

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.297 of 2015

Pravind Kumar, S/o Ram Ekwil Mishra, Resident of Village Bahera,
Zahidpur, P.S. Nanpur, District Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Radhe Ballabh Mishra, S/o Late Ram Padarath Mishra Resident of
Village Janipur, P.S. Nanpur, District Sitamarhi.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Patanjali Rishi, Advocate
Mr. Sanjeet Kumar Singh, Advocate
For the Opposite Parties : Mr. Vaidehi Raman Pd. Singh, Advocate
For the Respondent/s : Mr. Navin Kumar Pandey, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

4 19-11-2016 This application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 has been filed against the judgment and order dated 11.02.2015 passed by learned Sessions Judge, Sitamarhi in Criminal Appeal No. 16 of 2014 whereby he has dismissed an appeal preferred by the petitioner and has affirmed the judgment of conviction and order of sentence dated 13.05.2014 passed by learned Judicial Magistrate 1st Class, Pupri at Sitamarhi in Complaint Case No. 257 of 2011, corresponding Trial No. 661 of 2014. Learned Trial Court has convicted the of the offence punishable under Section 138 of the Negotiable Instruments Act and has sentenced him to undergo



rigorous imprisonment for one year and to pay a fine of Rs. 2,00,000/- in respect of Cheque No. 307484 dated 31.12.2010 drawn for an amount of Rs. 1,00,000/- with the further direction that out of the fine amount, a sum of Rs. 1,00,000/- could be given to the complainant/opposite party No. 2 as compensation and in case of default in payment of fine, the petitioner would undergo simple imprisonment for a further period of three months. The petitioner has been further sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 4,00,000/- in respect of Cheque No. 307483 dated 31.01.2011 drawn for an amount of Rs. 2,00,000/- with further direction of the fine amount, a sum of Rs. 2,50,000/- would be given to the complainant and in default of payment of this fine, the petitioner would have to undergo simple imprisonment for a period of three months. The sentences have been directed to run concurrently by the trial court.

2. Certain facts leading to lodging of the said Complaint Case No. 257 of 2011 are not in dispute. Two cheques bearing no. 307484 dated 31.12.2010 and 307483 dated 31.01.2011 were issued by the petitioner in the name of opposite party No. 2. The two cheques, on presentation before the Bank stood dishonoured on 06.06.2011, because of insufficiency of



fund. The complainant thereafter issued a notice to the petitioner making a demand for payment of the said amount of money on 04.07.2011 as contemplated under proviso (b) to Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act). This is not in dispute that there was no response from the petitioner to the said notice. A complaint petition was thereafter filed on 17.08.2011 by the opposite party No. 2 for making allegation of commission of offence under Section 138 of the Negotiable Instruments Act, in the background of the facts as noted above.

3. On perusal of the orders impugned, it is noticed that the complainant proved through Exhibit-4 that the said demand notice was served on the petitioner on 08.07.2011.

4. The petitioner was accordingly charged of commission of the offence punishable under Section 138 of the Negotiable Instruments Act. At the trial, the petitioner took the defence that issuance of the two cheques in favour of opposite party No. 2 was neither against any debt nor any other liability due on the petitioner and, therefore, no offence under Section 138 of the Negotiable Instruments Act could be made out. A plea was also taken that said cheques were issued in the name of the petitioner as surety and were, in fact, handed over to one

Jibneshwar Mishra in course of transaction of business of which the petitioner and opposite party No. 2 were partners.

5. Learned trial court, on the basis of evidence adduced at the trial concluded that the petitioner miserably failed to rebut the presumption under Sections 138 and 139 of the Negotiable Instruments Act.

6. Considering the testimony of complainant witness Radey Ballabh Mishra, learned trial court held that the said evidence could not be impeached. Upon analysis of evidence, oral as well as documentary, adduced at the trial, and the trial court held the petitioner guilty of the offence punishable under Section 138 of the Negotiable Instruments Act and thereafter imposed upon the petitioner sentence of imprisonment and fine as noted above. The appellate court, finding no infirmity in the judgment of conviction and order of sentence passed by the trial court affirmed it by the impugned order dated 11.02.2015 passed in Criminal Appeal No. 16 of 2014.

7. Learned counsel for the petitioner assailing the findings has submitted that the petitioner had rebutted the presumption by proving an agreement between the petitioner and the complainant of relating to the business transaction between



them through Exhibit-A/1. He has submitted that the courts below have miserably failed to consider this crucial aspect and has recorded conviction merely on the basis of presumption as available under Section 139 of the Negotiable Instruments Act. He has placed strong reliance on a Supreme Court decision in case of ***Kumar Exports v. Sharma Carpets*** reported in ***2009(2) SCC 513*** in support of his contention that the courts below ought to have considered that presumption under Section 139 of the Negotiable Instruments Act stood displaced in view of the proof in support of the case of the petitioner that the said cheques were issued as surety in the light of business agreement between the petitioner and the complainant.

8. The Supreme Court decision in case of ***Kumar Exports v. Sharma Carpets*** is applicable in the facts and circumstances of the present case, in my view. In that case the claim of the complainant was based on issuance of cheques against purchase of wool and carpets from the complainant, which stood dishonoured. The accused in the said case adduced oral as well as documentary evidence from the Sales Tax Department which indicated that the complainant himself had declared that no sale of woolen carpets had taken place during the period in



question. The Supreme Court in case of ***Kumar Exports v. Sharma Carpets*** (supra) has succinctly dealt with, as to how the presumption occurring under Section 139 of the Negotiable Instruments Act could be said to have been rebutted. Dealing with the said aspect, the Supreme Court held in paragraph 20 that an accused in a trial under Section 138 of the Negotiable Instruments Act can either show that consideration and debt did not exist or that under particular circumstances of the case non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. The Supreme Court observed that to disprove the presumption, an accused is required to bring on record such facts and circumstances upon consideration of which the Court may either believe that the consideration and debt did not exist or non-existence was so probable that a prudent man would under the circumstances of the case, and upon the plea that they did not exist.

9. I do not find, from the materials available on record and submissions advanced on behalf of the petitioner that the petitioner was able to disprove the presumption by showing that neither any debt nor any liability existed. Nothing could be shown to the Court to indicate that the circumstances were such

that non-existence of consideration and debt was more probable.

10. It is true that to rebut statutory presumption, an accused is not expected to establish his defence beyond all reasonable doubts but he must be in a position to show to the Court such materials/evidence on the basis of which, it could be said on the standards of preponderance of probabilities that no such debt/liability exist.

11. On this score, I do not find any legal infirmity in the judgments and orders impugned in the present Criminal Revision application. In such circumstance, concurrent findings of fact recorded by the court below need no interference, as this Court exercising revisional jurisdiction is not required to be re-appreciated the evidence on record, which have already been appreciated by the two courts below. I, therefore, find no reason to interfere with the finding of conviction of the petitioner under Section 138 of the Negotiable Instruments Act.

12. Learned counsel for the petitioner has attempted to persuade me that in the background of the nature of dispute a lenient view may be taken in the matter of imposition of sentence for imprisonment. I do not find this to be a fit case for reduction of sentence of imprisonment. I do not find any merit in this

application, which is accordingly dismissed.

13. The petitioner is directed to surrender before the court below thereafter, he shall be taken into custody for serving the remaining period of sentence.

14. The bail bonds furnished by the petitioner in compliance of the order dated 22.05.2015 passed by this Court stands cancelled.

(Chakradhari Sharan Singh, J)

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