

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59669 of 2024

Arising Out of PS. Case No.-1023 Year-2017 Thana- PATNA COMPLAINT CASE District-
Patna

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Hemant Kumar Das S/O Late Sri Awadhesh Kumar Das R/O Flat No. 504,
White House Apartment, Budh Marg, P.S.- Kotwali, Distt.- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. M/S K.G. Ventures Having its office at M/S. Elphinstone Picture Palace East
Gandhi Maidan, P.S- Gandhi Maidan, Patna through its Manager Sharad
Gupta, S/O Late Vijay Kumar Gupta, R/O Kannaul Road, Mithapur, P.S-
Jakkanpur, P.O- G.P.O, Distt.- Patna, Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Nikhil Kumar Agrawal, Advocate Ms. Aditi Hansaria, Advocate Mr. Keshav Bhardwaj, Advocate
For the State	:	Md. Aslam Ansari, APP
For the O.P. No. 2	:	None

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CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT

Date : 18-08-2026

Heard Mr. Nikhil Kumar Agrawal assisted by Ms.
Aditi Hansaria, learned counsels for the petitioner and learned
APP for the State.

2. However, despite issuance of notice to the
opposite party no. 2 and the same also having been received, the
opposite party no. 2 chose not to appear in the present
proceedings.

3. By way of the present application, a prayer has
been made for quashing the order dated 04.07.2024 passed by



the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 1023 of 2017 whereby cognizance was taken for the offence under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'N.I. Act') and summons have been issued thereunder.

4. The short facts of the case giving rise to the present complaint is that the complainant paid Rs. 13,50,000/- in advance to the petitioner for supply of generator, but the petitioner failed to deliver it and misappropriated the money. It is further alleged that during subsequent bail and settlement proceedings, the petitioner issued a cheque of Rs. 50,000/- for agreed compensation and he then instructed the bank to stop payment. The cheque bounced and the petitioner failed to pay despite receiving a legal notice, which showed a fraudulent intent to cheat.

5. Learned counsel for the petitioner has submitted that the present case has been filed merely to harass and malign the image of the petitioner and the said complaint was filed in the year 2017 but the same was kept pending for a period of almost seven years and it is only in the year 2024 that the complainant's S.A. was recorded on 13.03.2024. It is further submitted that the petitioner was a distributor/supplier of the



generator, which was to be supplied to the complainant and was not the manufacturer of the same and as a matter of fact, he was unable to make the said delivery, on account of the same not being handed over by the concerned company to the petitioner. For the said violation of the agreement, the opposite party no. 2 had filed a First Information Report (hereinafter referred to as the 'FIR') bearing Gandhi Maidan P.S. Case No. 277 of 2013 against the petitioner under Section 406 and 420 of the IPC with the allegation that despite payment of an amount of Rs. 13,50,000/- by the opposite party no. 2 to the petitioner, the generator was not supplied within the stipulated time.

6. It has next been submitted on behalf of the petitioner that a criminal writ bearing Cr.W.J.C. No. 924 of 2013 was filed before this Court for quashing of the said FIR dated 10.07.2013 and the matter between the parties was settled during the pendency of the said writ petition. It was agreed between the parties that the amount of Rs. 13,50,000/- would be paid by the petitioner to the opposite party no. 2 in installments and on account of the said settlement, the Cr.W.J.C. was disposed of by an order dated 08.05.2014 (Annexure P/5) directing the concerned Court to monitor the said transactions. On 30.09.2016, an agreement was signed by the parties,



whereby the parties had agreed upon the refund of the amount of Rs. 13,50,000/- by the petitioner to the opposite party no. 2 and an additional amount of Rs. 1,35,000/- as full and final compensation to the complainant. The terms and mode of payment was also decided to be paid in six installments, the details of which were elucidated in the said compromise petition dated 30.09.2016 (Annexure P/6).

