repayment of the loan amount, compensation was to be paid by the petitioner and there is no plea on behalf of the petitioner that any attempt was made by him to pay the said compensation between the year 2006 and



2013 and when the O.P. No. 2 made repeated requests from the petitioner to repay the loan amount with compensation, then finally two cheques were issued by the petitioner on two different dates and the same were admittedly dishonoured and in the year 2016, to discharge the liabilities having arisen against him in the light of the allegations levelled in the Complaint Case No. 452(C)/2013, he agreed to pay ten lakhs rupees to the O.P. No. 2, though the same was paid but he failed to pay any compensation amount to the O.P. No. 2 which was to be decided by the arbitrator and in this regard, no attempt was made by the petitioner. In view of these conducts relating on the part of the petitioner, it can not be deemed that there was no dishonest intention on the part of the petitioner from the very beginning of the alleged transaction, so, in such a situation, the *prima facie* attraction of the commission of the offence of cheating can not be denied. So far as the offence under section 138 of NI Act is concerned, the dishonourment of the concerned cheques is an admitted position and the petitioner has raised a question regarding territorial jurisdiction of the trial court with regard to the said offence, while on the other hand the petitioner has taken the plea that the cause of action arose in the Munger district as the cheque was presented at the branch of ICICI Bank, Munger,



from where it was returned as dishonoured on account of insufficient fund in the bank account of the petitioner. I am of the view that the said question should be left open for deciding by the trial court after examining all the circumstances relevant to the provisions of NI Act as the same requires evidences from both the sides and here, it is important to mention that as per the condition mentioned in the agreement deed, both the parties agreed that any dispute or differences arisen or touching the agreement shall be subject to the jurisdiction of the courts of Munger, Bihar/Mumbai and it will not be proper to quash the entire criminal proceeding relating to the Complaint Case No. 452(C)/2013 mainly on the technical ground of territorial jurisdiction in relation to the offence punishable under section 138 of NI Act, particularly, when the offence of cheating interconnected with the said offence regarding which the jurisdiction issue has not been raised. Accordingly, this Court finds no merit in this petition, so, it stands dismissed.

(Shailendra Singh, J)

annu/-

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