

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**SLA No.23 of 2016**

Arising Out of Complaint Case No. -363 Year- 2004 Thana -null District- BHAGALPUR

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1. Roop Kishore Shukla, Son of Late Murlidhar Shukla, Resident of 14-D.N. Singh Lane, P.S. Kotwali, District- Bhagalpur.

.... .... Appellant/s

Versus

1. The State of Bihar.  
2. Anand Kumar Nathani, Son of Satya Narayan Nathani, Resident of Dr. R.P. Road, P.S. Kotwali, District- Bhagalpur.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Dr. Manoj Kumar, Adv.  
For the Respondent/s : Mr. Bipin Kumar, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 18-10-2016**

The present application under sub-section (4) of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioner seeking leave to appeal against the judgment and order dated 8<sup>th</sup> March, 2016 passed by the learned A.C.J.M.-VIII, Bhagalpur in Complaint Case No. 363 of 2004/ Tr. No. 203 of 2015, whereby and whereunder the learned Magistrate has acquitted the accused opposite party no.2 3 of the charges under Section 138 of the Negotiable Instruments Act.

2. The petitioner-complainant filed a complaint petition bearing Complaint Case No. 363 of 2004 before the learned Chief Judicial Magistrate, Bhagalpur alleging, inter alia, that the



complainant and the accused were partners in a firm named M/s P.A. International. Later on, some dispute cropped up between them which was referred to an arbitrator, namely, Mr. B.K. Mantry, who was the Chartered Accountant of the firm. Arbitration award was prepared according to which a sum of Rs.1,59,404/- remained due and payable by the accused to the complainant. Thereafter, being custodian of cash and accounts, the accused deducted Rs.35,563/- on 8<sup>th</sup> September, 2003 and retained Rs.25,000/- against mobile bill and Rs.9,841/- for allied expenses and after adjusting the same, he issued a cheque for Rs. 89,000/- drawn on the State Bank of India, main Branch, Bhagalpur. It is alleged that the said cheque was presented before the Bank on 1<sup>st</sup> October, 2003 but the same was dishonoured due to 'stop payment by the drawer'. The complainant requested the accused to make payment of Rs.89,000/- in cash but the accused asked him to present the cheque in the first week of February, 2004 and in the meantime he will deposit cash in the Bank. The complainant again presented the cheque in the Bank on 12<sup>th</sup> February, 2004 but the same was again dishonoured. It is alleged that the complainant sent a legal demand notice through his advocate to the accused but the accused did not pay back the money despite service of the notice. Thereafter, the complaint petition was filed.

3 . The learned Chief Judicial Magistrate, Bhagalpur made

over the complaint case to the court of A.C.J.M.- VIII, Bhagalpur in exercise of power conferred under Section 192 of the Cr.P.C. for inquiry and disposal.

4. In course of inquiry, the complainant was examined on solemn affirmation. The learned A.C.J.M., finding a prima facie case to be made out against the sole accused - opposite party no.2 under Section 138 of the Negotiable Instruments Act, took cognizance of the offence and summoned him to face trial.

5. After appearance, the substance of the charge under Section 138 of the Negotiable Instruments Act was explained to the accused to which he pleaded not guilty and claimed to be tried. His statement was recorded under Section 313 of the Cr.P.C. on 19<sup>th</sup> June, 2013.

6. In course of trial, the complainant examined altogether four witnesses. They are P.W.1 Mahesh Kumar Sharma, P.W.2 Devki Nandan Shukla, P.W.3 Roop Kishore Shukla and P.W.4 Damodar Prasad Mandal.

7. The trial Magistrate considered the evidence of the complainant's witnesses and the defence version in great detail and came to the conclusion that the very genesis of the complaint case gets demolished. The complainant has not been able to prove the charge against the accused opposite party no.2 under Section 138 of

the Negotiable Instruments Act. Accordingly, the accused was acquitted of the charge leveled against him.

