

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.31347 of 2015

Arising Out of PS. Case No.-75 Year-2015 Thana- MADHUBANI COMPLAINT CASE

District- Madhubani

=====

Kanchan Jha W/o Sandeep Kumar Jha resident of Village - Sarisap, P.S. - Benipatti, District Madhubani.

... ... Petitioner/s

Versus

1. State of Bihar
2. Lallan Kumar Mishra S/o Lakshman Mishra resident of Village - Behta, P.S. - Benipatti, District - Madhubani.

... ... Opposite Party/s

=====

with

CRIMINAL MISCELLANEOUS No. 4642 of 2016

Arising Out of PS. Case No.-75 Year-2015 Thana- MADHUBANI COMPLAINT CASE

District- Madhubani

=====

Sandeep Kumar Jha son of Jai Nath Jha, resident of village- Sarisap, P.S.-Benipatti, District- Madhubani

... ... Petitioner/s

Versus

1. State of Bihar
2. Lallan Kumar Mishra S/o Lakshman Mishra, Resident of village- Behta, P.S.-Benipatti, District- Madhubani

... ... Opposite Party/s

=====

Negotiable Instrument Act, 1881—Sections 138 and 142—Indian Penal Code, 1860—Section 420—no any material available to attract the allegation of cheating—Jurisdictional Magistrate taken cognizance without following the mandatory compliance of provisions of Section 142 of Act, 1881—impugned order of cognizance quashed and set aside with all its consequential proceedings—application allowed.

(Paras 10, 11 and 12)

(2000) 2 SCC 636; 1992 Supplementary (1) SCC 335—Relied upon.

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31347 of 2015

Arising Out of PS. Case No.-75 Year-2015 Thana- MADHUBANI COMPLAINT CASE
District- Madhubani

Kanchan Jha W/o Sandeep Kumar Jha resident of Village - Sarisap, P.S. - Benipatti, District Madhubani.

... .. Petitioner/s

Versus

- 1. State of Bihar
- 2. Lallan Kumar Mishra S/o Lakshman Mishra resident of Village - Behta, P.S. - Benipatti, District - Madhubani.

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 4642 of 2016

Arising Out of PS. Case No.-75 Year-2015 Thana- MADHUBANI COMPLAINT CASE
District- Madhubani

Sandeep Kumar Jha son of Jai Nath Jha, resident of village- Sarisap, P.S.- Benipatti, District- Madhubani

... .. Petitioner/s

Versus

- 1. State of Bihar
- 2. Lallan Kumar Mishra S/o Lakshman Mishra, Resident of village- Behta, P.S. Benipatti, District- Madhubani

... .. Opposite Party/s

Appearance :
(In CRIMINAL MISCELLANEOUS No. 31347 of 2015)
For the Petitioner/s : Mr. Ratanakar Jha, Advocate
For the Opposite Party/s : Mr. Abhay Kumar, APP
(In CRIMINAL MISCELLANEOUS No. 4642 of 2016)
For the Petitioner/s : Mr. Ratanakar Jha, Advocate
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 06-05-2024

CRIMINAL MISCELLANEOUS No.31347 of 2015

Heard learned counsel for the petitioner and



learned counsel for the respondents.

2. The present quashing petition has been preferred to quash the order dated 08.05.2015 passed in C.R. No. 90/75 of 2015, where learned Judicial Magistrate, Ist Class Madhubani took cognizance for the offences punishable under Sections 420 of the Indian Penal Code read with Section 138 of the Negotiable Instrument Act (in short Act) against the petitioner.

3. Opposite Party No. 2 joins the present proceedings.

4. From the crux of complaint petition it appears that complainant filed a complaint case on 29-01-2015 in the court of learned Chief Judicial Magistrate, Madhubani stating therein that he has a shop of Hardware, cement etc. situated at Benipatti Bazar, where the date of occurrence i.e. on 05-08-2014 accused/petitioners came to his house and requested him to lend iron rod and cement for which they had no money at present and due amount shall be paid within a



month. At the request of accused complainant, complainant agreed to give the goods on credit like kamdhenu iron rod worth Rs. 44,000/-, four hundred bags cement total amounting to Rs. 2,87,013/- and accordingly the accused persons promised to pay the due amount within a month. It is further alleged that when complainant demanded due amount after a month accused person delayed the matter either on one or another pretext for a long and finally on 12-09-2014 in presence of accused no.2 accused no.1 issued a cheque for Rs. 2,87,013/- of ICICI Bank, Darbhanga in favour of Mishra Hardware and the cheque was presented for encashment. Cheque was returned on account of insufficiency of balance. It is further alleged that after returning the cheque from the bank complainant sent a registered legal notice on 11-11-2014 but no reply was made to the aforesaid notice. Thereafter again a reminder to the earlier legal notice was sent but no reply was made. On 01-01-2015 the accused persons saw the



complainant in Benipatti market and asked for payment of due amount, where they became angry and said that they will not pay a penny and assaulted. Thereafter accused no.1 took a shawl of Rs. 1500/- and accused no.2 took 0.8 grams of gold ring of Rs. 1500/- along with automatic titan watch of Rs. 1500/-. After the aforesaid occurrence, complainant made a complaint, firstly to the Superintendent of Police, where no action was taken and forced him to file the present complaint.

