

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1236 of 2019

Arising Out of PS. Case No.-3070 Year-2008 Thana- PATNA COMPLAINT CASE District-
Patna

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Ashok Kumar Mishra, Son of Gulab Mishra, Proprietor General Book Agency, resident of Ashok Raj Path, P.S. Pirbohor, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Raj Kumar Modi Son of Satya Narayan Modi, A partner of M/s. Patna Paper Company, a Partnership Firm, having its office and business premises at Mohalla- Langar Toli, P.S. Kadam Kuan, District- Patna.

... .. Respondent/s

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Appearance :

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| For the Petitioner/s | : | Mr.Bimlendu Mishra, Advocate Ms.Poonam Mishra, Advocate |
| For the State | : | Mr.Md. Matloob Rab, APP 34 |
| For the Opposite Party | : | Mr.Jitendra Prasad Singh, Advocate Mr.Kunal Ranjan, Advocate |

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 09-02-2024

1. The petitioner is the accused in a case under Section 138 of the Negotiable Instrument Act (hereinafter described as the N.I. Act) which was registered as Complaint Case No. 3070 (C) of 2008. The said complaint case was disposed of by the learned Judicial Magistrate, 1st Class at Patna, holding the petitioner guilty for committing offence under Section 138 of the N.I. Act and thereby convicting and sentencing him to suffer simple imprisonment for a term of one year and also to make payment of Rs. 3,81,000/- to the Opposite



Party No. 2 in lieu of cheque amount of Rs. 2,80,848/-. The petitioner assailed the said judgement and order of conviction and sentence before the learned Additional Sessions Judge, 6th Court at Patna, in Criminal Appeal No. 174 of 2013. The said appeal was dismissed on contest, affirming the judgement and order of conviction passed by the Trial Court.

2. Assailing the order of conviction and sentence, which was affirmed by the Trial Court, the accused/petitioner has preferred the instant Criminal Revision.

3. It is submitted by the learned Advocate for the petitioner that the Opposite Party No. 2, as one of the partners of M/s Patna Paper Company, filed the complaint under Section 138 of the N.I. Act without taking any letter of authorization from other partners. Therefore, the petition of complaint was bad in law as it was not authorized by all the partners of M/s Patna Paper Company.

4. It is further submitted by the learned Advocate for the petitioner that the case of the complainant/Opposite Party No. 2 is that in order to discharge the debt or existing liability, the petitioner issued one account payee cheque, dated 12th of May, 2008, for a sum of Rs. 2,80,848/- in favour of M/s Patna Paper Company drawn on State Bank of India, *Chauhatta*



Branch, Patna. The complainant duly presented the said cheque with his banker for encashment but it was returned, dishonoured with a Memo, Dated 6th of September, 2008, with a remark 'insufficient funds'. After the said cheque being dishonoured, the complainant issued legal notice through his Advocate on 18th of September, 2008, under Section 138 of the N.I., Act through registered post, dated 20th of September, 2008, demanding payment of cheque amount. But it was mentioned on behalf of the complainant that the accused persons got the said notice returned by bringing the Postman in collusion with an endorsement "Always not met". It is further alleged by the complainant that he sent another notice on 4th of October, 2008 to the petitioner through registered post but in spite of service of notice, the petitioner failed to make payment.

5. When the accused/petitioner failed to make payment of the cheque amount within the statutory period of time, the Opposite Party No. 2 filed a complaint on 12th of November, 2008, alleging commission of offence under Sections 420, 406, 120B of the IPC and Section 138 of the N.I. Act. The Trial Court took cognizance of offence against the accused persons and issued summons to him. The accused duly appeared before the Court.



6. Trial of the case commenced and on completion of trial, the learned Magistrate held the accused guilty, convicted and sentenced him accordingly.

7. The said order of conviction and sentence was affirmed by the Appellate Court.

8. In the instant Revision, it is argued by the learned Advocate for the petitioner that the complainant personally is neither payee nor holder in due course of cheque. M/s Patna Paper Company is the payee or holder of the cheque in due course. Therefore, the complainant in his personal capacity has no right to lodge the complainant against the petitioner. It is also contended by the petitioner that save and except the notice dated 18th of September, 2008, no notice was ever served upon the petitioner by the complainant, much less the notice dated 4th of October, 2008.

9. The Trial Court failed to appreciate the above mentioned issues and held the petitioner convicted for committing offence under Section 138 of the N.I. Act.

10. The learned Advocate for the accused/petitioner further submits that as per the provision Section 138 of the N.I. Act, the payee or holder of the cheque in due course is necessarily required to give written notice to the drawer of the



cheque within thirty days from the date of information received from the Bank about dishonoured. It is explicitly made clear that Clause (c) of the proviso to Section 138 that this gives an opportunity to the drawer of the cheque to make payment within the 15 days of receipt of such notice sent by the drawee. The object of providing Clause (c) of the proviso is to avoid unnecessary hardship. When the drawer fails to make payment within 15 days of receipt of such notice as provided under Clause (c), the drawer shall be deemed to have committed an offence under the Act and thereafter the drawee would be competent to file complaint against the drawer by following the procedure prescribed under Section 142 of the N.I. Act. In support of his contention, he refers to a decision of the Hon'ble Supreme Court in the case of *N. Parameswaran Unni v. G. Kannan & Anr*, reported in (2017) 5 SCC 737.

11. It is needless to say that the aforesaid decision deals with a case under the old N.I. Act before its amendment in 2003. In the aforesaid report, cheques in question were issued on 13th of October, 1990 and 4th of April, 1991.

12. Section 138 of the NI Act has been amended by Amending Act 55 of 2002 w.e.f., 6th February, 2003. The amended Section 138 runs thus:-



138. Dishonour of cheque for insufficiency, etc., of funds in the account.

—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.



13. Thus, in view of the amended provision of Section 138, the payee or the holder of the cheque is under obligation to issue demand notice within 30 days of receipt of the information of dishonour of cheque.

14. In the instant case, the petitioner received cheque dishonoured memo on 6th of September, 2008 and served notice under registered post on 20th of September, 2008.

15. It is contended by the petitioner that the petitioner is presumed to have received the said notice which was sent by registered post in correct address of the Patna Firm on 20th of September, 2008. However, the complaint was filed in Trial Court on 12th of November, 2008, meaning thereby after the expiry of 30 days from the date of receipt of the notice.

16. As per the amended provision of Section 138 of the N.I. Act, the petitioner was required to make payment of the cheque amount within 15 days from the date of receipt of the notice. If the notice is held to be served on 20th September, he was under obligation to pay the cheque amount within 5th October, 2008. When the petitioner failed to pay cheque amount within statutory period of time, the opposite party ought to have filed complaint within one month from the date of accrual of cause of action. Thus, the complaint ought to have been filed



within 6th November, 2018. When complaint was filed on 12th November, 2008, i.e., beyond the period of one month, the learned Magistrate could not have taken cognizance of offence in view of the provision contained in Section 142(1)(a),(b) of the NI Act.

17. Neither the Trial Court nor the Court of Appeal considered the said aspect of the matter.

18. Since the petition of complaint is barred by the statutory period of limitation and filed beyond 30 days from the date of service of notice cognizance of offence is bad and the Opposite Party cannot claim any relief on the said complaint.

19. In view of the above discussion, the judgement and order of conviction and sentence passed by the Trial Court and affirmed the Court of Appeal are quashed and set aside.

20. The instant Revision is accordingly allowed.

(Bibek Chaudhuri, J)

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