

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No. 1134 of 2012

Arising out of P.S. Case No. -2645 Year- 2008 Thana -
Complaint District- PATNA

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Sunil Kumar Tiwary S/o Late Rameshwar Tiwary Resident of
Mohalla Kalyani Co-Operative, Beur, Police Station Phulwari Sharif,
District Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Shambhu Prasad Gupta S/o Late Kanhaiya Lal Gupta Resident
of Madhav Bihar Apartment, Block-B, Rlat No. 402, P.S. Sri
Krishna Puri and District Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar, Adv.

For the Respondent/s: Mrs. Nitu Kumari, APP.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 20-04-2015

The Petitioner seeks quashing of the order
dated 09.06.2010 passed by the Additional Sessions
Judge-X, Patna in Cr. Rev. No. 412 of 2009 by which it
has set aside the order of cognizance dated 21.11.2008
passed by the Judicial Magistrate, 1st Class, Patna under
Sections 402 and 406 IPC and Section 138 of N.I. Act in
Complaint Case No. 2645(C) of 2008.

The case of the Complainant is that he was a
builder whereas the accused was a purchaser of a flat in
an apartment he had built. The Accused had executed
two post dated cheques which on presentation were
dishonoured on the ground of insufficiency of money and
the bank account having been closed.

It has been submitted on behalf of the Petitioner that in such circumstances evidently a case under the provision of N.I. Act is made out and the Revisional Court was wrong in setting aside the order of cognizance without noticing him.

On the other hand, Counsel for the Complainant submits that for the good reasons the Revisional Court has allowed the revision, hence, this Court should not interfere in the matter.

No doubt the Revisional Court should have taken care to notice the Complainant before setting aside the order of cognizance but I find from the Complaint Petition that on 01.06.2007 the flat had been registered in favour of the accused persons, hence, there was no justification for the Accused to have drawn a cheque on 15.06.2008 i.e. a date subsequent to the sale deed as also another one on 01.07.2006. Obviously there appears some suspicious element in the present prosecution.

Hence, finding no merit in the application, the same is dismissed.

However, this order shall not prejudice any party.

(Anjana Prakash, J.)

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