

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.875 of 2015**

Arising Out of PS. Case No.-2334 Year-2013 Thana- GAYA COMPLAINT CASE District-
Gaya

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Mukesh Kumar Son of Baijnath Sharma resident of Mohalla - Near Bikaneri
Dharmshala Godawari Road, Chand Choura, Police Station- Civil Line,
District - Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ribha Sharma Wife of Sushil Kumar Singh Proprietor of Sindhuja Engineer
and Countractor Firm, Godawari Road Chand Choura, P.S. Civil Line,
District- Gaya
3. Sushil Kumar Singh Son of Lal Bahadur Sharma Both resident of village -
Mau, Police Station Takari, District - Gaya, At Present both resident of
Mohalla - House No. 120B, Sultanpur Colony, M.G. Road New Delhi -
110030

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramashish, Advocate
For the Respondent/s : Mr. Nand Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 03-04-2019

Heard learned counsel for the parties.

2. Petitioner is complainant of Complaint Case
No.2334 of 2013. The petitioner is aggrieved by order dated
28.09.2015 passed in the aforesaid complaint case whereby the
learned Judicial Magistrate, 1st Class, Gaya, did not issue
summons to face trial against accused Sushil Kumar Singh, who
is Opposite Party No.3 herein. The complainant is further
aggrieved as the Court-below did not proceed with the trial for



the offence under Section 420 of the Indian Penal Code as alleged in the complaint petition.

3. The impugned order briefly narrates the prosecution allegation that Opposite Party No.2 Ribha Sharma, who was wife of Opposite Party No.3 Sushil Kumar Singh, was a registered contractor of civil construction in the civil departments of the government and the complainant was a petty contractor under her. The complainant was assigned three construction work by Ribha Sharma, referred in the complaint petition. Ribha Sharma made payment of the contract amount through cheque to the complainant on different occasions. However, one of the cheques of Rs.22,75,000/- issued by Ribha Sharma bounced. Learned Court-below has recorded that since Ribha Sharma was making payment of the contract amount in the past, hence, dishonest intention at the inception of the agreement or on the date of issuance of the cheque which bounced cannot be gathered. Hence, offence under Section 420 of the Indian Penal Code is not made out. The Court-below further recorded that role of co-accused Sushil Kumar Singh is nowhere there in any of the transactions. Hence, no summons was issued to Sushil Kumar Singh.

4. Learned counsel for the petitioner submits that in



fact the actual transaction was being done by accused No.2 Sushil Kumar Singh. Hence, prima facie case was there against him also.

5. This is not a case of vicarious liability nor there is any material to substantiate that Sushil Kumar Singh had ever issued any cheque in favour of the complainant or was in any other way engaged in any act of co-accused Ribha Sharma in her business matter. Hence, I do not find any reason to interfere with the impugned order.

6. Accordingly, this criminal revision stands dismissed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
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