

Ram Naresh Thakur and ors. Vs. State of Bihar and anr.

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SooperKanoon Citation : sooperkanoon.com/140416

Court : Patna

Decided On : Dec-09-2005

Judge : Navin Sinha, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 406 and 420; Code of Criminal Procedure (CrPC) - Sections 156(3)

Appeal No. : Crl. M. No. 34369 of 2003

Appellant : Ram Naresh Thakur and ors.

Respondent : State of Bihar and anr.

Advocate for Def. : Anil Kumar and Madheshwar Singh, Advs. for Opp. Party 2 and R.B. Roy "Raman", Adv.

Advocate for Pet/Ap. : Niraj Kumar, Adv.

Judgement :

Navin Sinha, J.

1. 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 under Section 156(3) of the Cr.P.C. this Court finds substance in the contention of the petitioner that very basic ingredients to allege offence under Section 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 under Section 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.