IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21715 of 2019

Arising Out of PS. Case No.-422 Year-2014 Thana- MUZAFFARPUR TOWN District- Muzaffarpur

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Anjani Singh @ Tej Pratap Singh Son of Deo Shankar Singh Resident of Village- Patedhi Jalal, P.S.- Marhaura, District- Saran at Chapra (Bihar)

... ... Petitioner

Versus

1. The State of Bihar
2. Lieutenant Colonel M.S. Ahmad Son of Mohammad Habibul Rahman Resident of Krishna Sadan, Chakkar Maidan (East), Muzaffarpur.

... ... Opposite Parties

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Appearance :
For the Petitioner : Mr. Harsh Vardhan, Adv.
: Mr. Rahul Kumar, Adv.
For the Opposite Parties : Mr. Anil Kumar Singh No. 1

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 21-09-2026

Heard the parties.

2. The present application has preferred for quashing the Order dated 12.05.2015, passed by the learned Additional Chief Judicial Magistrate XIII", Muzaffarpur (East) in Muzaffarpur (Town) Police Station Case No. 422 of 2014 (Trial No.1885 of 2018) through which the learned Magistrate took cognizance against the Petitioner under Sections 420 & 34 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act.

3. The prosecution case is that according to the informant, the petitioner took Rs.4 Lacs to do business and

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promised to make him partner. According to the informant, the Petitioner had opened a Shop in the name and style of M/s Lady Fashion Zone at Muzaffarpur. The said business was in partnership with Sri Subodh Singh and Sri Randhir Singh. Unfortunately the business failed. According to the informant again these persons started new business in the name and style of M/s Fashion Mart at Muzaffarpur itself. The informant stated in his written statement that Anjani Singh introduced him to Sri Randhir Singh, who in turn promised to return the money. According to the informant, against the loan of Rs.4 Lacs, the Petitioner had earlier given two cheques of Rs.2 Lacs each. When Sri Randhir Singh refused to return the money after which the Cheques were deposited with his banker which was returned by the Bank with a note **"Insufficient Fund".**

4. After investigation, police submitted charge-sheet under Sections 420 and 34 of the Indian Penal Code and also under Section 138 of the Negotiable Instrument Act, 1881 (in short NI Act) and on the basis of materials collected during investigation, the cognizance was taken by

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learned Chief Judicial Magistrate, XIII, Muzaffarpur(East) for the offences punishable under Section 420 and 34 of the Indian Penal Code and Section 138 of the Negotiable Instrument Act, 1881, vide impugned order 12.05.2015.

5. It is submitted by learned counsel appearing for the petitioner that entire allegation is roaming around dishonouring of cheque issued for Rs. 4 lakh. It is submitted that lodging FIR for dishonouring of cheque is bad in eyes of law and same is against the mandate of law available under Section 138 of Negotiable Instrument Act. It is submitted that the compliance of Section 142A of Negotiable Instrument also not appears followed in the present case.

6. Learned counsel for the petitioner also relied upon the legal report of Hon'ble Supreme Court as available through ***N. Harihara Krishnan Vs. J. Thomas [(2018) 13 SCC 663]*** where it is categorically observed that an FIR cannot be registered for such an offence and same can be raised only through complaint petition after due compliance of the procedural formalities as available under Section 138 and 142A of the Negotiable Instrument Act.

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7. It would be apposite to reproduce the paragraph nos. 18 and 19 of ***N. Harihara Krishnan*****(supra)** case which are as under:-

> *"18. Section 142 of the Act inter alia stipulates that no court shall take cognizance of any offence punishable under Section 138 unless a 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. The relevant portion of Section 142 reads as follows:*
>
> *"**142. Cognizance of offences**.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973—*
>
> *(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."*
>
> *19. The preliminary facts constituting an offence [However, this Court in MSR Leathers v. S. Palaniappan, (2013) 1 SCC 177 : (2013) 1 SCC (Civ) 424 : (2013) 2 SCC (Cri) 458, held: (SCC p. 188, para 12)"12. The proviso to Section 138, however, is all important and stipulates three distinct conditions precedent, which must be satisfied before the dishonour of a cheque can constitute an offence and become punishable. The first condition is that the cheque ought to have 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. The second condition is that the payee or the holder in due course of the cheque, as the case may be, ought to make 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. The third condition is that the drawer of such a cheque should have failed to make 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*

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> *fifteen days of the receipt of the said notice. It is only upon the satisfaction of all the three conditions mentioned above and enumerated under the proviso to Section 138 as clauses (a), (b) and (c) thereof that an offence under Section 138 can be said to have been committed by the person issuing the cheque."(emphasis supplied)] under Section 138 of the Act are; (i) that a cheque is drawn, and (ii) that cheque is dishonoured by the bank when presented by the payee. Under the scheme of Section 138 both the drawer of the cheque and the bank upon which the cheque is drawn are parties against whom the payee of the cheque can have various legal rights, which may have either civil or criminal consequences or perhaps both depending upon the facts of a given case. Section 138 prescribes only one of the consequences i.e. the prosecution and punishment of only the drawer of the cheque. It is possible in a given case that a bank may without any valid justification decline to honour a cheque drawn on it. For which act of the bank, the drawer of the cheque may in no way be responsible either in fact or in law. In such a fact situation, the payee of the cheque may have legal rights and remedies for the redressal of the injury (if any) caused by the bank in addition to his rights against the drawer of the cheque."*

8. Learned APP while opposing the present quashing petition could not disputed the aforesaid position of law.

9. In view of aforesaid factual submission and by taking note of fact as lodging of FIR for the offences punishable under Section 138 of the NI Act is not permissible under the law as discussed aforesaid, accordingly, the present petition stands allowed and, as such, order of cognizance dated 12.05.2015 is hereby set-aside/quashed.

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10.However, it is made clear that quashing of cognizance order dated 12.05.2015 shall not preclude OP. No. 2 *ipso-facto* to take any other appropriate legal action for recovery of Rs. 4 lakh or to claim otherwise permissible under law.

11. Let the copy of the Judgment be sent to learned trial court henceforth with TCR, if any.

(Chandra Shekhar Jha, J.)

Aniket/-

AFR/NAFR	AFR
CAV DATE	N/A
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