
(2005) 12 PAT CK 0026
In the Patna High Court
Case No : Criminal M. No. 34369 of 2003

Ram Naresh Thakur and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 09-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 34, 406, 420

Citation : (2006) 4 BC 264 : (2006) 1 PLJR 455

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : Niraj Kumar, for the Appellant; Anil Kumar and Madheshwar Singh for Opp. Party 2 and R.B. Roy "Raman", for the Respondent

Judgement

Navin Sinha, J.—Heard learned Counsel for the petitioners, the State and the learned Counsel appearing on behalf of opposite party No. 2.

2. The petitioners seek quashing of the FIR registered as Hajipur Sadar P.S. Case No. 275 of 2002 under Sections 420 and 406 read with Section 34 of the Penal Code and Section 138 of the Negotiable Instruments Act.

3. Having considered the submission made on behalf of the petitioners and the allegations as made out in the original complaint subsequently sent for investigation u/s 156(3) of the Cr.P.C. this Court finds substance in the contention of the petitioner that very basic ingredients to allege offence u/s 138 of the N.I. Act would not be recited in the complaint which has been sent for investigation. There would be no numbers of cheques in question, dates of their presentation in Bank and the date on which the same were dishonoured. No notice would have been served within the statutory time for non-payment by the concerned petitioner.

4. In the circumstances, this Court is satisfied that to permit the prosecution to continue u/s 138 of the N.I. Act would be an abuse of the process of the law. The

FIR is accordingly quashed to that extent only.

5. Insofar as the allegations under Sections 420 and 406 read with Section 34 of the Penal Code are concerned, this Court is not persuaded to interfere in the matter at this stage. The application is, therefore, rejected to that extent.

6. The petitioner would have filed a supplementary affidavit on 1.9.2004 that notwithstanding the order dated 23.6.2004, the Officer Incharge, Hajipur Sadar Police Station would have taken the petitioner in custody at 1.00 p.m. in between the night of 31.8.2004 and 1.9.2004. The show-cause stated to have been filed on behalf of the Officer Incharge is not on the record. The Court requested the Counsel for the petitioner to make available to the Court for perusal of the show-cause served upon him. The concerned petitioner would have their remedies against the Officer Incharge of Hajipur Sadar Police Station in an appropriate proceeding before the Court below.

7. This application is accordingly allowed to the extent indicated above only.