

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.1022 of 2014

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1. Sanchay Kumar, Son of Late Baijnath Prasad, resident of
village- D.N. Das Lane, Police Station-Kadamkuan, District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Subhranshu Shekhar Singh, Proprietor, Maurya Enterprises,
Janak Kishore Road, Police Station-Kadamkuan, District-Patna.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Shivendra Kumar Sinha, Adv.

For the State : Mrs. Nirmala Kumari, APP

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

ORAL JUDGMENT & ORDER

Date: 09-11-2016

This application has been preferred, under Section
397 read with Section 401 of the Code of Criminal Procedure,
against the judgment and order, dated 26.06.2013, passed by
learned Additional Sessions Judge-II, Patna, in Cr. Appeal No.
148 of 2001, whereby, he has set aside the judgment and
order of conviction and sentence passed by learned Judicial
Magistrate-Ist Class, Patna, on 31.05.2001, in Trial No. 507 of
2001, arising out of Complaint Case No. 55 C of 1998,

whereby the petitioner was convicted and sentenced to undergo rigorous imprisonment for one year.

2. Briefly narrated, the case of the prosecution, as alleged in the complaint petition, which gave rise to Complaint Case No. 55 C of 1998, is that the complainant and the petitioner had some joint business, run under an agreement of partnership between them. In course of time, since the joint venture could not succeed, the complainant opted to withdraw his share, in response to which, opposite party No. 2 issued two post-dated cheques, each worth Rs. 1,05,000/-. The petitioner, when presented the said cheques before the Bank, stood dishonored because of insufficiency of fund, as mentioned in memo No. 412 of 1997, issued by the Bank. The petitioner, thereafter, sent notice requesting opposite party No. 2 for payment of the cheque-amount, but he neither responded to the said notice nor did he pay the said amount.

3. After having taken cognizance of the offence and framing of charge against opposite party No. 2, trial commenced. Learned trial Court, on the basis of evidence adduced at the trial, held opposite party No. 2 guilty of the offence punishable under Section 138 of the Negotiable Instrument Act. Opposite party No. 2, thereafter, preferred an appeal before the learned Sessions Judge, Patna, which gave rise to Cr. Appeal No. 148 of 2001. The said appeal

came to be finally disposed of by the impugned judgment and order, dated 26.06.2013, whereby, the learned Sessions Judge, Patna, has allowed the said appeal and set aside the order of conviction.

4. Learned counsel, appearing on behalf of the petitioner, has submitted that the appellate Court set aside the judgment and order of conviction and sentence passed by the learned trial Court on erroneous grounds. According to him, on mere technical ground that the return memo, issued by the Bank, showing that the cheques stood dishonored because of insufficiency of fund, was not exhibited at the trial, the appellate court set aside the judgment and order of conviction and sentence passed by learned trial Court. He has further submitted that though the said return memo, issued by the Bank, was there on the record, the appellate Court, on the ground of the same having been not exhibited, set aside the judgment and order of conviction and sentence. He has further submitted that even in his statement, made under Section 313 of the Code of Criminal Procedure, opposite party No. 2 did not dispute that the said cheques, issued by him, stood dishonored by the Bank because of insufficiency of fund and the same having been not disputed, learned trial Court had rightly recorded conviction of opposite party No. 2 and the judgment and order passed by the appellate Court,

setting aside the judgment of learned trial Court, is perverse and erroneous, requiring interference by this Court in revisional jurisdiction.

5. Referring further to the judgment and order, under challenge, learned counsel for the petitioner has submitted that it was because of apparent typographical mistake in the notice issued by the petitioner to the complainant that in place of correct Cheque No. 4280, Cheque No. 4281 was mentioned. He has submitted that learned trial Court has given undue weightage to such mistake in the notice issued by the petitioner while setting aside the order of conviction passed by learned trial Court.

6. Upon careful scrutiny of the judgment and order impugned, I find, which is not in dispute that at the trial, the return memo, issued by the Bank in token of return of cheques, on the ground of insufficiency of fund, was not exhibited at the trial. A document, which could not be exhibited at the trial, couldnot have been taken as evidence. In order to prove the case of the petitioner that the said cheques stood dishonored because of insufficiency of fund, it was incumbent upon him to prove on the basis of document/memo issued by the Bank to the effect that cheques stood dishonored because of the said reason. That having not been proved, the judgment and order of the



appellate Court, reversing the finding of the learned trial Court, cannot be faulted with. So far as submission that learned appellate Court has given undue weightage to a mistake committed by the petitioner while mentioning cheque number in his statutory notice is concerned, I am of the view that that is not the only ground for the appellate Court while reversing the judgment of the learned trial court. Evidently, in the notice Cheque No. 4281 was mentioned in place of Cheque No. 4280. Cheque No. 4281 was never issued by opposite party No. 2 in favour of the appellant. He could not have been held guilty of the offence punishable under Section 138 of the Negotiable Instrument Act, if another cheque, i.e., Cheque No. 4280 stood dishonored, the same being not there in the notice. The notice has statutory character and for successful prosecution under Section 138 of the Negotiable Instrument Act, the description of the cheques, as mentioned in the notice, could only be taken into account at the trial. It is true that there was mentioned of Cheque No. 4279 in the notice and the said cheque was produced and proved at the trial.

7. However, as indicated above, in the absence of return memo said to have been issued by the Bank, in support of proof of dishonor of cheque due to insufficiency of fund, the charge, under Section 138 of the Negotiable

Instrument Act, could not be said to have been proved.

8. I do not find any infirmity in the judgment and order impugned in the present application.

9. This application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J.)

Praveen-II/-c

AFR/NAFR	NAFR
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