

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22997 of 2016

Arising Out of PS. Case No.-3257 Year-2011 Thana- VAISALI COMPLAINT CASE District-
Vaishali

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Sunil Kumar son of Late Jaylal Singh, resident of Mohalla- Ramna Road,
near Devi Sthan Gurudwara, P.S.- Muzaffarpur, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Umesh Kumar Rai, Proprietor M/s India Nursery, Jathuan, Bog Tola, P.O.-
Hajipur, P.S.- Hajipur Town

... .. Opposite Party/s

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Appearance :

For the Petitioner	:	Mr. Madan Jeet Kumar, Advocate
For the O. P. No.2	:	Mr. Vinod Kumar, Advocate
For the State	:	Mr. Ram Sevak Choudhary, APP

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

7 02-02-2026 Heard learned counsel for the parties.

2. The instant application has been filed by the petitioner under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') seeking quashing of the order dated 16.07.2014 passed by the Court of the Chief Judicial Magistrate, Vaishali at Hajipur in Complaint Case No. 3257 of 2011, corresponding to Trial No. 7587 of 2014, whereby cognizance of the offence under Section 138 of the Negotiable Instruments Act has been taken against the petitioner.

3. While assailing the impugned order, Mr. Madan Jeet Kumar, learned counsel appearing for the petitioner has mainly based his arguments on the alleged non-compliance with



clause (b) of the proviso appended to Section 138 of the Negotiable Instruments Act. Though he has admitted the issuance of the alleged cheques by the petitioner and their dishonour by the concerned bank.

4. On the other hand, Mr. Vinod Kumar, learned counsel appearing for Opposite Party No. 2 submits that the cheques allegedly issued by the petitioner were presented before the bank within the prescribed time limit under the Negotiable Instruments Act. Upon dishonour, the said cheques were returned by the concerned bank on account of insufficiency of funds in the petitioner's bank account. Thereafter, Opposite Party No. 2 issued a statutory notice to the petitioner through his counsel, calling upon him to make the payment. In response, the petitioner sought one month's time to make the payment, which was duly granted by Opposite Party No. 2. However, upon failure of the petitioner to make payment even after the expiry of the said period, Opposite Party No. 2 again issued a notice dated 10.10.2011 through his counsel. In view of these facts, it cannot be said that there was any non-compliance with clause (b) of the proviso to Section 138 of the Negotiable Instruments Act. It is further submitted that the case is presently at the stage of evidence before the trial court.



5. Considering the aforesaid submissions and the averments made in the complaint filed by Opposite Party No. 2, this Court is of the view that a *prima facie* case for the offence punishable under Section 138 of the Negotiable Instruments Act is made out against the petitioner. The issuance of the alleged cheques by the petitioner in favour of Opposite Party No. 2 and the dishonour thereof are not in dispute. So far as compliance with the mandatory provisions of the Negotiable Instruments Act is concerned, the same is a matter to be examined by the trial court after appreciation of the evidence adduced by both the parties. Accordingly, this Court finds no merit in the present application and no illegality in the impugned order. The instant petition is, therefore, dismissed.

(Shailendra Singh, J)

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