7. Learned counsel for the petitioner has emphatically contended that the compensation amount of Rs. 1,35,000/- was already paid to the opposite party no. 2 on 04.12.2015 and the receipt of the same was duly accepted by the opposite party no. 2, which fact forms part of the compromise agreement dated 30.09.2016. In paragraph 23 of the present application, the entire details of the amount, which was paid by the petitioner to the opposite party no. 2, has been described and the last installment of Rs. 3,00,000/- was duly paid vide cheque dated 10.11.2017 and the said cheque was handed over to the opposite party no. 2 on 09.10.2017.

8. In the background of these facts comes the issue of non-payment of a cheque of Rs. 50,000/- bearing Cheque No. 591592, which is the subject matter of the present complaint case. It has been submitted that during the process of payment,



one cheque bearing 591591 dated 30.12.2016 of an amount of Rs. 2,50,000/- was given towards the third installment and another post-dated cheque of Rs. 50,000/- bearing Cheque No. 591592 was given towards advance part payment of the fourth installment, which was to be paid on or before 31.03.2017. The attention of this Court has also been invited to the fact that this cheque of Rs. 50,000/- is in direct sequence of the earlier cheque of Rs. 2,50,000/- and it has been reiterated with all emphasis and command that the same was given only as an advance towards payment of the fourth installment and not for the purposes of being deposited. However, the next installment of Rs. 3,00,000/- was paid by the petitioner to the opposite party no. 2 by RTGS, which included the amount of the cheque of Rs. 50,000/-, which was allegedly misplaced by the opposite party no. 2 and as such, the said cheque becomes totally irrelevant and redundant.

9. Further submission on behalf of the petitioner is that, it is at this stage, that a dishonest intention crept in at the end of the opposite party no. 2 and the said cheque was misused with *mala fide* reasons to harass the present petitioner as he deposited the said Cheque No. 591592 on 07.02.2017, which was returned unpaid for reasons that the petitioner had earlier



requested the bank to stop payment of the said cheque in the background of the entire facts. It has also been pointed out that the *mala fide* of the opposite party no. 2 would be further apparent in the wake of the fact that the opposite party no. 2 was continuously receiving the amount fixed in installments as per the compromise, even six months after the filing of the present complaint case without making any protest before the concerned Court, which was monitoring the transactions. It does not stand to reason as to why this fact of bouncing of cheque of Rs. 50,000/- was never brought to the notice of the Court concerned at an earlier point of time when installments were still being paid to the opposite party no. 2. The entire story of the payment of Rs. 50,000/- as further compensation has no legs to stand and the compromise agreement does not find any mention of the said amount of Rs. 50,000/-, rather there is a mention about a compensation amount of Rs. 1,35,000/-, which was already received by him. As such, the story of Rs. 50,000/- to be paid as compensation is totally baseless and an afterthought.

10. On the basis of such submissions, learned counsel for the petitioner has strongly contended that the cheque in question was not given as against any legally enforceable debt and was rather given only by way of security in advance



for payment of the next installment and since the next installment was paid by way of RTGS including the cheque amount, the argument gets further strengthened that the cheque in question was not against any enforceable debt and would as such, not fall within the ambit of the offence under Section 138 of the Negotiable Instrument Act.

11. Moreover, the dispute between the parties is purely commercial in nature relating to an accounting dispute, which stood settled between the parties and the conduct of the opposite party no. 2 is deplorable to the extent that he has misused the concerned cheque given in good faith and he also kept the complaint pending for a period of almost seven years before his statement on S.A. was recorded. It is thus, submitted that the entire prosecution against the petitioner is totally a motivated one, making out no offence against the petitioner much less, the one as alleged and has been filed for the sole motive to cause undue harassment to the petitioner, as such, it is fit to be quashed.

12. As recorded earlier, no one has appeared on behalf of the opposite party no. 2 to contest the present application, however, this Court has appreciated the arguments advanced on behalf of the petitioner and has also gone through



the entire materials on record.

