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**(2015) 04 AHC CK 0160**

**In the Allahabad High Court**

**Case No : Criminal M. Application No. 8924 of 2015**

Prem Kumar Rai

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

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**Date of Decision : 08-04-2015**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482  
Negotiable Instruments Act, 1881 (NI) — Section 138  
Penal Code, 1860 (IPC) — Section 406, 419, 420, 504, 506

**Citation : (2015) 2 ACR 1533**

**Hon'ble Judges : Manoj Misra, J**

**Bench : Single Bench**

**Advocate : S.K. Dubey and Hemant Kumar Dubey, for the Appellant**

**Final Decision : Disposed off**

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## **Judgement**

Manoj Misra, J—Heard learned counsel for the applicant; the learned A.G.A. for the State and perused the record. This application under Section 482, Cr.P.C. has been filed for quashing the entire proceeding of State v. Prem Kumar Rai, Case No. 451 of 2014, pending in the court of Judicial Magistrate, Kasaya, District Kushinagar, arising out of Case Crime No. 1558 of 2013, under Sections 419, 420, 406, 504 and 506, I.P.C. police station, Sevarahi, District Kushinagar.

2. According to the prosecution case as taken in the first information report, the informant (the opposite party No. 2) had entered into an agreement for purchase of Truck No. UP 57-T-2880 from the applicant for a sum of Rs. 7,20,000 and in this connection a memorandum was prepared on a stamp paper duly signed by the applicant on 15th May, 2013. It is alleged that Rs. 7,20,000 was given by the informant to the applicant for purchase of said Truck but, instead of giving delivery of the Truck to the informant, the applicant sold the Truck to a third party and upon insistence of the informant to refund the amount, two cheques were issued by the applicant, one of Rs. 3,70,000 and the other of Rs. 3,50,000, which returned unpaid by the Bank with a memorandum that payment has been

stopped by the drawer. It has also been alleged that when demand was raised the applicant had threatened the informant. With the aforesaid allegations first information report was got registered through an application under Section 156(3), Cr.P.C.

3. The submission of learned counsel for the applicant is that there is a civil dispute between the applicant and the informant and, therefore, the amount was not actually payable by the applicant to the informant. The other submission is that since notice of demand was issued in respect of dishonour of the cheques, therefore, appropriate course for the informant was to file a complaint under Section 138 of the Negotiable Instrument Act instead of lodging first information report by alleging cheating.

4. The submission of learned counsel for the applicant that the informant could only have filed a complaint under Section 138 of the N.I. Act and not a first information report cannot be accepted, inasmuch as, the offence of cheating is a distinct and separate offence which is dependent on existence of a dishonest intention from the very beginning, whereas the offence punishable under Section 138 of the N.I. Act is an offence of technical nature where existence of mens rea is not necessary. In the case of *Sangeetaben Mahendrabhai Patel Vs. State of Gujarat and Another*, AIR 2012 SC 2844 : (2012) CriLJ 2432 : (2012) 2 Crimes 203 : (2012) 4 SCALE 549 : (2012) 7 SCC 621 : (2012) AIRSCW 2664 : (2012) AIRSCW 4243 : (2012) 3 Supreme 185 , the Apex Court took the view that the ingredients of an offence punishable under Section 138 of N.I. Act and Section 420, I.P.C. are completely different and in a case where even prosecution fails under Section 138 of N.I. Act, the accused can be prosecuted for an offence of Section 420, I.P.C. on the given set of facts. In the instant case, the alleged conduct of the applicant is such that it cannot be said that at the time of entering into an agreement for transfer of the vehicle the applicant did not harbour a dishonest intention, therefore, the proceeding cannot be quashed merely on ground that the informant had a right to file a complaint under Section 138 of the N.I. Act. With regards to the contention of the learned counsel for the applicant that there was a money dispute between the applicant and the informant and, therefore, the payment of the cheques was stopped by him, is a matter of defence which cannot be tested and seen at this stage.

5. In view of the above, I do not find any good reason to quash the proceedings and the charge-sheet as against the applicant.

6. However, considering the facts and circumstances of the case, it is hereby provided that in case the applicant appears before the court concerned and applies for bail within four weeks from today, his prayer for bail shall be considered and disposed of in accordance with the law laid down by this Court in the case of *Amarawati and Another (Smt.) Vs. State of U.P.*, (2005) 1 AWC 416 : (2005) CriLJ 755 : (2005) 1 UPLBEC 155 , as affirmed by Hon"ble Apex Court in *Lal Kamendra Pratap Singh Vs. State of U.P. and Others*, (2009) 7 JT 327 : (2009) 4 SCALE 77 : (2009) 4 SCC 437 : (2009) 4 SCR 1027 : (2009) 4 UJ

1588 . With the aforesaid observation, the application stands disposed of.