

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27813 of 2015**

Arising Out of PS. Case No.-2549 Year-2013 Thana- MUZZFARPUR COMPLAINT CASE
District- Muzaffarpur

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Krishna Mohan Kumar Son of Late Paras Nath Singh resident of village -
Chandrapatti, P.S. Kudhani, District – Muzaffarpur

... .. Petitioner/s

Versus

1. State Of Bihar
2. Vivek Kumar Son of Ranjeet Kumar Singh resident of Mohalla - Vishwanath Bhawan, Chandralok Chowk, Naya Tola, P.S. Kazimohammadpur, District - Muzaffarpur

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mrs. Bela Singh, Advocate Mr. Avinash Kumar Pandey, Advocate
For the State	:	Mr. Nawal Kishore Pd., APP
For the Opposite Party	:	Mr. Ravindra Kumar Shukla, Advocate Mr. R.R. Shukla, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

C.A.V. JUDGMENT

Date : 28-03-2024

Heard Mrs. Bela Singh, learned Counsel for
the petitioner and Mr. Ravindra Kumar Shukla, learned Counsel
appearing for the opposite party.

2. The present petition has been preferred for
the quashing of the order dated 08.09.2014 passed by the
learned Judicial Magistrate-1st Class, Muzaffarpur in
connection with Trial No. 4870 of 2015 (arising out of
Complaint Case No. 2549 of 2013) by which the cognizance has



been taken under section 138 of the Negotiable Instrument Act (henceforth for short 'the N.I. Act').

3. The facts of the case leading to the present petition is/are as follows:-

4. The opposite party no. 2, Vivek Kumar filed complaint case alleging that:

(i) the petitioner came to his house on 10.03.2013 and made a request for a loan amount of Rs. 8 lakhs. As they knew each other, the payment was made on 15.03.2013 and the petitioner assured to return the same by 15.06.2013.

(ii) as despite the said period crossed, no payment made, he made a request on 26.06.2013 which followed the issuance of Cheque No. 233717 dated 26.06.2013. However, upon production of the cheque before the Bank of Maharaja, Muzaffarpur, it was dishonoured for want of insufficient fund.

(iii) having received the information from the Bank on 28.06.2013, a legal notice was sent on 26.07.2013 and as there was no response, the complaint.

(iv) this led to filing of the Complaint Case No. 2549 of 2013 in which after enquiry under



section 202 of the Cr.P.C., the cognizance has been taken under section 138 of 'the N.I. Act' on 08.09.2014.

5. Aggrieved by the said order dated 08.09.2024, the present petition.

6. Mrs. Bela Singh, learned Counsel for the petitioner submits that the dates in the case are not in dispute but are important to be recorded which are as follows:-

- (i) on 26.06.2013, the cheque was issued;
- (ii) the complainant received information from the Bank regarding the non-clearance due to insufficient fund came on 28.06.2013;
- (iii) legal notice was sent by the complainant to the petitioner on 26.07.2013;
- (iv) the complaint was filed against him on 17.09.2013.

7. It is her submission that so far as the issuance of cheque of Rs. 8 lakhs is concerned, the same was stolen by the opposite party no. 2 as he used to come to petitioner's home and for that he lodged Muzaffarpur Sadar P.S. Case No. 287 of 2013 on 11.08.2013 under sections 406, 420 and 379 of the Indian Penal Code against the complainant (Annexure-3 to the supplementary affidavit). She submits that in



the said case, charge sheet was submitted against the opposite party no. 2 vide charge sheet no. 295 of 2016 dated 14.04.2016 under section 380 of the Indian Penal Code.

8. The further submission is that after FIR was lodged on 11.08.2013, to save his skin, the present complaint has been filed. Learned Counsel has taken this Court to section 142 of 'the N.I. Act' which read as follows:-

“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 of, 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. Learned Counsel submits that admittedly, as per section 142(b), the complaint has to be made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138 of ‘the N.I. Act’.

10. The submission put forward is that although there is a proviso to sub-section (b) allowing the Court to take cognizance after the prescribed period, if the complainant satisfies the Court showing sufficient cause for not making complaint within such period, neither the complaint shows the reason for the delay nor the order taking cognizance shows the satisfaction of the learned Magistrate and in that background, the case is fit to be allowed.



11. Learned Counsel for the complainant relied on a judgment of Patna High Court in **Jairam Sharma son of late Devi Singh & Anr. vs. The State of Bihar & Anr.** reported in **2010 Vol-2 PLJR 646** with reference to paragraph 7 in support of her case.

12. Mr. Ravindra Kumar Shukla, learned Counsel appearing on behalf of the opposite party, on the other hand, justified the cognizance taken by the learned Magistrate. He submits that as both the petitioner and the complainant were on friendly terms, on request, Rs. 8 lakhs was given to him and he had assured of clearing the same within a period of three months. As he failed to do so, upon request, cheque was issued on 26.06.2013 which bounced, information came on 28.06.2013, registered notice sent on 26.07.2013. As no response came from him to the said legal notice, the complaint.

