

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.8 of 2016

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Mukesh Mohan, Son of Late Mahendra Singh, resident of Village-
Fatehpur Ram, P.O.- Kanhauli, P.S.- Mahua, District- Vaishali.

.... Appellant/s

Versus

1. The State of Bihar.

2. Niranjn Kumar, Son of Sabhapati Rai, Proprietor of M/s Anand
Bhojnalaya and Fast Food Centre behind Laxmi Nursing Home,
near Central Force Commission, North Anandpuri Chowk, West
Boring Canal Road, Patna- 800001 and Proprietor of Niranjn
Hardware and Paints Co., resident of Raiji Gali, House of Rauji,
near Oro Dental Clinic, East Boring Canal Road, Patna- 800001.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Birendra Kumar Singh

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT & ORDER

Date: 28-11-2016

This special leave to appeal, under Section 378
(4) of the Code of Criminal Procedure, has been filed by the
petitioner, who is aggrieved by the judgment and order of
acquittal, dated 18/01/2016, passed by the learned Judicial
Magistrate, Ist Class, Hajipur, in Trial No. 767 of 2016, arising
out of C.R. No. 454 of 2010.

2. Opposite Party No. 2 stood charged of the offence, punishable under Section 138 of the Negotiable Instruments Act, at the aforesaid trial, which had commenced on the basis of a complaint petition filed by the petitioner.

3. It was alleged in the said complaint petition that the complainant had lent a sum of Rs. 80,000/- to opposite party No. 2 for expansion of the later's business for a period of 1 month on monthly interest of 1.5%. On persistent demand having been made for re-payment of the said amount, opposite party No. 2 is said to have issued a cheque worth Rs. 80,000/- against re-payment which on presentation in the Bank stood returned, on account of insufficiency of fund in the account of opposite party No. 2. It was also alleged in the said complaint petition that a legal notice was finally sent to opposite party No. 2, on 06/02/2010, which was not replied, whereafter, the said complaint petition came to be registered.

4. After taking of cognizance and framing of charge, trial commenced, as opposite party No. 2 denied the charge. At the trial altogether 4 witnesses were examined including the complainant as C.W.-3.

5. On perusal of the impugned judgment and order, I find that the learned court below recorded acquittal of opposite party No. 2 mainly on two grounds. Firstly, on the ground that no witness, including the complainant, indicated



anywhere in the deposition, the date on which the cheque was presented to the Bank and the date on which the cheque was returned and paid to him. The witnesses also could not point out at the trial, the date on which the notice was sent to or received by opposite party No. 2. No documentary evidence, such as copy of demand notice, was produced despite receipt was laid at the trial. Considering these aspects, the learned court below concluded that there was no material on record to satisfy the conditions precedent for constituting offence under Section 138 of the Negotiable Instruments Act.

6. Secondly, learned court below recorded that the cheque was drawn on the State Bank of India, Boring Road Branch, Patna, which was situated beyond the jurisdiction of the court of learned Chief Judicial Magistrate, Vaishali at Hajipur. That being so, in the light of Supreme Court decision, in case of *Dashrath Rupsingh Rathod Vs. State of Maharastra & Anr.* (AIR 2014 SC 3519) and a subsequent decision, in case of *Times Business Solution Ltd. Vs. Databyte* (2015 CRI. L.J. 1412), the trial being beyond jurisdiction, the complaint case was not maintainable.

7. I do not find any infirmity in either of the reasonings assigned by the learned court below. The reasonings assigned by the learned court below are germane and legally valid and acceptable.

8. The judgment and order, recording acquittal of opposite party No. 2, therefore does not require any interference by this Court.

9. This petition for grant of special leave to appeal is, accordingly, rejected.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30/11/16
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