

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.417 of 2016

Arising Out of PS. Case No.-552 Year-2010 Thana- VAISALI COMPLAINT CASE District-
Vaishali

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Bipin Kumar Sharma, Son of Devendra Sharma, Resident of Village-
Taiyabpur, PS Desri, District Vaishali.

... .. Petitioner

Versus

1. State Of Bihar
2. Ajay Kumar Pandit, Son of Devendra Pandit, resident of Village-
Murauatpur, PS Desari, District Vaishali.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Ramesh Kumar Choudhary, Advocate
For the State	:	Mr. Anil Kumar, APP
For the O.P. No.2	:	Mr. Sameer Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 08-07-2019

As L.C.R. has been received, this application is being disposed of
at the admission stage itself after hearing the parties.

2. This revision application is directed against the order dated
24.2.2016 passed by learned Additional Sessions Judge-III, Vaishali at
Hajipur in Criminal Appeal No. 13 of 2014 by which he has dismissed the
appeal filed by the petitioner and confirmed the judgment and order dated
7.4.2014 passed by Sri Ravi Kumar, learned Judicial Magistrate, 1st Class,
Vaishali at Hajipur in Complaint Case No. 552 of 2010/Tr.No. 1627 of 2014
convicting the petitioner and awarding a fine of Rs.1,35,622 holding the
petitioner guilty under Section 138 of the Negotiable Instrument Act
(hereinafter to be referred as 'N.I. Act') with modification to the extent,
converting the fine as compensation under Section 357(3) of the Criminal
Procedure Code (hereinafter to be referred as 'the Code').



3. The fact giving rise in this application, in short, is that the complainant-respondent-opposite party No.2 has filed a complaint case bearing No. C-552 of 2010 before the learned Chief Judicial Magistrate, Vaishali at Hajipur alleging, inter alia, that complainant and petitioner were well known to each other and petitioner was working under the scheme of Unicef Swakchhata Abhiyan in Gram Panchayat Jandaha Hari Adalpur. Further case is that complainant gave a loan of Rs.80,000/- to the petitioner with assurance to return back the money with interest but after expiry of six months when petitioner did not return the same, opposite party No.2 started demanding the same, on which petitioner gave a cheque of Bank of Baroda bearing No. 000309 dated 31.12.2009 of Rs.67,811/- and on depositing the said cheque by the complainant in Central Bank of India, Mahnar Branch for its encashment, the same was dishonoured because of insufficient funds.

4. The complainant was examined on Solemn Affirmation and witnesses were examined under Section 202 Cr.P.C. and learned Magistrate after finding a prima facie case under Section 138 of N.I. Act against the petitioner, issued summons to him to face the trial.

5. It further appears that petitioner appeared and pleaded not guilty and claimed to be tried with defence that opposite party No.2 has committed theft of cheque in question for which a case has been filed by the petitioner against the complainant-opposite party No.2, which was ultimately transferred to the court of Sri Manish Dwevedi, Judicial Magistrate, 1st Class for disposal. During trial altogether three witnesses have been examined on behalf of prosecution but no witness has been examined on behalf of defence petitioner.



6. On conclusion of the trial, learned Judicial Magistrate, 1st Class, found the petitioner guilty under Section 138 of N.I. Act and awarded a fine to the tune of Rs.1,35,622/-. Being aggrieved by the same, the petitioner preferred Cr.Appeal No. 13 of 2014 before the learned District and Sessions Judge, Vaishali at Hajipur, which was dismissed vide judgment dated 24.2.2016 with modification to the extent that amount of fine was directed to be converted into compensation to be paid to the complainant-respondent No.2 under Section 357(3) of the Code.

7. Being aggrieved by the same, the petitioner has filed this revision application mainly on the ground that Section 143(1) of N.I. Act provides for trial as a summary trial and as per Section 326(3) of the Code, if evidence is recorded by a Magistrate, his predecessor cannot proceed on the same, rather he has to record evidence afresh. In support of his contention, learned counsel for the petitioner has relied upon a decision of the Hon'ble Apex Court in the case of **Nitinbhai Saevatilal Shah and another vs. Manubhai Manjibhai Panchal and another : (2011) 9 SCC 638**. However, in the present case, learned Magistrate proceeded with the evidence recorded by his predecessor and convicted the petitioner. Even the learned appellate court failed to appreciate the above inherent illegality which vitiated the whole trial and affirmed the judgment and order passed by trial Magistrate.

8. Further submission of learned counsel for the petitioner is that the appellate court has also not considered the documents available on the record while confirming the judgment passed by learned trial Magistrate and on this ground also judgment of appellate court is fit to be set aside.

