IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10872 of 2017

Arising Out of PS. Case No.-1432 Year-2015 Thana- BHABHU(KAIMUR) COMPLAIN C District- Kaimur (Bhabua)

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Bharat Singh Son of Late Mushan Singh, Resident of Village-Mokari, P.S.- Bhabua, District- Kaimur at Bhabua.

... ... Petitioner/s

Versus

1. State Of Bihar
2. Sachidanand Singh, Son of Shrikantu Singh, Resident of Village- Mokari, P.S.- Bhabua District- Kaimur at Bhabua.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Prabhakar Singh, Advocate
Ms. Shambhavi Singh, Advocate
Mr. Anurag Patel, Advocate
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE PRAVEEN KUMAR
ORAL JUDGMENT
Date : 21-08-2026

Heard learned counsel for the petitioner and learned A.P.P. for the State.

2. This application has been filed for quashing of the order dated 07.01.2016 passed by Chief Judicial Magistrate, Kaimur at Bhabhua in Complaint Case No. 1432 of 2015, registration No. 1649 of 2015, whereby cognizance has been taken against the petitioner under Section 406 I.P.C. and 138 of N.I. Act.

3. As per the prosecution case, on 15.11.2015, Opposite Party No. 2, namely, Sachidanand Singh, filed Complaint Case No. 1649/1432 of 2015 in the Court of the Chief Judicial Magistrate, Kaimur at Bhabua. In the said complaint, it was alleged that the complainant (O.P. No. 2) negotiated with the petitioner to purchase 50 decimals of land for a total consideration of Rs. 3,60,000/-, out of which an advance payment of Rs. 1,80,000/- (Rupees One

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Lakh Eighty Thousand) was paid to the petitioner. It was further alleged that the petitioner subsequently refused to execute the sale deed and upon being pressurised to refund the advance amount, issued two cheques of Rs. 90,000/- each, both of which were dishonoured upon presentation.

4. Learned counsel for the petitioner has submitted that as per the averments made in the complaint itself, the cheque came to be dishonoured on presentation on 04.11.2015 and there is no averments that any legal notice was sent to the petitioner when the complaint came to be lodged on 21.11.2015. It has further been submitted that proviso (b) and (c) of Section 138 was not complied with, which is mandatory in nature, moreover, referring to Section 142(1)(b), it has been submitted that the complaint was to be filed within one month of the date on which the cause of action arose under proviso (c) to Section 138, when the proviso (c) to Section 138 provides that the drawer of such cheque fails to make payment after legal notice to the payee or as the case may be to the holder in due course within 15 days of receipt of the said notice. It has further been submitted that in absence of such compliance and in view of Section 142(1)(b), no cognizance can be taken against the petitioner. It has further been submitted that when the statute provides for non taking of cognizance for non compliance of the statutory provision, the prosecution against the petitioner would be an abuse of the process of Court.

5. Learned counsel for the State as well as learned counsel for O.P. No.2 has submitted that there is a presumption under Section 139 of the Negotiable Instrument Act and has submitted that it shall be presumed unless a contrary is proved that the holder of the cheque received the cheque of the nature referred to under Section 138 for the discharge in whole or in part of

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any debt or liability and has further submitted that the prosecution against the petitioner should continue.

6. Considering the aforesaid facts and circumstances as well as non-compliance of statutory provisions followed by bar under Section 142 of the Negotiable Instrument Act to take cognizance of the offence, the impugned order taking cognizance dated 07.01.2016 passed by Chief Judicial Magistrate, Kaimur at Bhabhua, in Complaint Case No. 1432 of 2015, registration No. 1649 of 2015, is hereby quashed.

7. The application stands allowed.

(Praveen Kumar, J)

Abdus/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.08.2026
Transmission Date	22.08.2026

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