

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.323 of 2016

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Lalkishore Singh, Son of Late Birendra Singh, resident of Village- Sheikhpura
Akharaghat P.S. Ahiyapur and District- Muzaffarpur.

.... Petitioner/s

Versus

The State of Bihar, through the Law Secretary, Government of Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Griyaghey, Advocate

For the Respondent/s : Mr. Gyan Shankar, A.C. to G.P.II

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

C. A. V. JUDGMENT

Date: 28-09-2016

The challenge in the present writ petition is to an order passed by the learned Sessions Judge, Muzaffarpur on 5th of November, 2015 whereby, Criminal Revision No.131 of 2015 preferred by an accused, namely, Sheo Ratan Das, was accepted and an order of conditional bail granted by the learned Chief Judicial Magistrate, Muzaffarpur in Complaint Case No.2722 of 2014 was modified.

2. The present petitioner has filed a complaint on account of dishonor of a cheque for an offence under Section 138 of the Negotiable Instrument Act (for short, 'the Act') and Section 420 of the Indian Penal Code (for short, 'the Code') on the ground that Rs.11 lacs was paid by the petitioner to the accused when an agreement to



sale of property was executed, but subsequently, the agreement was cancelled. The accused returned the amount through cheque dated 18.06.2014, but when the cheque was presented, the same was dishonoured. On such complaint, the learned Chief Judicial Magistrate, Muzaffarpur passed an order on 11th of August, 2015 wherein, the learned Chief Judicial Magistrate granted conditional bail to the accused. The condition was that the accused shall deposit Rs.2 lacs within two months and the remaining amount in four installments and that complainant shall be entitled to receive the said amount. It is the said order which was challenged before the learned Sessions Judge by the accused and the revision petition was accepted and the conditions were set aside. The Court found that in view of the stand of the accused that no such agreement was ever entered and no such cheque was given, therefore, such an order could not have been passed.

3. Before this Court, learned counsel for the petitioner has argued that order of grant of bail is an interlocutory order and that no revision against the said order is maintainable. Therefore, the order passed by the Sessions Judge on 05.11.2015 cannot be sustained. Another ground taken in the writ petition is that the said order was passed without giving an opportunity of hearing to the petitioner.

4. I have heard learned counsel for the parties and find that no cause is made out for interference in writ jurisdiction of this

Court.

5. In respect of the second argument, a perusal of the order passed by the learned Sessions Judge shows that Sri Priya Ranjan, learned Advocate, appeared on behalf of the complainant-petitioner before the learned Sessions Judge. Therefore, to raise an assertion that an order was passed without granting opportunity of hearing is not factually made out.

6. Coming to the argument that revision is not maintainable before the learned Sessions Judge, I find that no such argument was raised by the counsel, who represented the petitioner before the Sessions Judge. Still further, I find that the revision can be said to be not maintainable against an order granting bail in view of the judgment of the Hon'ble Supreme Court in Amar Nath Versus State of Haryana, (1977) 4 SCC 137, but that fact alone will not make out a case for interference. Even if revision is not maintainable, I find that the condition imposed by the trial Magistrate in directing the accused to deposit the cheque amount without any finding as to whether the cheque was issued by him or not, was not warranted at that stage more so when the amount has been ordered to be paid to the complainant. For an offence under Section 138 of the Act read with Section 420 of the Code, there could not be pre-judging of the guilt of the accused and to order payment of the cheque amount. Such an order could be passed

only after trial for an offence under Section 138 of the Act, but such order is not warranted for an offence under Section 420 of the Code. Therefore, at the stage of considering bail application, the condition of payment of the cheque amount is not only harsh, but untenable. The same has been rightly set aside even if it is to be assumed that the revision was not maintainable. This Court in exercise of the writ jurisdiction is inclined to set aside such an order passed by the Trial Magistrate.

7. The order passed by the Trial Magistrate to grant bail to the accused on the condition of deposit of cheque amount is not warranted in law.

8. It may be noticed that the accused has not been made party in the present proceedings. No order adverse to the accused could be passed in their absence. For the said reason also, I do not find any reason to interfere in writ jurisdiction of this Court.

9. The writ petition is, thus, dismissed.

(Hemant Gupta, J.)

Sunil

AFR/NAFR	N. A. F. R
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