

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19079 of 2020**

Arising Out of PS. Case No.-269 Year-2018 Thana- SAMASTIPUR District- Samastipur

MANOJ KUMAR Son of Late Sh. Om Prakash Resident of RZ-B71, Street No. 5, Raj Nagar Parti-1 Palam Colony New Delhi through its Pairokar Of Mr. Shubham Kumar, Son of Manoj Kumar

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr.Rakesh Chander Agrawal

For the Opposite Party/s : Mr.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 09-04-2020

In the aftermath of outbreak of COVID-19 pandemic twenty-one days' nationwide lockdown has been declared, in the midst of which filing of the present application, purportedly under Section 482 read with Sections 439 and 440 of the Code of Criminal Procedure, has been accepted by this Court, through e-mail, under the orders of Hon'ble the Chief Justice and it has been posted before me for hearing through video-conference. The petition is defective in so many respects, as has been pointed out by the Stamp Reporter. Many of such defects relate to non-compliance of the filing procedure laid down under the Patna High Court Rules.

The petitioner is an accused in Samastipur Town P.S. Case No. 269 of 2018, registered for the offences punishable under Section 138 of the Negotiable Instruments Act, 1881 and



Sections 406, 420, 467, 468, 471 and 506 of the Indian Penal Code.

My attention has been drawn by Mr. Rakesh Chander Agrawal, learned counsel appearing on behalf of the petitioner, to page 34 of the present application which is the written statement of the informant and the basis for registration of the First Information Report. It is alleged in the written statement that the informant runs a business in the name and style of Maa Vaishnav Galla Bhandar at Samastipur and deals in supply of mustard oil and other edible oils. The petitioner is the Director of S.B.O. Exports Private Limited, New Delhi. Certain supply was made by the informant to the Company for a sum of Rs.4,96,897/-. The petitioner, in his capacity as Director of the Company, had allegedly issued and delivered, at Samastipur, a cheque on 18.06.2018 in favour of the informant of the said amount of Rs.4,96,897/- for having delivered edible oils to the petitioner. The petitioner had requested the informant to present the cheque for encashment in July, 2018. Allegedly, when he presented the cheque, the same stood dishonoured because of insufficiency of fund in the account of the petitioner. There is statement made by the informant that on the petitioner's request, he had again deposited the cheque for encashment, which again



stood dishonoured for the same reason. Requisite statutory notice was issued to the petitioner for payment of the amount in question. The petitioner, however, did not pay the amount, which compelled the informant to lodge the First Information Report, the informant alleges.

On careful reading of the application, it is not made out as to whether the petitioner is in custody in connection with the present criminal case. Mr. Agrawal, learned counsel for the petitioner, has submitted that the petitioner is in custody in connection with some other case registered in Uttar Pradesh. He has also submitted that the petitioner has instruction from his client that in the present case also a production warrant has been issued by the Samastipur Court, though there is no such statement made in the application.

Considering the extraordinary situation prevalent nationwide, ignoring the procedural aspects of the matter and the nature of allegation in the First Information Report, the Court is of the view that certain protection needs to be granted in favour of the petitioner in connection with the present case. I have kept in mind the fact that the date, when the notice was issued by the informant, after the said cheque, according to him, stood dishonoured, is not mentioned, which is an essential



requirement for constituting an offence under Section 138 of the Negotiable Instruments Act, 1881. I am, *prima facie*, of the view that the allegations made in the First Information Report do not constitute offence under Section 406 and 467 of the Indian Penal Code. It is made clear that these observations are tentative, only for the purpose of this application. Question of grant of regular bail exercising power under Sections 439/440 of the Code of Criminal Procedure would have arisen, had the petitioner been in custody in connection with the said case.

Mr. Agrawal, learned counsel for the petitioner, has submitted that he will be filing a supplementary affidavit stating specifically as to whether the petitioner has been remanded in the present case also or not and that he is in custody in connection with other cases. Let him do so.

I have also kept in mind the fact that applications in this Court are filed through learned Advocates-on-Record of this Court. Mr. Agrawal, learned counsel for the petitioner, is not an Advocate-on-Record of this Court. In view of the nationwide lockdown, I have ignored, for the present, the said defects/deficiencies in filing of the application.

In the background of the facts indicated above, it is directed, by way of interim measure, that if the petitioner is



sought to be arrested/remanded in connection with Samastipur Town P.S. Case No. 269 of 2018, he shall be released on provisional bail on furnishing bail bond of Rs.10,000/- with two sureties of the like amount each to the satisfaction of learned Court below. This is subject to the condition that the defects pointed out by the Stamp Report are removed within two months from today. It is further directed that the petitioner shall not leave the country without specific permission of the Court.

List this matter on 2nd July, 2020.

Since there is a lockdown, the Court has considered it appropriate to adopt following procedure for communication of the present order : -

(i) The order, which has been dictated during the course of the proceedings of virtual Court, shall be communicated to me on my *e-mail* I.D. by the Secretary.

(ii) The corrected copy of the order shall be transmitted by me from my *e-mail* I.D. to the Secretary, which shall be treated to be the authentic copy of the order passed by this Court today in the present proceeding.

(iii) Hard copy of the order, duly signed by me, shall be preserved in my residential-office for documentation and future use, if any.



(iv) The said order shall be communicated to the Court below for the needful by the Secretary through *e-mail*.

(v) Let a copy of the order be sent to Mr. Agrawal, learned counsel for the petitioner also on his *e-mail* address.

(vi) Let steps be taken by the Registry for uploading of the present order without compromising with the norms of social-distancing.

(Chakradhari Sharan Singh, J)

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