IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53668 of 2017

CNR No. BRHC010519262017

Arising Out of PS. Case No.-2111 Year-2013 Thana- PATNA COMPLAINT CASE District- Patna

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Sima Kumari W/o Nand Lal Prasad Resident of Mohalla- GrihandaJakhraj Asthan, P.S. Sheikhpura, District- Sheikhpura.

... ... Petitioner

Versus

1. State of Bihar
2. Raja Ram Singh S/o late Karu Singh Resident of Mohalla- Mahatma Gandhi Nagar, near Budha Dental College, P.O. Lohia, Nagar, P.S. Patrakar Nagar, District- Patna.

... ... Opposite Parties

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Appearance :
For the Petitioner : Mr. Anisur Rahman, Advocate
For the Opposite Party State: Mr. S.M. Rahman, APP

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CORAM: HONOURABLE MR. JUSTICE PRAVEEN KUMAR
ORAL JUDGMENT
Date : 29-10-2026

Heard learned counsel for the petitioner and learned counsel for the State. However, there is no representation on behalf of O.P. No.2.

2. The petitioner has approached this Court seeking quashing of the impugned order dated 12.08.2014, passed by the learned Judicial Magistrate 1st Class, Patna, in Complaint Case No. 2111(C) of 2013, whereby and whereunder cognizance of the offences punishable under Section 420 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act has been taken against the petitioner.

3. The prosecution case, in brief, is that the complainant, a power of attorney holder, entered into a registered

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agreement for sale of land with the petitioner on a consideration amount of Rs.14 lakhs per katha and at the time of the execution of the agreement, the petitioner paid Rs. 2,50,000/- in cash and through cheque. Thereafter, it is alleged that the petitioner issued two cheques in favour of the complainant amounting to Rs.4,80,000/- and Rs.3,00,000/- respectively, which got dishonoured on being presented for encashment. It has further been alleged that the complainant thereafter sent legal notice to the petitioner, but the money was not paid to her.

4. Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case. Learned counsel for the petitioner, referring to Section 142(b) of the N.I. Act, has submitted that the complaint was filed much beyond the statutory period of one month from the date on which the cause of action arose.

4.1. Learned counsel for the petitioner, referred to certain dates, which are relevant for the just decision of the case. Firstly, learned counsel for the petitioner has submitted that cheques, in question, were issued on 09.01.2011. The Memo by the Bank was issued on 06.11.2012. The legal notice was sent on 19.12.2012 and the present complaint came to be filed on 19.06.2013.

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4.2. Learned counsel for the petitioner has, thus, submitted that in view of the statutory bar to take cognizance in the matter, the present case against the petitioner would amount to an abuse of the process of the court.

4.3. Learned counsel for the petitioner has further submitted, relying upon a judgment of the Hon'ble Supreme Court in the case of ***Mohd. Ibrahim v. State of Bihar***, reported in **(2009) 8 SCC 751**, that no offence under Section 420 of the IPC is made out in the facts and circumstances of the case as the dispute primarily is of civil nature, which has been given colour of criminal cloak and the order taking cognizance under Section 420 of the IPC and under Section 138 of the N.I. Act is bad in law and on facts.

4.4. Learned counsel for the petitioner has further referred to paragraph 102 of the judgment of the Hon'ble Supreme Court in the case of ***State of Haryana v. Bhajan Lal*****,** reported in **1992 Supp (1) SCC 335**, and has submitted that the case of the petitioner falls under various categories as discussed in paragraph 102 of the said judgment. Moreover, the present prosecution against the petitioner is malicious and vexatious one.

4.5. Learned counsel for the petitioner has also referred to another judgment of the High Court of Karnataka in the case of ***Dr. Geetha Vs. Vasanthi S. Shetty***, reported in **2010 Crl**

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LJ 2698:2010 SCC OnLine Kar 28, and has referred to paragraph 22 thereof, which is reproduced hereinbelow: -

> *"**22.** As noticed above, after the complainant received information from her Banker on 13.01.2003 about the return of the cheque, cause-of-action for issue of notice began to run. As per the law that existed on that day, she was required to issue notice, within 15 days, which expired on 28.01.2003. On account of the inaction on the part of the complainant in not issuing notice of demand within 15 days from the date of the receipt of the information from her Banker about the return of the cheque, she had lost her right to file a compliant for an offence under Section 138 of the Act, as there was no demand in writing made by her to the drawer of the cheque as required by law. Unless such a demand had been made and unless an opportunity had been afforded to the drawer of the cheque, the offence was not complete. Therefore, the complainant had no right to present a complaint. The amendment brought into force from 06.02.2003 did not give her a right to issue a notice of demand in respect of dishonouring of the cheque on 09.01.2003, which was intimated to her on 13.01.2003. Therefore, the complaint lodged was defective and the Learned Magistrate could not have taken cognizance of the offence alleged. In this view of the matter, the judgment of the Learned Sessions Judge in acquitting the accused is just and proper."*

4.6. Learned counsel for the petitioner has lastly submitted that the continuation of the present proceeding against the petitioner would be an abuse of the process of the court.

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5. Learned Additional Public Prosecutor appearing on behalf of the State opposed the prayer of the petitioner.

6. Heard the parties and perused the record.

7. Considering the facts and circumstances of the case, as discussed above, and in view of the statutory bar under Section 142 of the N.I. Act and also in view of the judgments of the Hon'ble Supreme Court, as discussed above, the present prosecution against the petitioner would amount to an abuse of the process of the court.

8. Accordingly, the impugned order taking cognizance dated 12.08.2014, passed by the learned Judicial Magistrate 1st Class, Patna, in Complaint Case No. 2111(C) of 2013, with respect to the petitioner only, is hereby quashed.

9. However, proceeding against the co-accused person may continue.

10. The application stands allowed.

(Praveen Kumar, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30.10.2026.
Transmission Date	30.10.2026.

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