

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60248 of 2018

Arising Out of PS. Case No.-152 Year-2018 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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Ketan Kumar son of Sri Ashok Kumar Gupta, M/s Sunrays Trading Pvt. Ltd,
Resident of Mohalla- Ambedkar Chawk, Old G.T. Road, P.S.- Dehri T,
District- Rohtas.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Tej Narayan Singh, S/o Jokhan Singh, Resident of Village- Dudhami
Datauli, P.S.- Indrapuri, District- Rohtas.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Ramchandra Singh
For the Opposite Party/s : Mr.Sri Shyam Bihari Singh

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 13-01-2026 Heard the parties.

2. The present application has been filed for quashing the order dated 01.06.2018 passed by the SDJM, Dehri in Complaint Case No. 152 of 2018 by which the court below has refused to take cognizance against the opposite party no. 02 under Section 138 of the N.I. Act and 420, 406 of the Indian Penal Code and dismissed the Complaint Case No. 158 of 2018 of the petitioner.

3. As per the prosecution case, the petitioner has alleged that the opposite party no. 02 has bought ornaments from his showroom worth Rs. 1,88,227/- and paid only Rs. 20,000/- and for balance amount paid a cheque bearing Cheque No. 925126 on 10.12.2017 but when the petitioner tried to



encash the same, the bank has refused the same by issuing a note that no contact number is available of the person who has issued the cheque. Thereafter, the petitioner again and again tried to encash the cheque but the issue remained the same. Furthermore, the petitioner gave legal notice dated 5.3.2018 to the opposite party no. 02 but the opposite party no. 02 has not responded to the same and because of the same, the petitioner went to the house of the opposite party no. 02 and the opposite party no. 02 has assured him to pay the money but on 20.05.2018, the opposite party no. 02 came to the shop of the petitioner and has said that he will not pay him the balance amount.

4. It has been submitted by the learned counsel for the petitioner that the complaint of the petitioner has been dismissed by the learned Magistrate on the ground that the same has been filed after two and a half months of the issuance of the pleader notice.

5. Learned counsel for the petitioner has also relied upon a judgment of the Hon'ble Supreme Court in the case of ***Dilip Kumar Vs. Brajraj Shrivastava reported in 2023 INSC 670*** and paragraph no. 4 of the same reads as under:-

We have carefully perused the order dated 18 th September, 2008 passed by the learned



Magistrate and carlier order of 22nd August, 2008. Under sub-Section (1) of Section 202 of the Cr.P.C, the learned Magistrate has a discretion either to inquire into the case himself, or to direct a Police Officer to investigate and submit a report. In this case, he took recourse to the first option. A perusal of the complaint shows that eight witnesses were specifically named in the complaint. The learned Magistrate did not examine any of them. In the order dated 18th September, 2008, the learned Magistrate has not recorded reasons for not recording the statements of other witnesses specifically cited in the complaint. The law is well settled, which is found to have been reiterated in the decision in the case of Mohinder Singh (supra). After taking recourse to sub-Section (1) of Section 202 of the Cr. P. C, before dismissing a complaint by taking recourse to Section 203 of the Cr.PC, the learned Magistrate has to consider the statements of the complainant and his witnesses. In this case, the learned Magistrate has not examined the other witnesses. The view taken by this Court in the case of Nagawwa (supra) is no different.

6. Upon perusal of the records of the case and the upon perusal of the judgment of the Hon'ble Supreme Court this court is of the view that the Magistrate should have examined the witnesses and thereafter should have considered as to whether cognizance can be taken after condoning the delay in



filing the present complaint but the Magistrate has dismissed the complaint of the petitioner by a cryptic order which cannot be sustained.

7. In view of the above, this application is allowed and the order dated 01.06.2018 passed by the SDJM, Dehri in Complaint Case No. 152 of 2018 is hereby quashed.

8. The matter is remitted back to the SDJM, Dehri, Rohtas, who will proceed in the case and decide the cognizance issue within two months of communication of this order.

9. Let a copy of this order be communicated to the Principal District and Sessions Judge, Rohtas through FAX for its compliance.

(Sandeep Kumar, J)

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