In the Court of Additional Sessions Judge-II, Danapur,
DISTRICT-PATNA, BIHAR

Present :- Kshiprachala Anjalee,
Addl. Sessions Judge-II, Danapur

Danapur, dated 01st day of August,2026

Criminal Revision No. 737 of 2024

(This Criminal Revision is directed against the order dated 28-10-2024, passed by the Court of Ms. Tulika Shankar, learned Judicial Magistrate, Second Class (Court No.9) Danapur, in Complaint Case No. 725(C) of 2024.)

In the matter of,

Niraj Sao, son of Late Surendra Sao, Resident of Village + Police Station-Rupaspur, District-Patna .... Petitioner.

Versus

The State of Bihar ....Opp.Party.

Learned counsel for the Revisionist :- Smt. Rina Kumari, Advocate
Learned counsel for the Opp. Party :- Sri Ramkeshwar Prasad, Addl. P.P.

ORDER

1. Attendance has been filed on behalf of revisionist/petitioner. Record has been put up for hearing. Parties have been heard at length. Hence the order :-

2. This criminal revision has been preferred against the order dated 28-102024 passed by the learned Judicial Magistrate, Second Class, Danapur, in Complaint Case No. 725(C) of 2024 whereby the learned Magistrate dismissed the complaint under Section 203 of the Cr. P.C. (corresponding provision under B.N.S.S.) and declined to issue process against the accused persons for the offence punishable under

Sections 138 of the Negotiable Instrument Act, 1881 and Sections 406 and 420 read with Section 34 of the I.P.C.

3. The Case of the complainant, in brief, is that accused persons Raju Kumar and his wife Anju Kumari agreed to sell certain immovable properties to the complainant for a total consideration of Rs.80,00,000/-. In pursuance thereof, the complainant allegedly paid an aggregate amount of Rs.40,00,000/- on different dates as earnest money. Subsequently, the accused persons allegedly sold the said property to a third person. Upon demand for refund of the earnest money, the accused persons issued three cheques in favour of the complainant. Similarly, accused Sushmita Kumari allegedly agreed to sell her house/property for Rs.10,00,000/- and received Rs.7,00,000/- from the complainant. Thereafter, she also sold the property to another person and, on demand, issued a cheque for Rs.7,00,000/- towards repayment. All the cheques, when presented for encashment, were dishonored on account of "Insufficient Funds" and "Exceeds Arrangement".

4. The learned Magistrate dismissed the complaint primarily on two grounds :- The statutory notice under Section 138 of the Negotiable Instruments Act was not issued within the prescribed period of limitation, and the allegations under Sections 406 and 420 of the I.P.C. disclosed merely a civil dispute arising out of breach of contract. Being aggrieved the present revision has been filed.

5. The following issues arise for consideration :-

(I) Whether the complainant under Section 138 of the Negotiable

Instrument Act was liable to be dismissed on the ground of limitation ?

(II) Whether the allegations disclose prima facie commission of offences under Sections 406 and 420 of the I.P.C.

F I N D I N G S

6. Regarding Section 138 of the Negotiable Instruments Act. The learned Magistrate proceeded on the premise that since the legal notice dated 27-05-2024 was issued beyond thirty days from the date dishonour of the cheques, the mandatory requirement of Section 138(b) of the Negotiable Instruments Act stood violated. However, from the complaint petition and the documents available on record, it appears that immediately after dishonour of the cheques, the complainant had caused legal notices to be issued within the statutory period through his counsel on the permanent addresses of the accused persons. Those notices, however, could not be served and were returned by the postal authorities with the endorsement that the addressees had left the premises and were no longer residing there. Thereafter, upon making inquiries, the complainant came to know about the present addresses of the accused persons at Delhi. Without any undue delay, fresh notices were issued at the correct addresses, whereupon two accused persons sent a reply to the notice while the third accused refused to receive the notice. Thus, the materials available on record prima facie show that the complainant had acted diligently and had initiated the statutory process well within the prescribed period. The subsequent issuance of notices at the correct addresses was only a bona fide attempt to rectify the mistake occasioned due to lack of knowledge regarding the present residence of the accused persons. The delay, if any, was neither deliberate nor attributable to negligence on the part of the complainant. Rather, it occurred because the accused persons were not available at their permanent addresses and their present whereabouts were not within the complainant's knowledge.