5. Learned counsel for the petitioner submitted that impugned order of cognizance appears bad in eyes of law only for the reason that mandatory provision of Section 142 of the Act not appears to be followed before filing complaint in the present case and said facts were completely ignored by trial court while taking cognizance. It is submitted that cheque dated 12.09.2014 upon presentation before the concerned bank was dishonored in want of insufficient fund on 15.10.2014. The fact of dishonored cheque was brought



to the notice of drawer, through notice dated 11.11.2014 and also through, second notice dated on 01.12.2014. It is pointed out that postal receipt of earlier notice dated 11.11.2014 was not brought on record, which simply suggests that no such notice was issued to the petitioner. It is further pointed out that the complaint in this case was filed on 20.01.2015 i.e., after about 50 days of issuing the notice. It is submitted that for issuance of notices and filing of present complaint petition was made without following mandatory time period as provided under Section 142 of the Act and as such impugned order of cognizance is bad in eyes of law and thus same is fit to quashed and set aside.

6. While travelling over the argument learned counsel submitted that as there is no such allegation as to cheat complainant from the very inception cognizance under Section 420 of the IPC also appears bad in the eye of law. In support of the submissions learned counsel relied upon the report of Hon'ble Supreme Court



in the case of **G. Sagar Suri and Another Vs. State of U.P. and Others** as reported in **(2000) 2 SCC 636**. Learned counsel also relied upon the report of Hon'ble Supreme Court in the case of **State of Haryana and Others vs. Bhajan Lal and Others** reported in **1992 Supp (1) Supreme Court Cases 335**.

7. Learned counsel appearing on behalf of O.P. No. 2 submitted that matter stands compromised between the parties but still Rs. 30,000/- is pending with petitioner. It is submitted that as petitioner entered into compromise, now she cannot deny the liability by taking shelter of Section 142 of the Act.

8. It would be apposite at this stage to reproduce Section 142 of the Negotiable Instrument Act, for the sake of better understanding of legal position of this case:-

142. Cognizance of offences.

—[(1)] Notwithstanding anything contained in the Code of Criminal



Procedure, 1973 (2 of 1974),—

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.].

[(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction, —

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or



holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

9. It would also be apposite to reproduce the paragraph no. 102 **Bhajan Lal Case (supra)** which reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of



any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first informant report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of



the same do not disclose the commission of nay offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.



(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

10. In view of aforesaid factual and legal discussions, it appears that the mandatory compliance of provisions of Section 142 of the Act not appears followed in the present case and without following the same cognizance was taken by learned Jurisdictional Magistrate.

11. Learned counsel for O.P. No. 2 also supported the factum of compromise. There is no, prima facie, material available as to attract the allegation of cheating case of petitioner appears covered under the guidelines as mentioned in para no. 6 of **Bhajan Lal Case (supra) & G. Sagar Suri Case (supra)**. Accordingly, impugned order of cognizance dated



08.05.2015 with all its consequential proceedings, *qua*, petitioner arising thereof as passed in C.R. No. 90/75 of 2015, pending before learned Judicial Magistrate, Ist Class Madhubani is hereby quashed and set aside.

12. The application stands allowed.

13. Let a copy of this judgment be sent to learned Trial Court, immediately.

CRIMINAL MISCELLANEOUS No. 4642 of 2016

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present quashing petition has been preferred to quash the order dated 08.05.2015 passed in C.R. No. 90/75 of 2015, where learned Judicial Magistrate, Ist Class Madhubani took cognizance for the offences punishable under Sections 420 of the Indian Penal Code read with Section 138 of the Negotiable Instrument Act (in short Act) against the petitioner.

3. Opposite Party No. 2 joins the present



proceedings.