13. Learned Counsel submits that though there has been delay in filing the complaint, the learned Magistrate is fully authorized to take cognizance even after the prescribed period as per the 'N.I. Act' and in that background, no interference is required. Regarding the FIR against the complainant, learned Counsel submits that only to save his skin following receipt of legal notice, the same was lodged.



14. Having heard the submissions put forward by the parties and upon perusal of the records of the case, this Court finds that though legal notice was sent on 26.07.2013, the complaint was filed on 17.09.2013.

15. Section 138 of 'the N.I. Act' read as follows:-

“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.”

16. A perusal of the same would show that specific time frame has been incorporated inasmuch as the cheque has to be presented to the Bank within six months from the date on which it is drawn or within a period of its validity whichever is earlier.

17. Further, the demand for payment by issuance of notice has to be given within a period of 30 days after the receipt of the information from the bank regarding the non-clearance of the cheque. Further, if the drawer fails to make a payment within a period of 15 days on the receipt of the notice, the same has to be filed within a period of 30 days.



18. Section 142 of 'the N.I. Act' debars the Court from taking cognizance of an offence punishable under section 138 of 'the N.I. Act' if such complaint is not made within one month from the date on which cause of action arise under clause (c) of the proviso to section 138. The said section of 'the N.I. Act' do allow the Court to take cognizance beyond the prescribed period but the complainant has to satisfy it showing sufficient cause for delay and the satisfaction of the learned Magistrate has to be incorporated in the order taking cognizance.

19. In this case, it is an admitted fact that on 26.07.2013, the notice was sent whereas the complaint was filed only on 17.09.2013, much beyond the period prescribed under 'the Act'. No explanation whatsoever has been made by the opposite party no. 2 in his complaint. The Court too has not recorded his satisfaction showing reason to accept the complaint beyond prescribed period. In that circumstance, the Court certainly exceeded its jurisdiction in taking cognizance in the matter.

20. This Court cannot ignore an important fact regarding the allegation made by the petitioner that it was the opposite party no. 2 who had stolen the blank cheque from his



home, inscribed Rs. 8 lakhs, presented it before the Bank which followed the issuance of legal notice. Upon knowledge, he immediately lodged Muzaffarpur Sadar P.S. Case No. 287 of 2013 in which cognizance has been taken under section 380 of the Indian Penal Code and opposite party no. 2 is facing trial.

21. In Jairam Sharma vs The State of Bihar & Anr. (supra), learned Single Judge held that there is no provision for condoning the delay in filing the case under section 138 of 'the Act' and though section 142 gave power to consider the reasons for the delay, term 'satisfies' necessarily means that it can be considered only after sufficient reason is made out. Paragraph 7 of the judgment read as follows:-

“7. Learned Counsel for the opposite party relying on a Supreme Court judgment in the case of Chandra Deo Singh vs. Prakash Chandra Bose @ Chabi Bose & Another, AIR 1963 SC 1430 submits that an accused in a case does (sic-not?) have any locus to appear at the time of taking cognizance and as such the petitioners cannot claim that they ought to have been heard by the Magistrate on the date on which he passed the order taking cognizance of the offence under Section 138 of the Act. The principles laid down in the case of Chandra Deo Singh (supra) have been later reiterated in several judgments of the High Courts and the Supreme



Court. However, the facts and circumstances in those cases are different to the facts of the present case. The N.I. Act is separate code which deals with the offences relating to promissory notes, bill of exchange and cheques. Before the amendment of Section 142 by Act 55 of 2002 there was no provision for condoning the delay in filing a complaint under section 138 of the Act and obviously due to non obstante clause there was a bar in taking cognizance if the complaint was filed beyond the time provided. The introduction of the proviso to Section 142 gave the court power to consider the reasons for the delay in filing the complaint and the use of the term "satisfies" necessarily means that the complaint would only be considered after sufficient reasons were made out for condoning the delay."

22. This Court is fully satisfied that in absence of sufficient reason given by the opposite party no. 2, there was no question for the learned Magistrate to take cognizance in the matter particularly when he has not recorded his satisfaction in this regard.

23. Considering the aforesaid facts, the cognizance order dated 08.09.2014 in connection with the Trial no. 4870 of 2015 (arising out of Complaint Case No. 2549 of 2013) pending before the learned Judicial Magistrate-1st Class,



Muzaffarpur stands quashed.

24. Cr. Misc. No. 27813 of 2015 is allowed.

(Rajiv Roy, J)

Neha/-

AFR/NAFR	AFR
CAV DATE	20.03.2024
Uploading Date	28.03.2024
Transmission Date	