9. On the other hand, learned counsel for opposite party No.2 has appeared and submitted that so far Section 326(3) of the Code is concerned,



that applies only when procedure for summary trial has been followed by the Magistrate but in the present case lower court record shows that in this case evidence has been recorded in detail and chance has been given to the petitioner to cross examine the witnesses also and as such it cannot be said that the learned Magistrate has followed the procedure of summary trial and as such the said point of the petitioner cannot stand. It has also been submitted that considering the said learned appellate court, relying upon a decision of Hon'ble Apex Court in the case of **Mehsana Nagrik Sahkari Bank Ltd. vs. Shreeji CAB Co. & Ors. : 2014 CRI. L.J. 1953 SC**. It has further been submitted that this question has also been considered by this Court in an unreported judgment dated 18.12.2018 passed in **Criminal Revision No. 359 of 2016 (Surendra Prasad vs. State of Bihar & another)** in which considering in detail the provisions of Section 143 of N.I. Act, Sections 263, 264 and 265 as well as Section 326 of the Code, has come to a similar finding that when the evidence has been recorded in detail, Section 326(3) of the Code is not applicable and as such argument advanced by learned counsel for the petitioner is not sustainable.

10. Further submission of learned counsel for opposite party No.2 is that so far another point is concerned, that appellate court has not considered the exhibits available on the record that does not appear to be well founded as learned court below has considered the same in paragraph-10 of the judgment discussing in details about the documents filed by the petitioner.

11. Having heard both sides and after going through the provisions of Section 143 of N.I. Act as well as Sections 262 to 264 and 326 of the Code it appears that the purpose behind the provision of Section 326(3) of the Code is that in a summary trial under Section 264 of the Code only



substance of evidence has to be recorded by the Magistrate and as such successor Magistrate cannot appreciate the evidence recorded by his predecessor. However, on perusal of Section 143 of N.I. Act it appears that the said Section provides for trial by the First Class Magistrate and provisions of Sections 262 to 264 of the Code shall apply as far as may be and 2nd proviso to Section 143 of N.I. Act also provides that the Magistrate may proceed otherwise also. However, before that he has to hear both the parties and pass an order on that. As such the above provision does not bar the Magistrate from proceeding in some other manner than the procedure of summary trial. Section 264 of the Code provides that in every case tried summarily, the Magistrate shall record the substance of evidence and judgment containing a brief statement of the reasons is for the finding.

12. In the present case, after going through the L.C.R. it appears that the evidence has been recorded in detail and not the substance of the evidence has been recorded as provided under Section 264 of the Code and even the chance for cross-examination has been given.

13. This Court has also considered the aforesaid points raised by learned counsel for the petitioner in an unreported decision of this Court in the case of **Surendra Prasad** (supra) where the petitioner has challenged the appellate court judgment confirming the trial court judgment on the ground of successor Magistrate cannot pass the judgment on the basis of the evidence recorded by his predecessor and this Court after considering the materials available on the record also passed a detailed order dismissing the revision application filed by the petitioner.

14. Further on perusal of the judgment of Hon'ble Apex Court in the case of **Mehsana Nagrik Sahkari Bank Ltd.** (supra) relied by learned



appellate court, it appears that in a similar situation learned Sessions Judge has ordered for de novo trial allowing the appeal filed against the judgment passed by the Additional Chief Judicial Magistrate and the same was upheld by learned Single Judge of the High Court also. On appeal while considering also the decision of Hon'ble Apex Court in the case of **Nitinbhai Saevailal Shah** (supra) held in paragraphs 5 and 6, as follows :

“5. We have perused the notes of evidence which are produced on record. They clearly show that evidence in this case was recorded in full and not in a summary manner. That being so, we cannot but accept the submission of Mr. Ahmadi.

6. In the facts and circumstances of the case, we allow this appeal, set aside the order passed by the High Court and direct the Additional Chief Judicial Magistrate, Mehsana, to proceed hereafter from the stage where it is pending now.....”

15. Apart from that, so far the judgment of Hon'ble Apex Court in **Nitinbhai Saevatilal Shah's** case (supra) is concerned, in that case the Hon'ble Apex Court was considering the matter in which the evidence was recorded in a summary manner, whereas the fact of the present case is different.

16. Considering the discussions made above, this Court finds that a trial cannot vitiate on the ground that the successor Magistrate has passed the judgment relying on the evidence recorded by the predecessor Magistrate and convicted the petitioner. As such I find no merit in the argument advanced by learned counsel for the petitioner so far this point is concerned.

17. So far other point raised by learned counsel for the petitioner that appellate court has not considered the documents produced by the trial Magistrate, on perusal of the judgment of appellate court as well as trial Magistrate I find no substance in the above argument as documents produced by opposite party No.2 has well been discussed in the judgment of trial



Magistrate and appellate court has also considered the judgment in paragraph-10 of the appellate court judgment. Here it is relevant to mention here that petitioner has not adduced any evidence during the trial nor produced any document in favour of his case.

18. Some contradictions, here and there, are also pointed out by learned counsel for the petitioner but on perusal of the same it appears that the same is not relevant as it is well established that the minor contradiction which does not go into the root of the case cannot disbelieve the prosecution case. There is concurrent finding of both the courts and the revisional court ordinarily is restrained from interfering with the same so far appreciation of evidence is concerned unless there are some glaring error apparent on the face of the record or any inherent illegality.

19. In view of the discussions made above, this Court finds this revision application is being devoid of merit, accordingly, dismissed.

(Vinod Kumar Sinha, J)

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AFR/NAFR	
CAV DATE	
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