IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50805 of 2018

Arising Out of PS. Case No.-2065 Year-2013 Thana- VAISALI COMPLAINT CASE District- Vaishali

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Sanjeev Kumar S/o Sri Sunil Kumar Jaiswal Das, Residents of Vill.- Mahnar, P.S.- Mahnar, Distt.- Vaishali, at present Thayrocare Janch Ghar, Navin Cinema Road, Hajipur, P.S.- Hajipur Town, Distt.- Vaishali.

... ... Petitioner/s

Versus

1. State of Bihar.
2. Sanjay Singh S/o Hariballav Prasad Singh, R/o Vill.- Mustafapur, P.O.- Maniyarpur, P.S.- Bidupur, Distt.- Vaishali.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Mahendra Thakur, Advocate
For the Opposite Party/s : Mr. Pradeep Narain Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

C.A.V. JUDGMENT

Date : 06-02-2026

1. Heard learned counsel for the petitioner as well as the learned A.P.P. for the State.

2. The present application has been filed on behalf of the petitioner for quashing the order dated 14.11.2014 passed by the learned Judicial Magistrate 1st Class, Vaishali at Hajipur (hereinafter referred to as 'Magistrate') in connection with Complaint Case No. C1-2065 of 2013 wherein the learned Trial Court took cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'N.I. Act') against the petitioner and accordingly, directed to issue process.

3. The fact of the case, in brief, is that the complaint was instituted by Opposite Party No.2 alleging that on 11.02.2013 the petitioner approached him for a loan of Rs.1,00,000/-, out of which a sum of Rs.95,000/- was allegedly advanced in the presence of witnesses, and in discharge of the said liability, a cheque dated 11.03.2013 for Rs.95,000/- was issued by the petitioner. It is further alleged that upon presentation, the cheque was dishonoured due to insufficiency of funds and, thereafter, a legal notice dated 22.05.2013 was issued to the petitioner, who failed to make payment within the statutory period. The complainant has been examined on oath and two inquiry witnesses have also been examined. Learned Magistrate on perusal of record found sufficient materials available on record to proceed with the case and recorded that a *prima facie* case is made out against the petitioner and directed to issue summons upon him *vide* impugned order dated 14.11.2014. Aggrieved by the impugned order of cognizance, the petitioner has approached this Court by filing the present petition.

4. Learned counsel for the petitioner has assailed the impugned order primarily on the ground that the mandatory requirements of Section 138 of the N.I. Act were not fulfilled prior to institution of the complaint. It is submitted that no

statutory legal notice was ever served upon the petitioner and the same was not filed along with the complaint petition. Neither the complaint petition nor the order taking cognizance reflect compliance with the requirement of issuance and service of notice. It is further submitted that the learned Magistrate has taken cognizance in a mechanical manner without proper application of judicial mind to the materials on record. Moreover, it is submitted that there existed a joint business relationship between the petitioner and Opposite Party No.2 and certain cheques of the petitioner were lying with the Opposite Party No.2, which have been misused to give a criminal colour to what is essentially a civil dispute. It is further submitted that the petitioner never received any amount from the Opposite Party No.2 and never issued the cheque in question towards discharge of any legally enforceable debt or liability. Therefore, it is lastly submitted that continuation of the criminal proceeding would amount to abuse of the process of the Court and the impugned order is liable to be quashed.

5. Per contra, learned A.P.P. for the State submitted that the impugned order taking cognizance of the offence under Section 138 of the N.I. Act does not suffer from any apparent illegality warranting interference under Section 482 of the Code

of Criminal Procedure. It is submitted that at the stage of taking cognizance, the learned Magistrate is only required to *prima facie* satisfy himself regarding the existence of ingredients of the alleged offence and a detailed appreciation of evidence is neither required nor permissible. Learned A.P.P. further submitted that the defence raised by the petitioner relates to disputed questions of fact, which can be adjudicated only during trial. It is also submitted that no case is made out for exercise of inherent jurisdiction of this Court to quash the criminal proceeding at the threshold. Thus, the present petition shall be dismissed.

