

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.3501 of 2019

Prashant Kumar Singh, aged about 37 years, son of Shri Ram Naresh Singh, resident of H. No.5/744, Vikash Khand-5, Gomtinagar, P.O. Gomtinagar, P.S. Gomtinagar, District Lucknow (Uttar Pradesh)

... Petitioner

Versus

1. The State of Jharkhand
2. Nagmani Kumar Singh, son of Shri Jagdish Kumar Singh, resident of Jhumari Tillaiya, Gas Godaam Gali, Ward No.24, P.O.- Jhumari Tillaiya, P.S.- Tillaiya, District- Koderma ... Opposite Parties

For the Petitioner	: Ms. Rakhi Rani, Advocate Ms. Amrita Kumari, Advocate
For the State	: Mr. Bhola Nath Ojha, Spl.P.P.
For the O.P. No.2	: Mr. Sanjay Kr. Pandey, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure with a prayer to quash and set aside the First Information Report (F.I.R) registered against the petitioner vide Jainagar P.S. Case No.136 of 2018 corresponding to G.R. No.637 of 2018 registered for the offences punishable under Sections 467, 468, 120B of the Indian Penal Code and Section 138 of the Negotiable Instruments Act and the said case is now pending in the court of learned S.D.J.M., Koderma.

3. The allegation against the petitioner is that the petitioner issued a cheque for Rs.10,82,500/- on 21.10.2017 to the complainant and the same was

dishonoured due to insufficiency of fund in the account of the petitioner. The complainant issued a notice through his advocate on 03.11.2017. The petitioner replied to the notice on 11.12.2017 intimating that before presenting the cheque, the complainant ought to have taken the approval of the petitioner. The complainant filed the complaint on 12.01.2018 and took time several time and ultimately on 26.04.2018 made a prayer to refer the complaint to police under Section 156 (3) of Cr.P.C. which was allowed by the learned S.D.J.M., Koderma and basing upon the same, Jainagar P.S. Case No.136 of 2018 has been registered.

4. Learned counsel for the petitioner relies upon the judgment of Hon'ble Supreme Court of India in the case of **N. Harihara Krishnan vs. J. Thomas** reported in **(2018) 13 SCC 663** wherein in paragraph-27 of the said judgment, the Hon'ble Supreme Court of India, in no uncertain manner has observed that the opening of Section 142 of the N.I. Act with the *non obstante clause* makes it abundantly clear that Section 142 of the N.I. Act does not either contemplate a report to the police or authorize the Court taking cognizance, to direct the police to investigate into the complaint.

5. Learned counsel for the petitioner next submits that so far as the offence punishable under Section 138 of the N.I. Act is concerned, the registration of the F.I.R. amounts to a gross illegality. It is next submitted that there is absolutely no allegation against the petitioner of committing any forgery and in the absence of the same, the offence punishable under Section 467 or 468 of the Indian Penal Code is not made out. Hence, it is submitted that the prayer of the petitioner, made in the instant Cr.M.P., be allowed.

6. Learned Spl.P.P. appearing for the State and the learned counsel for the opposite party No.2 on the other hand fairly submit that there is no allegation against the petitioner of having committed forgery but submit that since the petitioner has committed the offence punishable under Section 138 of the N.I. Act, hence, the F.I.R. ought not be quashed. It is lastly submitted that this Cr.M.P., being without any merit, be dismissed.

7. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that the law is well-settled that Section 142 of the N.I. Act does not contemplate a report to the police nor authorize the Court taking cognizance to direct the police to investigate into the complaint. Section 142 (1) (a) of the N.I. Act categorically mandates that cognizance of the offence punishable under Section 138 can only be taken upon the complaint in writing. Thus, under such circumstances, this Court has no hesitation in holding that the continuation of the First Information Report (F.I.R) registered against the petitioner vide Jainagar P.S. Case No.136 of 2018, in respect of the offence punishable under section 142 of the N.I. Act, is not sustainable in law.

8. So far as the offence punishable under Sections 467, 468/120 B of the Indian Penal Code is concerned, it is needless to mention here that in order to constitute the said offences, making of a false document is a *sine qua non*. There is no allegation against the petitioner of making any false document or committing any forgery. Under such circumstances, this Court is of the considered view that even if the entire allegations made against the petitioner in the F.I.R. are considered to be true in their entirety still the offences

punishable under Sections 467, 468/120 B of the Indian Penal Code is not made out against the petitioner.

9. Because of the discussions made above, this Court is of the considered view that as the offences punishable under Sections 467, 468/120 B of the Indian Penal Code, for which the First Information Report (F.I.R) registered against the petitioner vide Jainagar P.S. Case No.136 of 2018 is not made out and the first information report is not maintainable in respect of the offence punishable under section 138 of the Negotiable Instrument Act, 1981, hence, the continuation of the same will amount to abuse of process of law. Therefore, this is a fit case where the First Information Report (F.I.R) registered against the petitioner vide Jainagar P.S. Case No.136 of 2018 corresponding to G.R. No.637 of 2018 which is now pending in the court of learned S.D.J.M., Koderma, be quashed and set aside.

10. Accordingly, the First Information Report (F.I.R) registered against the petitioner vide Jainagar P.S. Case No.136 of 2018 corresponding to G.R. No.637 of 2018 which is now pending in the court of learned S.D.J.M., Koderma, is quashed and set aside *qua* the petitioner named above.

11. In the result, this Cr.M.P., stands allowed.

12. In view of disposal of the instant Cr.M.P., the interim relief granted vide order dated 14.01.2020, stands vacated.

(Anil Kumar Choudhary, J.)