IN THE HIGH COURT OF JUDICATURE AT PATNA
SLA No.6 of 2019

Arising Out of PS. Case No.-3413 Year-2006 Thana- PATNA COMPLAINT CASE District-Patna

==

KUMAR PRABHAKAR, aged about 43 years (Male), son of Sri Nawal Kishore Prasad R/o Mohalla- Musallahpur Hat, P.S- Pirbahore, Dist- Patna, Presently residing at Flat No. 204, Swastik Enclave, Road no. 9, Safi Alam Road, Beside Corporation Bank, Ramjaipal Nagar, Gola Road, P.S. Rupaspur, Dist. Patna.

... ... Appellant.

Versus

1. THE STATE OF BIHAR.
2. Ranjan Kumar Gupta @ Munna, age about 52 years (M), son of Late Yogendra Kumar, R/o Mohalla- Shanti Bhawan Daldali Road, P.S. Kadamkuan, District-Patna.

... ... Respondents.

==

Appearance :

For the Appellant	:	Mr. K.P. Singh, Senior Advocate. Mr. Manindra Kishore Singh, Advocate.
For the State	:	Mr. Bipin Kumar, A.P.P.

==

CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
Date : 05-09-2019

Heard learned counsel for the appellant and the learned Additional Public Prosecutor for the State.

2. This Special Leave to Appeal, under Section 378(4) of the Code of Criminal Procedure, has been filed on behalf of the appellant, seeking leave to file appeal against the Judgment and Order dated 29.10.2018 passed in Sessions Trial No.1578 of 2009, arising out of Complaint Case No.3413(C) of 2006, whereby and whereunder the Additional Sessions Judge-VII, Patna, acquitted the respondent no.2 of the charges framed against him for the offence under Sections 406, 409 and 420 of the Indian Penal Code and Section 138 of the N.I. Act.

3. The facts leading to this Special Leave to Appeal is that the complainant/appellant, namely, Kumar Prabhakar, filed Complaint Case No.3413(C) of 2006 against the respondent no.2, namely, Ranjan Kumar Gupta alias Munna and one Sanjay Kumar Gupta alias Sanju with the contention that he was in business relation with Sanjay Kumar Gupta alias Sanju and the respondent no.2, namely, Ranjan Kumar Gupta alias Munna. In the first week of the month of January 2006, both came to his house and made request to him to give cash Rs.75,00,000/- (Rupees Seventy Five Lacs) for distributing the same amongst the brokers of Madhya Pradesh, Rajsthan, Uttar Pradesh and Bihar as advance so that they may supply the seeds of wheat and mustered in low price. On their much persuasion and request and also to promote the business, he gave Rs.67,00,000/- to Sanjay Kumar Gupta alias Sanju and the respondent no.2, namely, Ranjan Kumar Gupta alias Munna,in presence of the witnesses, namely, Rajeev Ranjan (P.W.1) and Amit Kishore (P.W.2) and both put their signatures on the Revenue Stamp for receiving the aforesaid amount in presence of the witnesses (P.W.1 Rajeev Ranjan and P.W.2 Amit Kishore). In the month of

May, 2006, when he visited Madhya Pradesh, Rajsthan, Uttar Pradesh and Bihar in connection with his business for purchasing the seeds of wheat and mustered, then came to know that no advance payment was made to the brokers. Thereafter, he was surprised and met Sanjay Kumar Gupta alias Sanju and the respondent no.2, namely, Ranjan Kumar Gupta alias Munna, who admitted their guilt and assured him to return Rs.67,00,000/- within a month but they did not return the aforesaid amount. On much persuasion and request made by him to them, Sanjay Kumar Gupta alias Sanju issued cheque of Rs.67,00,000/- of the H.D.F.C. Bank, Rajendra Ram Plaza, Exhibition Road Branch, Patna, in his favour in presence of the respondent no.2, namely, Ranjan Kumar Gupta alias Munna, with the assurance that the cheque would be encashed after its presentation in the Bank after one month. After one month, he presented the said cheque in his Bank Account for its encashment but, after sometime, he received information from the Bank that the said cheque has become dishonoured due to insufficient fund in the account. After receiving information about dishonouring of the cheque by the Bank, he sent legal notice to Sanjay Kumar Gupta alias Sanju and the respondent no.2, namely, Ranjan Kumar Gupta alias Munna through

Advocate on 07.10.2006 but the notice returned unserved with the endorsement that both have left their houses. Thereafter, on 22.10.2016, Sanjay Kumar Gupta alias Sanju and the respondent no.2, namely, Ranjan Kumar Gupta alias Munna, approached him and made request to him to give time for ten days to return the aforesaid money but in spite of passing over considerable time, the money was not returned by them to him.

4. In the light of the order dated 07.10.2009 passed in Criminal Misc. No.10550 of 2009 by this Court, the said complaint case was committed to the court of sessions, numbered as Sessions Trial No.1578 of 2009, where Sanjay Kumar Gupta alias Sanju and the respondent no.2, namely, Ranjan Kumar Gupta alias Munna stood charged for the offence under Sections 406, 409 and 420 of the Indian Penal Code and Section 138 of the N.I. Act. Thereafter, the case of Sanjay Kumar Gupta alias Sanju was separated due to his long absence and only respondent no.2, namely, Ranjan Kumar Gupta alias Munna faced trial.

5. During trial, the complainant/appellant got himself examined as P.W.3, whereas Rajeev Ranjan and Amit Kishore, who are said to be the witnesses of the making the receipt of receiving Rs.67,00,000/- by Sanjay Kumar Gupta alias Sanju and the respondent no.2, namely, Ranjan Kumar Gupta alias Munna from the complainant/appellant, were examined as P.W.2 and P.W.3 respectively and several documents were also produced by the complainant/appellant. In defence, the respondent no.2 Ranjan Kumar Gupta alias Munna got himself examined as D.W.1.

6. On perusal of the oral and documentary evidence, as adduced on behalf of the parties, the Additional Sessions Judge-VII, Patna, acquitted the respondent no.2 of the charge framed against him under Sections 406, 409 and 420 of the Indian Penal Code and Section 138 of the N.I. Act.

7. From perusal of the impugned Judgment, it appears that in the complaint petition, which is the basis of the present case, and in Ext.1, the receipt dated 24.01.2006, which is said to be given by Sanjay Kumar Gupta alias Sanju and the respondent no.2, namely, Ranjan Kumar Gupta alias Munna, it has been mentioned that payment of Rs.67,00,000/- was made by the complainant/appellant to them in one time, while the complainant/appellant, who is examined as P.W.3, and his two other witnesses, namely, Rajeev Ranjan (P.W.1) and Amit Kishore (P.W.2) have stated in their evidence that the aforesaid money was given to them in four times. The witnesses also admitted in their evidence that cheque in dispute was issued by Sanjay Kumar Gupta alias Sanju and not by the respondent no.2, namely, Ranjan Kumar Gupta alias Munna.

The Additional Sessions Judge-VII, Patna, has discussed the evidence of the witnesses, as adduced on behalf of both sides, in detail and has rightly come to the conclusion that the prosecution has not been able to prove the charges framed against the respondent no.2 for the offence under Sections 406, 409 and 420 of the Indian Penal Code and Section 138 of the N.I. Act beyond all reasonable doubts and, accordingly, acquitted the respondent no.2 of the charges framed against him under the aforesaid Sections.

8. I find no reason to interfere with the impugned Judgment and Order and to entertain this Special Leave to Appeal. Accordingly, this Special Leave to Appeal stands dismissed.

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.09.2019.
Transmission Date	09.09.2019.