13. It appears from perusal of the complaint itself that it mentions about a compromise dated 30.09.2016 and in paragraph 6 of the said complaint, a story has been introduced that it was the accused persons, who got the clause of payment of Rs. 50,000/- removed from the compromise by undertaking to make the said payment. However, this allegation does not get substantiated by any other fact and rather, it remains a vague and a bald allegation, inasmuch as, the reference of this payment as a compensation neither features in the compromise deed nor in the order of bail, which was granted to the petitioner and it was also never brought before the concerned Court, which was monitoring the entire transaction of payment of installments.

14. This Court has also gone through the terms of compromise having been entered between the parties, and has also perused the details of payment, which was made to the opposite party no. 2 in terms of the said compromise. Upon perusal of the same, the entire story of cheque of Rs. 50,000/- does not appear to this Court to be one against any legally enforceable debt rather, so far as compensation is concerned, the compromise dated 30.09.2016 makes only a clear mention of an online payment of Rs. 1,35,000/- as compensation, which was



duly accepted by the opposite party no. 2.

15. This Court has also been taken through the order dated 30.09.2016, passed by the Court of learned A.C.J.M., Patna whereby bail was granted to the petitioner and the said order also mentions the entire mode of payment in installments and also makes a mention of the compensation amount of Rs. 1,35,000/- but there is no whisper of any amount of Rs. 50,000/- to be paid to the opposite party no. 2 by way of a cheque and this order dated 30.09.2016 was never subjected to any challenge as the dispute between the parties was set to rest with the agreement of payment of the amount in six installments, which nowhere included any payment of Rs. 50,000/-. It is also a fact that on account of settlement between the parties, the earlier case bearing Gandhi Maidan P.S. Case No. 277 of 2013 also stood quashed by way of order dated 03.04.2023 passed by a co-ordinate Bench of this Court (Annexure P/9).

16. The primary issue in question, as would be evident from the above discussion, concerns the cheque in question of an amount of Rs. 50,000/-, which was subsequently presented by the complainant company and the very fact that a reference of it was not made in any of the earlier documents including the compromise, this Court is of the considered view



that the same could at best be said to be in nature of a security cheque not encashable for any existing legally enforceable debt or liability. Reliance in this regard is placed on the case of **Sripati Singh (Since deceased) through his son vs. State of Jharkhand and Anr.** reported in **(2022) 18 SCC 614**. Paragraph nos. 21 and 22 of the said judgment are quoted hereunder:-

“21. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. “Security” in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified time-frame and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of the NI Act would flow.

22. When a cheque is issued and is treated as “security” towards repayment of an amount with a time period being stipulated for repayment, all that



it ensures is that such cheque which is issued as “security” cannot be presented prior to the loan or the installment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented.....”

17. It is true that at the stage of cognizance, the Court is not to go into the merits of the allegations or accusations, but it has been held in the case of **Harshendra Kumar D. vs. Rebatilata Koley and Ors.** reported in (2011) 3 SCC 351 that in an appropriate case if, on the face of the facts and documents placed, which are beyond suspicion or doubt, the accusations against the accused cannot stand, it would be a travesty of justice if the accused is relegated to trial and if he is asked to prove his defence before the trial Court. In such matters, for securing the ends of justice and for preventing an abuse of the process of the Court, the materials having significant bearing on the matter at the *prima facie* stage, can be looked into.

18. In such view of the matter, this Court has no hesitation in holding that the allegations made in the complaint do not make out a case under Section 138 of the Negotiable



Instruments Act as the cheque in question was for a specific purpose, which could not have been encashed against any subsequently arising liability, as it was not against any legally enforceable debt. In the present case, it is apparent on the face of record that all due payments were already received by the O.P. No. 2, by way of installments in terms of compromise deed, including the compensation amount, as such there is no question of existence of any debt or liability.

19. In such view of the matter, the order dated 04.07.2024 passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 1023 of 2017, whereby cognizance was taken against the petitioner and summons were issued, are hereby quashed.

20. Accordingly, the present application stands allowed.

(Soni Shrivastava, J)

priyanka/-

AFR/NAFR	AFR
CAV DATE	N/A
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