

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.85714 of 2019**

Arising Out of PS. Case No.-695 Year-2018 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

Amjad Ali Khan @ Guddu Khan Son Of Late Abdul Monaf Khan Resident
Of Village - Bathana, P.S.- Kesariya, Distt.- East Champaran ... Petitioner
Versus

1. The State Of Bihar
 2. Lal Babu Prasad Son of Mahanth Bhagat Resident of Village - Jhakhra, P.S.-
Govindganj, Distt.- East Champaran.
- Opposite Parties

Appearance :

For the Petitioner : Mr.Vijay Shankar Shrivastava, Advocate
For the State : Mr.P.K.Pandey, Addl Public Prosecutor
For the opposite party no.2 Mr. Rajesh Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
CAV JUDGMENT**

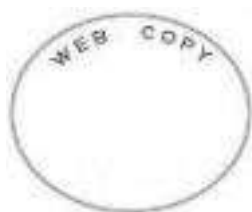
Date : 01-09-2022

Present application has been filed for quashing of order dated 22.8.2019, passed in Cr. Revision No. 29 of 2018 by the Additional Sessions Judge VIII, Motihari, East Champaran by which petitioner's criminal revision has been dismissed, which was filed against order dated 11.7.2018, passed by the Additional Chief Judicial Magistrate IX, Motihari, East Champaran in Complaint Petition No. 695 of 2018, whereby and whereunder Additional Chief Judicial Magistrate IX, Motihari, East Champaran has taken cognizance of the offence punishable under section 138 of the Negotiable Instrument Act against the petitioner.



Short facts giving rise to this case is that petitioner had issued two cheques of total Rs.12 lacs in favour of complainant's firm which were dishonoured due to insufficiency of fund for which certificate of dishonour/return memo (Annexure 2) was issued by the bank to the complainant on 17.2.2018. Thereafter, complainant gave legal notice to the petitioner on 17.3.2018 which was acknowledged by the petitioner but he did not make payment leading to filing of Complaint Case No. C-695 of 2018 dated 25.4.2018 (Annexure 1) for the offences punishable under sections 420, 406 and 120B of the IPC read with section 138 of the NI Act against the petitioner. Thereafter, complainant was examined on SA and his witnesses were also examined during course of enquiry and on the basis of deposition of complainant and his witnesses, Additional Chief Judicial Magistrate IX took cognizance of the offence punishable under section 138 of the NI Act vide order dated 11.7.2018. Cr. Rev. No. 291 of 2018 filed by the petitioner challenging the said order was dismissed by the Additional Sessions Judge VIII, Motihari, East Champaran vide order dated 22.8.2019.

Learned counsel for the petitioner submits that the order of cognizance dated 11.7.2018 as well as revisional order dated 22.8.2019 are bad in law and fit to be quashed for the simple



reason that both the Courts failed to appreciate provisions of law provided under section 138 of the NI Act. He next submits that cognizance has been taken by the Court below on a time barred complaint. In the instant case, cause of action arose on 17.3.2018, whereas complaint was filed on 25.4.2018, i.e, beyond the statutory period of 30 days as per clause (c) of the proviso to section 138 of the NI Act. That apart, no limitation petition was filed for condoning the delay by the complainant. Court below without condoning the delay has taken cognizance and hence both orders are bad in law and fit to be quashed. In this connection, reliance is placed on the judgment of this Court in case of **Birendra Kumar Singh Vs. the State of Bihar and another**, reported in **2007(3) PLJR 390**.

Learned counsel for the State as well as learned counsel appearing for opposite party no.2 oppose the prayer of the petitioner. Learned counsel for the opposite party no.2 submits that order of cognizance cannot be said to be bad in law simply because that the same has been taken without condoning the delay. A minor irregularity does not go to the root of the case and cannot vitiate the order of cognizance.

Heard learned counsel for the petitioner, the State and the opposite party no.2.



Section 142 of the NI Act reads as follows-

142. Cognizance of offences.

¹[(1)] *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),*

(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:

²*[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;]*

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.]

In terms of clause (c) of the proviso to section 142 of the NI Act, such complaint should be filed within one month after drawer of the cheque has received notice, and 15 days thereafter have elapsed. In this case, cause of action arose on 17.3.2018 and complaint was filed on 25.4.2018, i.e., after delay of 7 days and thus cognizance has wrongly been taken. Moreover, no petition for condoning the delay has been filed on behalf the complainant and without condoning delay, Court below has taken cognizance on the



complaint which was barred by limitation. It is settled law that the Magistrate is forbidden from taking cognizance of the offence if the complaint was not filed within one month of the date of which the cause of action arose. Reference can be made to the decision of the Hon'ble Apex Court in the case of **Prem Chand Vijay Kumar Vs. Yashpal Singh and another**, reported in **2005(3) PLJR SC 115**.

Having heard learned counsel for the parties and having perused the materials available on record and the law laid down by the Hon'ble Apex court in the case of **Prem Chand Vijay Kumar (supra)**, I find it difficult to endorse the cognizance order dated 11.7.2018 as well as the revisional order dated 22.8.2019. In the opinion of the Court, these orders dated 11.7.2018 and 22.8.2019 are erroneous and contrary to law. Hence, they are set aside and quashed.

This petition is allowed in the aforesaid terms.

(Prabhat Kumar Singh, J)

Shashi

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