

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL MISCELLANEOUS No.37499 of 2025**

Arising Out of PS. Case No.-1030 Year-2024 Thana- SAHARSA COMPLAINT CASE  
District- Saharsa

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Arun Kumar Choudhary @ Arun Choudhary Son of Khokhay Choudhary  
Village - Vengha, Ward no. 10, Ps and Dist- Saharsa

... .. Petitioner/s

Versus

1. The State of Bihar
2. Pranav Kumar Son of Arun Kumar Singh village- Naya Bazar Ward no. 3/11, Ps and Dist- Saharsa

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Pramod Mishra, Advocate  
For the Opposite Party/s : Mr. Arun Kumar Singh, APP  
For the O.P. No. 2 : Mr. Arun Kumar Sinha, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA  
C.A.V. JUDGMENT**

**Date : 19-01-2026**

Heard learned counsel for the petitioner and  
learned counsel appearing on behalf of the State as well as  
learned counsel for Opposite Party No. 2.

2. The present application has been filed for quashing the impugned order dated 17.12.2024 passed in Complaint Case No. 1030 of 2024, under Section 138 of the Negotiable Instruments Act, 1981, by the learned Judicial Magistrate, First Class, Saharsa, whereby cognizance has been taken against the petitioner.

3. Notice was issued to Opposite Party No. 2/complainant, which was duly served and he has entered appearance.



4. The prosecution case is based upon the complaint petition as contained in Annexure-P/1. From a perusal of the complaint petition, particularly paragraph-4, it is alleged that the accused-petitioner had issued six cheques, each for a sum of ₹ 3,00,000/-, on 19.07.2023 and it is further alleged that the complainant presented the said cheques on 23.08.2024 in his bank account maintained with Bandhan Bank, which were dishonored and returned unpaid with the endorsement “Exceeds Arrangement.”

5. Learned counsel for the petitioner submitted that the cheques were not presented within the statutory period. It was contended that although the cheques were issued on 19.07.2023, the complainant presented the same on 23.08.2024, i.e., after more than one year, which is contrary to the mandatory requirements of Section 138 of the N.I. Act.

6. Learned counsel for the petitioner next submits that for the very same transaction and cause of action relating to the alleged land purchase dispute, another criminal case has already been instituted between the parties, which is pending adjudication. It was contended that initiation of the present complaint under Section 138 of the N.I. Act amounts to multiplicity of proceedings on identical facts and reflects an



attempt to harass the petitioner by giving a criminal colour to a civil dispute. Such successive criminal proceedings, it was argued, are impermissible in law and constitute abuse of the process of the court.

7. Learned counsel for the petitioner further submitted that the present case has been maliciously instituted and the criminal prosecution is being used as a tool for recovery of money, which is impermissible in law. Reliance was placed upon the judgment of this Court in *Deepak Kumar vs. State of Bihar, Cr. Misc. No. 17078 of 2020*, wherein it has been held that criminal proceedings under Section 138 of the N.I. Act cannot be permitted to continue when statutory requirements are not fulfilled.

8. Learned counsel appearing on behalf of the State and the complainant supported the impugned order. Learned counsel for the complainant submitted that the cheques were not presented earlier as the complainant was awaiting intimation from the petitioner, who had assured that he would inform the complainant once sufficient funds were available in his bank account.

9. Heard the submissions advanced by learned counsel for the parties and upon perusal of the materials



available on record. This Court finds that the complainant has failed to exercise due diligence in presenting the cheques within the period prescribed under law. The explanation offered by the complainant does not extend or override the statutory mandate of Section 138 of the N.I. Act.

10. Section 138 of the Negotiable Instruments Act is a penal provision and the conditions prescribed therein are required to be strictly complied with. The Hon'ble Supreme Court in *Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129*, has held that the ingredients of Section 138 are mandatory in nature and any deviation there from would vitiate the prosecution. Further, in *MSR Leathers v. S. Palaniappan, (2013) 1 SCC 177*, the Apex Court reiterated that presentation of the cheque within its period of validity is a *sine qua non* for maintaining a complaint under Section 138 of the N.I. Act. In the absence of compliance with the statutory timeline, the criminal prosecution becomes legally unsustainable.

11. The complainant, by his own showing, failed to present the cheques within the period prescribed under law and has not offered any legally sustainable explanation for such delay. It is a settled principle that the law aids the vigilant and



not those who are negligent in asserting their rights (*vigilantibus et non dormientibus jura subveniunt*).

12. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the essential ingredients for constituting an offence under Section 138 of the N.I. Act are not satisfied and the learned Magistrate has erred in taking cognizance of the offence and the continuation of such proceeding could be an abuse of law.

13. Accordingly, the impugned order dated 17.12.2024 passed in Complaint Case No. 1030 of 2024 is hereby quashed.

14. The present application is allowed.

**(Rudra Prakash Mishra, J)**

Rajorshi/-

AFR/NAFR	NAFR
CAV DATE	08.01.2026
Uploading Date	19.01.2026
Transmission Date	19.01.2026