6. The law with respect to quashing of criminal proceeding is now well settled that while considering a prayer to quash the criminal complaint and the consequential proceedings at the threshold, the Court is required to examine whether the allegations made in the complaint along with materials in support thereof make out a *prima facie* case to proceed against the accused or not. The reference to the same has been made by the Hon'ble Apex Court in various judgments including ***State of Haryana v. Bhajan Lal,*** reported in ***1992 Supp (1) SCC 335*** and ***Pradeep Kumar Kesarwani v. State of Uttar Pradesh & Anr.***, reported in ***2025 SCC OnLine SC 1947.***

7. The Hon'ble Supreme Court in ***Sri Om Sales v.***

Abhay Kumar @ Abhay Patel & Anr. reported in ***2025 SCC OnLine SC 2897*** observed that under Section 482 Cr.P.C., to test, whether cheque was issued for discharge of any debt or liability is unwarranted because under Section 139 of the N.I. Act, there is presumption that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability and this presumption can be rebutted by evidence led in trial. The Hon'ble Apex Court in the aforesaid judgment has also laid down guidelines with respect to quashing of a proceeding in cases under the N.I. Act in para 13 to 17 as under:

> ***"13.*** *However, the High Court, in its jurisdiction under Section 482, proceeded to test whether the cheque was issued for the discharge, in whole or in part, of any debt or other liability. In our view, such an exercise was unwarranted because, under Section 139 of the N.I. Act, there is a presumption that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. This presumption can be rebutted by evidence led in trial. A fortiori, the said issue can appropriately be decided either at the trial, or later, upon conclusion of trial, by the appellate/revisional court.*
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> ***14.*** *In Maruti Udyog Ltd. v. Narender, this Court held that a presumption must be drawn that the holder of the*

cheque received the cheque of the nature referred to in Section 138, for the discharge of any debt or other liability unless the contrary is proved and, therefore, the High Court was not justified in entertaining and accepting the plea of the accused at the initial stage of the proceedings and quash the complaint.

15. *Likewise, in Rangappa v. Sri Mohan, it was held that the presumption mandated by Section 139 of the N.I. Act includes the existence of a legally enforceable debt or liability. It was observed that such a presumption is rebuttable, and the accused must raise its defense in the trial.*

16. *In Rajeshbhai Muljibhai Patel v. State of Gujarat, it was held that the High Court should not quash the criminal complaint under Section 138 of N.I. Act by going into disputed questions of fact regarding the cheque in question being issued for the discharge of debt or liability. Moreso, when Section 139 of the N.I. Act raises a statutory presumption as regards the cheque being issued for discharge of debt or liability.*

17. *In Rathish Babu Unnikrishnan v. State (NCT of Delhi), this Court held that when there is a legal presumption under Section 139 of N.I. Act, it would not be judicious to carry out a detailed enquiry on a disputed question of fact at a pre-trial stage to quash the complaint. The relevant observations in the judgment are extracted below:*

"17. The proposition of law as set out above makes it abundantly clear that the court should be slow to grant the relief of quashing a complaint at a pre-

trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defense without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

18. The consequences of scuttling the criminal process at a pretrial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e.,the trial court is ousted from weighing the material evidence. If this is allowed, the accused may be given an unmerited advantage in the criminal process. Also, because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favor of the complainant/prosecution, as the accused will have the opportunity to adduce defense evidence during the trial, to rebut the presumption.

19. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited."

8. In the present case, mere perusal of the complaint petition reveals specific assertions regarding advancement of loan, issuance of cheque towards discharge of liability, dishonour of the cheque on account of insufficiency of funds, and issuance of statutory legal notice within the prescribed period and its service on the petitioner. The Opposite Party No.2 has categorically pleaded that despite receipt of notice, the drawer failed to make payment within the statutory time. At the stage of taking cognizance, the learned Magistrate is required only to ascertain whether the allegations, taken at face value, disclose the commission of an offence, and not to examine the truthfulness or otherwise of the defence put forth by the accused. The contention raised on behalf of the petitioner that no legal notice was served upon them, or that the cheque was not issued in discharge of a legally enforceable debt, involves disputed questions of fact which cannot be adjudicated in proceedings under Section 482 Cr.P.C. The complaint discloses the foundational facts necessary for proceeding under Section 138 of the N.I. Act. However, all the matters requiring evidence and cross-examination and can be appropriately decided only during trial. Therefore, the impugned order of cognizance does not suffer from any patent illegality, perversity, or jurisdictional error warranting interference by this

Court in exercise of its inherent powers. Interference at this stage would amount to stifling a legitimate prosecution at its inception, which is impermissible in law.

9. Accordingly, the present application stands dismissed.

(Sunil Dutta Mishra, J)

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