4. From the crux of complaint petition it appears that complainant filed a complaint case on 29-01-2015 in the court of learned Chief Judicial Magistrate, Madhubani stating therein that he has a shop of Hardware, cement etc. situated at Benipatti Bazar, where the date of occurrence i.e. on 05-08-2014 accused/petitioners came to his house and requested him to lend iron rod and cement for which they had no money at present and due amount shall be paid within a month. At the request of accused complainant, complainant agreed to give the goods on credit like kamdhenu iron rod worth Rs. 44,000/-, four hundred bags cement total amounting to Rs. 2,87,013/- and accordingly the accused persons promised to pay the due amount within a month. It is further alleged that when complainant demanded due amount after a month accused person delayed the matter either on one or another pretext for a long and finally on 12-09-2014 in



presence of accused no.2 accused no.1 issued a cheque for Rs. 2,87,013/- of ICICI Bank, Darbhanga in favour of Mishra Hardware and the cheque was presented for encashment. Cheque was returned on account of insufficiency of balance. It is further alleged that after returning the cheque from the bank complainant sent a registered legal notice on 11-11-2014 but no reply was made to the aforesaid notice. Thereafter again a reminder to the earlier legal notice was sent but no reply was made. On 01-01-2015 the accused persons saw the complainant in Benipatti market and asked for payment of due amount, where they became angry and said that they will not pay a penny and assaulted. Thereafter accused no.1 took a shawl of Rs. 1500/- and accused no.2 took 0.8 grams of gold ring of Rs. 1500/- along with automatic titan watch of Rs. 1500/-. After the aforesaid occurrence, complainant made a complaint, firstly to the Superintendent of Police, where no action was taken and forced him to file the present complaint



case.

5. Learned counsel for the petitioner submitted that impugned order of cognizance appears bad in eyes of law only for the reason that mandatory provision of Section 142 of the Act not appears to be followed before filing complaint in the present case, and said facts were completely ignored by trial court while taking cognizance. It is further submitted that cheque in issue was not drawn by the petitioner and his implication appears in the present case only being husband of Khanchan Jha, who drawn the cheque. It is submitted that cheque dated 12.09.2014 upon presentation before the concerned bank was dishonored in want of insufficient fund on 15.10.2014. The fact of dishonored cheque was brought to the notice of drawer, through notice dated 11.11.2014 and also through second notice dated 01.12.2014. It is pointed out that postal receipt of earlier notice dated 11.11.2014 was not brought on record, which simply suggests that no such notice was



issued to the petitioner. It is further pointed out that the complaint in this case was filed on 20.01.2015 i.e., after about 50 days of issuing the notice. It is submitted that for issuance of notices and filing of present complaint petition was made without following mandatory time period as provided under Section 142 of the Act and as such impugned order of cognizance is bad in eyes of law and thus same is fit to be quashed and set aside.

6. While travelling over the argument learned counsel submitted that as there is no such allegation as to cheat complainant from the very inception cognizance under Section 420 of the IPC also appears bad in the eye of law. In support of the submissions learned counsel relied upon the report of Hon'ble Supreme Court in the case of **G. Sagar Suri and Another Vs. State of U.P. and Others** as reported in **(2000) 2 SCC 636**. Learned counsel also relied upon the report of Hon'ble Supreme Court in the case of **State of Haryana and Others vs. Bhajan Lal and Others**



reported in 1992 Supp (1) Supreme Court Cases**335.**

7. Learned counsel appearing on behalf of O.P. No. 2 submitted that matter stands compromised between the parties but still Rs. 30,000/- is pending with petitioner. It is submitted that as petitioner entered into compromise, now she cannot deny the liability by taking shelter of Section 142 of the Act.

8. It would be apposite at this stage to reproduce Section 142 of the Negotiable Instrument Act, for the sake of better understanding of legal position of this case:-

142. Cognizance of offences.

—[(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;



(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.].

[(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction, —

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account,



is situated.

9. It would also be apposite to reproduce the paragraph no. 102 **Bhajan Lal Case (supra)** which reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be



exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first informant report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is



permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”



10. In view of aforesaid factual and legal discussions, it appears that the mandatory compliance of provisions of Section 142 of the Act not appears followed in the present case and without following the same cognizance was taken by learned Jurisdictional Magistrate.

11. Learned counsel for O.P. No. 2 also support the factum of compromise. There is no, prima facie, material available as to attract the allegation of cheating case of petitioner appears covered under the guidelines as mentioned in para no. 6 of **Bhajan Lal case (supra) & G. Sagar Suri case (supra)**. Accordingly, impugned order of cognizance dated 08.05.2015 with all its consequential proceedings, *qua*, petitioner arising thereof as passed in C.R. No. 90/75 of 2015, pending before learned Judicial Magistrate, Ist Class Madhubani is hereby quashed and set aside.

12. The application stands allowed.



13. Let a copy of this judgment be sent to
learned Trial Court, immediately.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	10.05.2024
Transmission Date	10.05.2024

