

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr.M.P. No.4198 of 2018

Avinash Kumar, aged 35 years S/o Ramkishore Mehta, Resident of Vill.
Dand, P.O. & P.S. Katkamsandi, Dist. Hazaribag.

... Petitioner

Versus

1. The State of Jharkhand
2. Md. Azmatullah S/o Md. Sanaullah, resident of Village Pabra, P.O.
& P.S. Katkamsandi, District - Hazaribag.

... Opp. Parties

Coram: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Petitioner : Mr. Awnish Shankar, Adv.

For the State : Mr. Abhay Kr. Tiwari, Addl. P.P.

Order No.07/Dated- 04.02.2025

1. Heard learned counsel for the petitioner as well as learned
A.P.P. appearing for the State.

2. No one appears on behalf of opposite party No.2 after valid
service of notice.

Moreover, notice to opposite party No.2 is not required as the
case has been dismissed at the stage of passing summoning order
against the proposed accused.

3. The instant criminal miscellaneous petition has been filed for
quashing the order dated 23.08.2018 passed in Complaint Case
No.425 of 2018 and consequent order dated 24.09.2018 passed in
Criminal Revision No.107 of 2018 whereby and whereunder, the
complaint case of the petitioner filed for the offence under Section
138 of the N.I. Act has been dismissed by the concerned Trial Court
and affirmed by the Revisional Court.

4. Learned counsel for the petitioner has submitted that the
complaint case was instituted along with all necessary documentary
evidence and the complainant has also filed affidavit in lieu of his
examination under Section 200 of the Cr.P.C. but the learned Trial
Court as well as learned Revisional Court has committed serious
error of law in dismissing the complaint ignoring the provisions of
Section 145 of the N.I. Act, whereby the procedure for proceeding in

the matter of N.I. Act cases for passing summoning order against accused override the provisions of Code of Criminal Procedure, 1973. Therefore, impugned order is absolutely illegal and liable to be set aside. Learned counsel for the petitioner has placed reliance upon the Hon'ble Apex Court judgment in *State of Punjab vs. Naib Din* reported in (2001) 8 SCC 578.

5. I have gone through the record in light of aforesaid submissions of learned counsel for the petitioner, it is relevant to extract the provision of Section 145 of the Negotiable Instruments Act for better appreciation of the case which reads as under:

"Section 145 (1) Notwithstanding anything contained in the Code of Criminal Procedure 1973, the evidence of the complainant may be given by him on affidavit and may subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein."

6. The objects and reasons for introduction of Sections 143 to 147 are as under:

"The existing provisions in the Negotiable Instruments Act, 1881 namely, Sections 138 to 142 in Chapter XVII have been found deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed for the Courts, to deal with such matters has been found to be cumbersome. The Courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act."

Therefore, the proposed amendments were aimed at early disposal of cases relating to dishonour of cheques, enhancing punishment for offenders, introducing electronic image of a truncated cheque and a cheque in the electronic form as well as exempting an official nominee director from prosecution under the Negotiable Instruments Act, 1881.

A combined reading of the Statement of objects and reasons and Section 145 of the Act makes it clear that the Legislature having felt that the existing provisions of the Act are inadequate to tackle delay in disposal of cases, amended the Act by introducing Sections 143 to 147 to the Act so as to avoid the cost and valuable time of the Courts.

7. It may also be observed that Section 200 of the Code of Criminal Procedure provides the procedure for dealing with the private complaint, according to which, the jurisdictional Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any and, the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate. The proviso to this Section provides certain exceptions. But by insertion of new Section 145 of the Negotiable Instruments Act, the statute prescribes the procedure of having the evidence of complainant in the form of affidavit, notwithstanding anything contained in the Code of Criminal Procedure 1973. The said Section 145 is an exception to general procedure prescribed in the Code of Criminal Procedure for recording the evidence and it has got overriding effect. It is settled principle of interpretation of statutes that whenever any Act is enacted, it should be construed in such a way so as to give effect to the object of the "Act" for which the enactment was introduced. Otherwise, the very purpose of introduction of such legislation would be rendered useless. In the background of this principle, if Section 145 of the "Act" is read along with the statement of objects and reasons, it is clear that the procedure is prescribed for dispensing with recording of

preliminary evidence (sworn statement) of the complainant which saves the cost as well as the valuable time of the Court. Such procedure, will not in any way affect or prejudice the right of accused as it is always open for him to file an application under Section 145(2) to summon and examine any person giving evidence on affidavit as to the facts contained therein and rebut the averments made in the affidavit filed by the complainant and his witnesses. The word "evidence" is a broader term than the word "sworn statement". Thus, it is evident that even at the stage of issuing process on the basis of the complaint filed under Section 200 of the Cr.P.C., the Court can accept the affidavit of complainant instead of recording his sworn statement, in view of introduction of Section 145 of the Act and can proceed further, if the affidavit filed by the complainant makes out prima facie case against the accused. Even when the sworn statements of the complainant and his witnesses are recorded under Section 200 of the Cr.P.C, the said statements are not tested by the cross-examination at that stage of the proceedings. The Court has to mainly rely upon the uncross-examined or untested sworn statement, which is generally one sided, at the time of issuing process.

8. In the case of *State of Punjab vs. Naib Din* reported in (2001) 8 SCC 578, it was observed by Hon'ble Apex Court that the wording found in Section 145 of the Negotiable Instruments Act are more or less similar to Section 296 of the Code of Criminal Procedure which reads thus:

"Section 296 Evidence of formal character on affidavit.

- (1) The evidence of any person whose evidence is of a formal character may be given by affidavit and may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceeding under this Code.
- (2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused,

summon and examine any such person as to the facts contained in his affidavits."

9. From perusal of impugned order passed by learned Trial Court, it appears that the complainant has filed affidavit and original documents but the case was running at the stage of SA and inquiry as prescribed under Code of Criminal Procedure. The complaint was filed on 12.03.2018 but till the date of passing the order, i.e., 23.08.2018, the complainant failed to examine himself under Section 200 of the Cr.P.C., therefore, further inquiry was closed and case was dismissed. This order has been upheld by the Revisional Court without appreciating the relevant amended provisions of the Negotiable Instruments Act.

10. In view of above discussion and reasons, I find that the dismissal of complaint of the petitioner is absolutely illegal and based on improper exercise of jurisdiction and application of relevant laws. Therefore, impugned orders are hereby quashed. The Complaint Case No. 425 of 2018 filed by the petitioner is restored to its original number and the concerned Trial Court is directed to proceed further in the said complaint case in accordance with law.

11. Accordingly, this criminal miscellaneous petition is allowed.

12. Let the copy of this order be immediately sent to concerned Courts through F.A.X. for information and needful.

13. Registry is also directed to circulate this order among all judicial officers in the State.

Sd-

(Pradeep Kumar Srivastava, J.)

True Copy

Secretary/Sr. P.A./ P.A.

11/2/2025

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