

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 518 of 2022

Rajeev Kumar @ Rajiv Kumar @ Pappu, aged 48 years, S/o Sri Rajeshwar Prasad, Resident of Madhukunj, P.O. Karaundi, P.S. - Gumla, District -Gumla.

.... Petitioner

Versus

1. The State of Jharkhand
2. Gulzar Khan, aged about 32 years, S/o Jamal Khan, Resident of Toto Khan Mohalla, P.O., P.S. & District -Gumla.

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner	: Mr. Mohit Prakash, Advocate
	: Ms. Vani Kumari, Advocate
For the State	: Mr. V.K. Vashistha, Spl. P.P.

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By the Court:-

1. Heard the parties.
2. Though notice has been validly served upon the opposite party no.2, no one turns up on behalf of the opposite party no.2 in-spite of repeated calls.
3. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of Cr.P.C. with the prayer to quash the order dated 22.01.2022, passed by the learned Chief Judicial Magistrate, Gumla in connection with Complaint Case No. 106 of 2021 whereby and where under the learned Chief Judicial Magistrate, Gumla has found *prima facie* case for the

offence punishable under Section 138 of the Negotiable Instruments Act.

4. The brief fact of the case is that the petitioner issued a cheque of Rs.12,45,000/- to the complainant. The same was dishonoured because of insufficiency of the funds in the account of the petitioner. The complainant served a notice demanding the cheque amount but the same was not paid by the petitioner. Upon the complaint being filed by the complainant, the learned trial court found *prima facie* case for the offence punishable under Section 138 of the Negotiable Instruments Act and ordered for issue of summons.
5. It is submitted by the learned counsel for the petitioner that that the allegation against the petitioner is false. The business transaction was between Heera Sahu and the complainant but the cheque was given by the petitioner. It is next submitted that the petitioner has made the cash payment of Rs.12,45,000/- to the complainant and the complainant has returned the cheque to the petitioner. It is then submitted that this case has been instituted on the basis of forged documents. Hence, it is submitted that the prayer as prayed for in this criminal miscellaneous petition be allowed.
6. The learned Spl. P.P. appearing for the State on the other hand opposes the prayer and submits that Section 139 of the Negotiable Instruments Act enables the court to draw the presumption that the holder of the cheque received the cheque for discharge in

whole or in part of any debt or other liability and the contention of the petitioner that the same is not true is at best a defence of the petitioner which can be taken at the time of trial of the case; but certainly the same cannot be a ground to quash the entire criminal proceeding or the cognizance order. It is next submitted that in para-7 of the statement of the complainant under solemn affirmation, the complainant has categorically stated that the petitioner and Heera Sahu were having share in the business and both of them were jointly liable to pay Rs.12,45,000/-. Under such circumstances, it cannot be said that the cheque was not issued in discharge of any debt or liability. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

7. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that the undisputed fact remains that the petitioner issued a cheque for Rs.12,45,000/- and the same has been dishonoured because of insufficiency of funds in the bank account of the petitioner and in spite of notice demanding the cheque amount has been issued to the petitioner but the petitioner has not paid the same.
8. So far as the contention of the petitioner that the cheque issued by him was not in discharge of any debt or liability is concerned, the same is at best a defence of the petitioner which the petitioner certainly can take during the trial of the case but the same cannot

be treated as a gospel truth to quash the order taking cognizance dated 22.01.2022, passed by the learned Chief Judicial Magistrate in connection with Complaint Case No. 106 of 2021.

9. It is a settled principle of law, as has been held by the Hon'ble Supreme Court of India, in the case of **State of Madhya Pradesh vs. Awadh Kishore Gupta & Ors.** reported in **2004 2 Supreme 501** that the defence of the accused person and the veracity of the evidence put forth by the accused, cannot be considered in exercise of the jurisdiction under Section 482 Cr.P.C. by the High Court, as that would be job of the trial court.
10. It is also a settled principle of law, as has been held by the Hon'ble Supreme Court of India in the case of **State of Uttar Pradesh & Another vs. Akhil Sharda & Others** reported in **2022 Live Law SC 594**, the relevant portion of which reads as under:-

"Having gone through the impugned judgment and order passed by the High court has set aside the criminal proceedings in exercise of powers under Section 482 CrPC, it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482CrPC. As observed and held by this court in a catena of decisions, no mini trial can be conducted by the High Court in exercise of power under Section 482CrPC, jurisdiction and at the stage of deciding the application under Section 482CrPC, the High Court cannot get into appreciation of evidence of the particular case being considering." (Emphasis supplied)

that no mini trial can be conducted by the High Court in exercise of the power under Section 482 of Code of Criminal Procedure to get into the appreciation of the evidence of the particular case.

11. Now coming to the facts of the case, as the undisputed fact remains that the petitioner issued the cheque which was

dishonoured for insufficiency of funds and in spite of being served with the notice of demanding the cheque amount, the same has not been paid. This Court is of the considered view that the same is sufficient to constitute the offence punishable under Section 138 of the Negotiable Instruments Act.

12. So far as the contention of the petitioner that the cheque was not issued in discharge of debt and liability is concerned, in view of the presumption under Section 139 of the Negotiable Instrument Act to the contrary, this Court is not inclined to exercise the power under Section 482 of the Cr.P.C. to quash the order taking cognizance dated 22.01.2022, passed by the learned Chief Judicial Magistrate in connection with Complaint Case No. 106 of 2021, as the same can at best be a defence of the petitioner; which can only be considered at the time of trial of the case.

13. Accordingly, this criminal miscellaneous petition being without any merit is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 11th November, 2025
AFR/Sonu-Gunjan/-

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