

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL MISCELLANEOUS No.12872 of 2023**

Arising Out of PS. Case No.-969 Year-2019 Thana- SAMASTIPUR COMPLAINT CASE  
District- Samastipur

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Vikash Kumar S/o Arun Sah R/o Ambedkar Nagar, Near House of Talim  
Miyam, Ward no. 22, P.S.- Nagar Samastipur, Distt- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Vijay Sah S/o Jung Bahadur Sah, R/o- Bahadurpur, P.S.- Town Samastipur,  
Distt- Samastipur.

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr.Deepak Kumar, Advocate  
For the Opposite Party/s : Mr.Ashok Kumar Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA  
ORAL JUDGMENT**

**Date : 24-04-2025**

Heard learned counsel appearing on behalf of the parties.

2. At the outset, the matter is pending for removal of defect(s) since last three years, which has not been removed by learned counsel appearing for petitioner, accordingly same be ignored for the present, in view of his request, as he is ready to argue on the point of admission.

3. The present application has been filed for quashing of cognizance order dated 29.07.2019 in Complaint Case bearing CR. (P) Case No. 969 of 2019 passed by learned Judicial Magistrate, 2<sup>nd</sup> Class, Samastipur for the offences punishable under Section



138 of the N.I. Act.

4. It appears out of submission of learned counsel for the parties and upon perusal of record that learned JMFC, Samastipur vide its order dated 22.04.2022 directed petitioner to deposit Rs. 20% of the instrument amount i.e. Rs. 10 lacs in view of legal provision as available under Section 143A of the Negotiable Instrument Act, 1881 against which petitioner preferred revision before the Court of Additional District and Sessions Judge-IX, Samastipur, where the impugned order to deposit Rs. 20% of instrument amount was upheld by dismissing the revision petition preferred by petitioner bearing Cr. Revision No. 395 of 2022 vide its order dated 14.12.2022.

5. Hence the present quashing petition.

6. It would be apposite to reproduce impugned order dated 22.04.2022, which reads as under:-

“परिवादी के विद्वान अधिवक्ता निवदेन करते हैं, कि यह वाद एन0आई0 एक्ट की धारा 138 के अन्तर्गत चल रहा है जिसमें अभियुक्त विकाश कुमार पर 10 लाख रुपये को लेने के बाद उक्त राशि को वापस नहीं करने का अभियोग है। अभियुक्त को वर्तमान में कुल बकाया राशि में से 25 प्रतिशत रुपया जो 2,50,000 रुपया बनता है तत्काल लौटाने का आदेश दिया जाय। यदि उक्त राशि को अभियुक्त द्वारा नहीं लौटाया जाता है तो प्रार्थी को भारी क्षति होगी।

बचाव पक्ष के विद्वान अधिवक्ता के द्वारा इसके प्रत्युत्तर में कहा गया है, कि परिवादी द्वारा दिया गया आवेदन न्याय के विपरीत तथा गलत तथ्यों पर आधारित है। इसलिए परिवादी का आवेदन खारिज किया जाय।

सुना गया तथा अभिलेख का अवलोकन किया गया, इस वाद में दिनांक 29/07/19 को अभियुक्त विकाश कुमार



के खिलाफ एनआई0 एक्ट की धारा 138 के अन्तर्गत प्रथम दृष्टया मामला बना। अभियुक्त पर परिवादी के 10 लाख रुपया को लेकर वापस नहीं करने का अभियोग चल रहा है। वर्तमान में उपरोक्त अभियुक्त की उपस्थिति पूरी हो चुकी है। एनआई0 एक्ट का नियम है, कि पहली उपस्थिति में कुल देय राशि का 20 प्रतिशत जमा करना होता है। अतः उपरोक्त तथ्यों के आलोक में अभियुक्त को निर्देश दिया जाता है, कि वह कुल देय राशि का 20 प्रतिशत जो 2,00,000 रुपया बनता है परिवादी को अगली तिथि पर भुगतान करे। तदनुसार इस आवेदन को निस्तारित किया जाता है।”

