

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.506 of 2016

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1. Vijay Shankar Mishra @ Parikshan Mishra son of Late Pitambhar Mishra, resident of village- Bihra, P.S.- Bihra, District- Saharsa

.... Petitioner/s

Versus

1. The State of Bihar
2. Jata Shankar Jha @ Banti Jha, son of Shambhu Nath Jha, resident of village- Bihra, P.S.- Bihra, District- Saharsa

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pravin Kumar Sinha

For the Respondent/s : Mr. Raj Kishore Singh(App)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

3 24-11-2016 This application under Sections 397 read with 401 of the Code of Criminal Procedure, 1973 has been preferred against the judgment and order, dated 09.02.2016, passed by the learned Sessions Judge, Saharsa in Criminal Appeal No. 11 of 2015, whereby while upholding the conviction of the Opposite party No.2 recorded by the learned Judicial Magistrate First Class, Saharsa in Trial No. 119 of 2015, dated 22.01.2015, arising out of Complaint Case No. 164 of 2007, registered for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 the sentence has been modified. Learned trial Court, after having held the Opposite party No.2 guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 had sentenced him to undergo imprisonment for a period of one

year and imposed a fine of twice the amount of cheque, i.e. 7,76,000/- (twice of the cheque amount, i.e., 3,88,000/-).

2. Learned appellate Court, however, has modified the sentence by confining it to payment of fine, twice the cheque amount.

3. Learned counsel appearing on behalf of the petitioner has submitted that there was no reason for the appellate Court to have modified the sentence in the facts and circumstances of the case by not awarding Opposite party No.2 sentence of imprisonment.

4. Power under Sections 397 read with 401 of the Code of Criminal Procedure, 1973, can be exercised only if the order under challenge is either beyond jurisdiction or contrary to any statutory provisions resulting into grave miscarriage of justice. The impugned judgment and order cannot be said to be beyond jurisdiction and the discretion in imposition of sentence by modifying the original order of sentence passed by the trial Court cannot be said to be in breach of any statutory provision or against accepted norms of the judicial discretion.

5. I do not find any merit in this application. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

ArunKumar/-

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