

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.620 of 2022**

Arising Out of PS. Case No.-269 Year-2018 Thana- SAMASTIPUR District- Samastipur

Manoj Kumar Son of Late Om Prakash, Resident of RZ-B71, Street No.- 5,  
Raj Nagar Part - 1, Palam Colony New Delhi, P.S.- Palam Village, District -  
New Delhi.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Department Home Bihar Patna. Bihar
2. The Director General of Police Bihar, Patna. Bihar
3. The Superintendent of Police, Samastipur. Bihar
4. The Sub-Divisional Police Officer, Town Samastipur Bihar
5. The Officer In-Charge Town Thana, Samastipur Bihar
6. Vinod Kumar Sinha Son of Late Mahesh Prasad Sinha R/o- Maa Vaishnav Galla Bhandar, Ghosh Lane Ward No.- 17, P.S.- Town Thana, Samastipur, District - Samastipur.

... .. Respondent/s

**Appearance :**

|                      |   |                                  |
|----------------------|---|----------------------------------|
| For the Petitioner/s | : | Mr. Saroj Kumar Sharma, Advocate |
| For the State        | : | Mr. Suman Kumar Jha, AC to AAG-3 |
| For the Resp. No.6   | : | None                             |

**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR**  
**ORAL JUDGMENT**

**Date : 23-06-2026**

The present writ petition has been preferred by the petitioner for quashing of the F.I.R. bearing Samastipur (Town) P.S. Case No. 269 of 2018 registered for the offence punishable under Section 138 of Negotiable Instrument Act and Sections 420, 406, 467, 468, 471 and 506 of the Indian Penal Code against seven accused persons including the petitioner, who all are Directors of S.B.O. Export Private Limited Company, who allegedly issued the cheque of Rs.4,96,897/- in favor of the



petitioner, but the same was dishonored.

2. As per allegation, the informant had supplied some mustered oil and edible items on 18.06.2018 to S.B.O. Export Private Limited Company and thereafter, one cheque in question was issued by the petitioner and co-accused/Sunil Garg. However, when the same was presented in the bank for encashment on 3<sup>rd</sup> July, 2018, the cheque was dishonored on account of insufficient fund. Despite telephonic talk to the Directors/accused, the petitioner could not get satisfactory response. Thereafter, legal notice was sent by an Advocate on behalf of the informant. However, for reasons of reassurance, the cheque was represented on 23.08.2018 to the Bank for encashment, but again it was not encashed and again, legal notice was sent and there was telephonic talk, but the informant got threat to his life and he was directed not to re-talk to them.

3. Heard learned counsel for the petitioner and learned counsel for the State. However, nobody is present on behalf of the complainant who is Respondent No.6 herein, despite appearance of attendance by his counsel.

4. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in this case. He further submits that as per the allegation, no Section of



I.P.C. will be applicable. For applicability of Section 420 of IPC, there must be allegation of *mens rea* since inception in the whole transaction, but there is no allegation that the accused persons had dishonest intention/*mens rea* to cheat the petitioner and there is no question of application of Section 406 IPC for want of any entrustment. Even Sections 467, 468 and 471 of the Indian Penal Code will not apply, because there is no allegation of any forgery and even the allegation of threat is frivolous with intent to make the allegation serious.

5. He further submits that as per allegation, the company is the main accused, but the company has not been impleaded as accused and without the company being accused, no Director of the company can be prosecuted. He also refers to the judgment of Hon'ble Supreme Court passed in **Aneeta Hada & Ors. Vs. M/s. Godfather Travels & Tours Pvt. Ltd.** as reported in **2012 (5) SCC 661**.

6. He also submits that the petitioner had already resigned from the company as a Director on 10.04.2018. He has annexed a copy of the Form No. DIR-12 showing that he had resigned w.e.f. 10.04.2018.

7. He further submits that as per Section 142 of N.I. Act, in case of offence under Section 138 of N.I. Act, only



complaint is required to be lodged by the victim and as such, this FIR is not maintainable and, therefore, is liable to be quashed.

**8.** However, learned counsel for the State defends the FIR submitting that the FIR is maintainable and investigation is required to be done in this case. He also argues that the cheque dated 18.06.2018 is signed by the petitioner, so the claim of the petitioner that he had resigned long back in April, 2018, is false.

**9.** I considered the submissions advanced by both the parties and perused the material on record.

**10.** I find that for want of any allegation of *mens rea* since inception, Section 420 of the Indian Penal Code is not applicable. Even Section 406 of the Indian Penal Code is not attracted for want of any allegation of entrustment of any money to the petitioner and refusal to pay it back on demand. All other Sections regarding forgery are also not applicable, because there is no allegation of any forgery of any document. As far as Section 506 of the Indian Penal Code is concerned, it is frivolous.

**11.** I also find that as per Section 142 of Negotiable Instrument Act, in case of offence under Section 138 of N.I. Act, only complaint is maintainable and no F.I.R. can be lodged for



offence committed under Section 138 of Negotiable Instrument Act.

12. Moreover, no Director of any company without the company being accused can be prosecuted. As such, at most as per the allegation, Section 138 of Negotiable Instrument Act may be applicable for which the informant or Respondent No.6 has remedy by way of filing criminal complaint as per Negotiable Instrument Act.

13. Hence, the present petition is allowed quashing the F.I.R. bearing Samastipur (Town) P.S. Case No. 269 of 2018, giving liberty to the Respondent No.6 to pursue remedy of complaint under Section Negotiable Instrument Act.

(Jitendra Kumar, J.)

ravishankar/-

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