7. It would be further apposite to reproduce revisional order dated 14.12.2022, which reads as under:-

*“1. This Criminal Revision is directed against the order dated 22.04.2022 passed by learned Judicial Magistrate, Samastipur in C.R. case no. 969/2019 by which the Id. Judicial Magistrate, Samastipur directed the petitioner to deposit 20% of Rs. 10 lakh i.e., Rs. 2 lakh in the case registered u/s-138 of N.I Act.*

*2. It was stated by the petitioner (revisionist) that the Impugned order dated 22.04.2022 passed by Id. Judicial Magistrate, Samastipur was bad in law and wrong on facts and was passed without application of judicial mind. It was further stated by the petitioner that Id. Court failed to appreciate this fact that the petitioner had filed a criminal case against the complainant who forcefully took the said cheque from the petitioner and so it was prayed to allow this Criminal Revision and set aside the impugned order dt. 22.04.2022 passed in C.R Case No-969/2019.*

*3. The Id. A.P.P on behalf of opposite-1st party and Id. Counsel of O.P-2nd party submitted during the course of hearing that there was no irregularity in the order dated 22.04.2022 passed by the learned Judicial Magistrate, Samastipur in C.R No-969/2019 and so this*



*Criminal Revision was liable to be dismissed.*

*4. Heard learned counsels of both sides and perused the case record of C.R. Case No-969/2019. From perusal of the case record of C.R Case No-969/2019, it appears that the complainant (O.P 2nd party) filed this complaint Case against the petitioner u/s-138 N.I Act stating that the - Complainant gave Rs. 10 lakh to the petitioner as the petitioner was in need of money for his business and the petitioner later on gave a cheque of Rs. 10 lakh to the complainant in lieu of returning the money but the said cheque was dishonoured due to insufficient fund and after sending the pleader's notice, the complainant filed complaint case against the petitioner and the Id. Court passed summoning order on 29.07.2019 after considering the materials available on the case records and held that a prima-facie case u/s-138 N.I Act was made out against the petitioner. Accordingly, after explaining the accusation to the accused petitioner the Id. Court vide order dated 22.04.2022 directed the petitioner to deposit 20% of the total amount of Rs. 10 lakh i.e., Rs. 2 lakh in favour of the complainant. Evidently, as per the provisions laid down under N.I Act, 20% amount of the total cheque is to be deposited by the petitioner as interim compensation. Hence, in light of the provisions laid down under amended N.I Act, the Id. Court directed the petitioner to deposit 20% of the amount of the total cheque which comes out to be Rs. 2 lakh.*

*5. Therefore, there seems no illegality or irregularity in the order dated 22.04.2022 passed by Id. Judicial Magistrate, Samastipur in C.R. Case No-969/2019 and so, the present Criminal Revision is hereby **dismissed**. Let a copy of this order along with the original case record be sent to the Id. Court concerned."*

8. In view of aforesaid facts and circumstances, the first



impugned order dated 22.04.2022, in which it was directed to pay 20% of instrument amount of Rs. 10 lacs i.e. Rs. 2 lacs appears in view of statutory provisions being interim compensation as available under Section 143A of Negotiable Instrument Act, 1881, which was rightly declined by learned Sessions Judge through Cr. Revision No. 395 of 2022 dated 14.12.2022 discussed aforesaid, as there was no illegality.

9. In view of aforesaid, the present petition appears devoid of any merit, rather a deliberate attempt to delay the payment as directed by learned J.M.F.C. cum Additional Munsif, Samstipur vide its order dated 22.04.2022.

10. Accordingly, the present petition stands dismissed at admission stage itself.

11. Let copy of this order be sent to the trial court, without delay.

**(Chandra Shekhar Jha, J)**

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.04.2025
Transmission Date	25.04.2025

