

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75642 of 2018

Arising Out of PS. Case No.-74 Year-2013 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

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Rakesh Ranjan Prasad Son of Ram Parsad Nayak Resident of Naya Tola Prem
Nagar, Bhikhanpura, P.S. Ishakchak, District- Bhagalpur.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Dilip Jha @ Dilip Kr. Jha, Son of Late Ramanand Jha, Resident of Mohalla-
Choti Khanjarpur Rai Bahadur Surya Prasad Road, P.S.- Barari, District-
Bhagalpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Najmul Hodda, Adv.
For the Opposite Party/s : Mr. Rajendra Nath Jha, APP

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CORAM: HONOURABLE MR. JUSTICE PRAVEEN KUMAR
ORAL ORDER

5 13-07-2026 Heard learned counsel for the petitioner and learned

APP appearing on behalf of the State.

2. The instant application has been filed for quashing
of the order dated 30.07.2018 passed by learned Additional
District & Sessions Judge, 7th, Bhagalpur in Cr. Revision No. 70
of 2016, setting aside the order dated 19.01.2016 passed by
learned Additional Chief Judicial Magistrate, XIV, Bhagalpur, in
connection with Complaint Case No. 74(C) of 2013.

3. The case of the complainant, as set out in
Complaint Case No. 74 of 2013, is that O.P. No. 2, namely,
Dilip Jha, who is the husband of Pushpa Jha, who was engaged
in the construction business in partnership with the landlord, late



Tri Vikram Prasad, on the basis of a written partnership agreement. After the death of Tri Vikram Prasad, his wife, Manju Devi, succeeded to his interest in the partnership. Upon completion of the construction of the apartment, the intention of the accused persons allegedly became mala fide, whereupon the partnership was dissolved by a written agreement dated 05.06.2012. It is further alleged that, in terms of the said agreement, a cheque bearing No. 276847 dated 05.09.2012 was issued by accused Dilip Jha on behalf of his wife. Thereafter, with the consent of Manju Devi, the said cheque was handed over to her son, Bikram Anand. With the consent of both the accused persons, the cheque was presented for encashment through the State Bank of India; however, the same was dishonoured on account of insufficiency of funds. The complainant has further alleged that a statutory notice dated 12.12.2012 was issued to the accused persons and dispatched by registered post. Despite receipt of the notice, the accused persons allegedly met the complainant and assured that payment would be made; however, the cheque amount remained unpaid. Consequently, the complainant allegedly suffered a loss of Rs. 50,000/-, as the payment was not made within the prescribed period.



4. Learned counsel for the petitioner submits that the revisional order has not been passed after appreciating the entire facts and materials available on record. The order of learned Magistrate is a well reasoned and no interference is required in that order. It has further been submitted that upon perusal of the complaint as well as statement of enquiry witnesses recorded under Section 202 of Cr.P.C. amply goes to show that there was prima facie material to constitute offence under Section 138 of Negotiable Instruments Act against the accused persons. It has further been submitted that learned Magistrate passed order of cognizance against the opposite parties after applying his judicial mind.

5. Heard the parties, perused the records.

6. The present case is based on a written agreement of dissolution of partnership, but the original agreement has not been brought on record and the dates of the cheques issued are contrary to the said agreement. There is no proof to show receipt of notice by the opposite parties, which is *sine qua non* for completion of offence under Section 138(b) of the Negotiable Instruments Act.

7. It is well settled that five ingredients to constitute offence under Section 138 of Negotiable Instruments Act should



be made out i.e. drawing, presentation, return unpaid, notice to the drawer and failure of drawer to make payment after receipt of the notice.

8. Having considered the facts and circumstance in totality, this Court does not find any irregularity in the impugned order of the Revisional Court and hence the same requires no interference.

9. This application is devoid of merit and accordingly the same stands dismissed.

(Praveen Kumar, J)

Ankit Kumar/-

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