8. After analyzing the evidence of the witnesses examined on behalf of the complainant, the trial court has recorded its finding in paras 16 and 17 of the impugned judgment. They are as under :

“16. ... Here it would be pertinent to note that the above named sole accused, during his statement u/s-313 of CRPC and the defence counsel during the cross examination of prosecution witnesses and argument has denied to the existence of any legally enforceable debt or other liability upon the accused in favour of the complainant. Rather it has been stated by the accused during his **statement u/s-313 of CRPC** that he did not issue any cheque in favour of the complainant and he had drawn a self cheque for making payment to his advocate and accountant and handed it over to his accountant namely Hariom Lohia who had kept it in the drawer but the cheque went missing and when it was not returned to him, he made a stop payment to his banker on 20.09.03. This defence has been pleaded during the course of argument and also during the cross examination of prosecution witnesses. Learned defence counsel has pleaded that the entire amount of Rs. One lakh fifty nine thousand four hundred and four (159,404/-) of loan which is said to have been due upon the accused after settlement of the dispute and preparation of arbitration award and in lieu of which the alleged cheque was issued, had already been repaid to the complainant by the accused and this fact is evident from the defence document i.e. **exhibit-B/6** which is the receipt acknowledging the payment of Rs. One lakh fifty nine thousand four hundred and four (159,404/-). Furthermore in **para-30** of his cross-examination, this witness has admitted that he had received Rs.89000/- in cash and that rest of the amount was deducted in lieu of mobile bills etc. and he has also admitted his signature on the receipt in lieu of mobile bills etc and he has also admitted his



signature on the receipt in lieu of full payment. **Exhibit-A** is the Deed of declaration of receiving the stock as per the arbitration award signed by complainant Roop Kishore Shukla and in the same document the complainant has admitted that the difference of Rs. One lakh fifty nine thousand four hundred and four (159404/-) has been received in cash by him against the amount receivable by him as per the award. In **para-31 & 32** of his cross examination also this witness has admitted about his signature on the **exhibit-A** i.e. the deed of declaration. The defence counsel has also brought on record the **exhibits B to B/5** showing that the complainant used to receive the payment on cash vouchers. In **para-33 & 34** of his cross examination, this witness has admitted about his signatures on the vouchers. Even during his cross examination in **para-9 & 15** he has admitted that he is conversant with hindi and English language and he used to put his signature after going through the audit report, balance sheet etc. and that whatever money he received from the firm by him and Anand Nathani firm, was received through vouchers. He has also admitted his signature in para 17 of his cross examination.

Thus from the above discussions it is clear that the defence has been able to prove that the entire amount of Rs. One lakh fifty nine thousand four hundred and four (159,404/-) of loan which is said to have been due upon the accused after settlement of the dispute and preparation of arbitration award and in lieu of which the alleged cheque of Rs.89000/- was issued, had already been repaid to the complainant by the accused. Thus the accused has been able to fully rebut the presumption u/s-139 of N.I.Act.

17. ... It would be pertinent to note here that apart from the presumption u/s-139 of N.I. Act discussed above, the complainant is duty bound to prove rest of the material facts. The complainant has stated that the alleged cheque was presented twice to the bank but on the perusal of it four endorsements dt: 26.09.03; 01.10.03; 10.02.04 and 12.02.04 are found at the back of the cheque which goes to create



some doubt over this version of the complainant. Moreover, the first two endorsements do not bear the signature of the complainant. It is only on the last two endorsements that the signature of the complainant is found. The complainant has not brought any evidence to explain this fact and inconsistency. Similarly during the course of his examination in chief, the complainant has stated that the cheque was issued in his name but the cheque was a self cheque. Furthermore during his evidence, the complainant has deposed that four persons namely Hari Mohan Lohia, one Sharma, Santosh Choudhary and Pawan Sharma were present at the time of delivery of the cheque to him from the accused but surprisingly, none of these persons has been examined by the complainant during evidence. When the accused has disputed the very act of drawing of this cheque for making payment to the complainant, these persons could have been the best witness to support and substantiate the contention of the complainant but their absence has given a big jolt to the complainant's case. From the above discussions defence has been able to prove that the entire amount of Rs. One lakh fifty nine thousand four hundred and four (159,404/-) of loan which is said to have been due upon the accused after settlement of the dispute and preparation of arbitration award and in lieu of which the alleged cheque of Rs. 89000/- was issued, had already been repaid to the complainant by the accused. Thus the very genesis of this case and its occurrence gets demolished."

9. In the opinion of this Court, the above findings of the trial court are based on proper analysis of the evidence adduced during trial. The reasonings assigned are cogent and well founded. In that view of the matter, I see no merit in this application. Accordingly, the application filed under Section 378(4) of the Cr.P.C. seeking leave to appeal is rejected.

10. The application stands dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

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