7. The object of Section 138 of the Negotiable Instruments Act is to promote the credibility of commercial transactions and not to defeat a bona fide prosecution on technicalities where the complainant has acted with due diligence. Further the Hon'ble Supreme Court in Econ Ankit Ltd. v. Rom Industries Ltd. (2014) 11 SCC 769 has held that the provisions relating to limitation under Section 138 of the Negotiable Instruments Act are to be construed in a manner advancing the legislative intent. Moreover, the proviso to Section 142(b) of the Negotiable Instruments Act empowers the Court to take cognizance even after the prescribed period if sufficient cause is shown for the delay. In present case, the facts disclosed in the complaint itself constitute sufficient explanation showing that the complainant had acted in good faith and had merely rectified the mistake committed while issuing the first notice on the permanent address of the accused persons. Therefore, the learned Magistrate ought not to have rejected the complaint solely on the ground of limitation without appreciating the entire factual matrix and the explanation available on record.

8. Regarding Sections 406 and 420 of the I.P.C. the learned Magistrate further held that the dispute is purely civil in nature arising out of breach of an agreement to sell. It is true that mere breach of contract or failure to perform contractual obligations does not ipso facto constitute the offence of cheating. However, equally well settled is the principle that availability of a civil remedy does not bar criminal prosecution if the allegation disclose the ingredients of a criminal offence. In present case, the allegations are not confined merely to non-execution of sale deeds. The complaint alleges that substantial amounts running into several Lakhs of Rupees were received by the accused persons in different installments, despite receiving the money, the properties were sold to third parties. Thereafter, the accused persons themselves issued cheques towards repayment of the amounts received, all such cheques were dishonored due to "Insufficient Funds" and "Exceeds Arrangement", despite service of statutory notice, payment was not made. Issuance of cheques acknowledging liability, followed by their dishonour for want of sufficient funds, is a significant circumstances which cannot be ignored at the threshold stage. Even assuming that the dishonest intention was not present at the the inception of the transaction, the allegations prima facie indicate that such dishonest intention developed during the course of the transaction, particularly when the accused retained the money, alienated the property to third parties and thereafter issued cheques which ultimately stood dishonored.

9. It is settled law that at the stage of issuance of process, the Court is only required to determine whether a prima facie case exists. A meticulous appreciation of evidence or determination of the ultimate guilt is impermissible. The observations of the **Hon'ble Supreme Court of India in Indian Oil Corporation v. NEPC India Ltd. (2006) 6 SCC 736, Rajesh Bajaj v. State (NCT of Delhi), (1999) 3 SCC 259 and S.W. Palanitkar v. State of Bihar, (2002) 1 SCC**

241 make it clear that merely because civil liability also arises, criminal proceedings cannot be quashed if the allegations disclose the necessary ingredients of the offences alleged.

Therefore, the learned Magistrate erred in hold that the dispute is purely civil without examining whether the allegations and supporting materials disclosed a prima facie criminal offence.

10. In view of the discussions made herein above, this Court is of the considered opinion that the impugned order dated 28-10-2024 suffers from material illegality and improper appreciation of the materials available on the record. The learned Magistrate failed to consider that the complainant had initially issued statutory notices within the prescribed period and the subsequent notices were issued only after discovering the correct addresses of the accused persons. The complainant had acted bona fide and with due diligence. Consequently, the question of limitation deserved proper consideration in the light of the explanation furnished by the complainant and the enabling provisions contained in Section 142 of the Negotiable Instruments Act. Likewise, the learned Magistrate, prematurely concluded that the dispute was purely civil without considering the cumulative effect of acceptance of huge amounts, subsequent alienation of the properties, issuance of cheques towards repayment and dishonour thereof, which collectively disclose sufficient prima facie material warranting further inquiry.

11. Accordingly, the revision petition is allowed. **The impugned order dated 28-10-2024 passed by the learned Judicial Magistrate, Second Class, Danapur, in Complaint Case No. 725(C) of 2024**

is set aside. The matter is remanded to the learned Trial Court with a direction to reconsider the complaint afresh in accordance with law, keeping in view the observations made hereinabove, particularly regarding the complainant's bona fide explanation for service of statutory notice and the prima facie materials relating to the offences under Section 138 of the Negotiable Instruments Act and Sections 406 and 420 of the I.P.C., and thereafter pass an appropriate reasoned order regarding issuance of process.

8. Let the Lower Court Records be transmitted forthwith along with a copy of this order. The revision stands disposed of accordingly.

(Dictated & corrected by me)	**(Dictated)**
(Kshiprachala Anjalee) **Additional Sessions Judge-II,** **Danapur.** **Dated 01-08-2026**	**(Kshiprachala Anjalee)** **Additional Sessions Judge-II,** **Danapur** **Dated 01-08-2026**