

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.713 of 2016**

Arising Out of PS. Case No.-973 Year-2010 Thana- PATNA COMPLAINT CASE District-  
Patna

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Lav Kumar Singh, son of Sri Kamendra Kumar Singh, resident of Mohalla-  
West Lohanipur, Police Station- Kadamkuan, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar
2. Navin Kumar Wadhwa, son of Late Vijay Kumar Wadhwa resident of  
Mohalla- P.C. Colony, Kankarbagh, House No. C/34, in front of the Post  
Office, Jivan Dhara Mineral Water Building, R.K. Industries, 3rd Floor,  
Police Station- Kankarbagh, District- Patna.

... .. Respondents

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**Appearance :**

For the Petitioner/s : Mr.Shailendra Kumar Jha  
For the Respondent/s : Smt. Gulnar Begam

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**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA**  
**CAV JUDGMENT**

**Date : 05-08-2019**

This revision application is directed against the judgment dated  
2.5.2016 passed by learned Sessions Judge, Patna in Cr.Appeal No. 154 of  
2015 by which he was pleased to allow the appeal preferred by opposite party  
No.2 in the present case for setting aside the judgment of conviction and  
sentence dated 25.8.2015 passed by Sri Raghvendra Narain Singh, Judicial  
Magistrate, 1<sup>st</sup> Class, Patna in Complaint Case No. 973(C) of 2010 filed by  
the petitioner by which learned Magistrate has convicted the opposite party  
No.2 under Section 138 of Negotiable Instrument Act and sentenced him to  
undergo Simple Imprisonment for six months and to pay compensation of  
Rs.1,50,000/- to the complainant.

2. The fact giving rise to this revision application, in short, is that  
a complaint case was filed by the present petitioner stating therein, inter alia,  
that he and opposite party No.2 were known to each other and they were



engaged in a business of selling of motor parts situated in Ambika Motor Market, Kankarbagh, Patna. It is also his case that the said Ambika Motor was owned by the complainant and his uncle Ashok Kumar Singh and the shop was in the tenancy of the accused. Further case is that accused opposite party No.2 demanded Rs.4 lac as friendly loan from the complainant-petitioner and he has paid the amount with assurance that he will refund the amount very shortly but he did not return the amount and on persuasion he gave a cheque bearing No. 348590 dated 6.1.2010 of Rs.1 lac to the complainant-petitioner but on presentation the cheque was bounced due to insufficient of fund.

3. The complainant-petitioner thereafter sent a message to the accused-opposite party No.2 verbally but he evaded the same and did not reply and thereafter petitioner sent a registered legal notice through Lawyer on 2.3.2010 but even on receipt he has not paid the amount, as such he left with no option but to file the complaint case which was numbered as 973(C) of 2010 under Sections 406, 420 of IPC and Section 138 of N.I. Act.

4. Cognizance was taken under section 138 of N.I. Act and for trial ultimately the case was transferred to the file of Sri Raghvendra Narain Singh, Judicial Magistrate, 1<sup>st</sup> Class, Patna and it appears that during trial four witnesses have been examined on behalf of complainant-petitioner and some documents have also been filed.

5. Learned Magistrate after conclusion of trial has convicted the accused opposite party No.2 under Section 138 of N.I. Act and sentenced him to undergo Simple Imprisonment for six months and to pay compensation of Rs.1.5 lac to the complainant by his judgment and order dated 25.8.2015.

6. Being aggrieved by the same, accused opposite party No.2 preferred Cr. Appeal No. 154 of 2015 before learned Sessions Judge, Patna in



which on notice the complainant-petitioner appeared and learned Sessions Judge was pleased to allow the appeal and set aside the judgment and order dated 25.8.2015 vide order dated 2.5.2016 passed in Cr.Appeal No. 154 of 2015.

7. Being aggrieved by the aforesaid order passed by learned appellate court, the present revision application has been filed. The ground for assailing the judgment of appellate court is that the witnesses who have deposed in favour of the complainant have categorically stated that accused opposite party No.2 has demanded Rs.4 lacs and the same has been given to him but the learned appellate court on the ground of mere technicality that the amount has not been mentioned in the legal notice has allowed the appeal, especially when there is evidence on record that cheque issued by opposite party No.2 was bounced on production.

8. On the other hand, learned APP and learned counsel for the opposite party No.2 have defended the judgment passed by the appellate court and submitted that there is no illegality or error apparent on the record and as such the same could not be interfered by this Court in its revisional jurisdiction.

9. On perusal of the judgment passed by the trial court as well as appellate court it appears that defence of the accused opposite party No.2 is that a cheque has been given to Ashok Kumar Singh, uncle of the complainant as he was his tenant in his house and an occurrence of assault was committed by one Sanjay Singh, brother-in-law of Ashok Kumar Singh, for that opposite party No.2 lodged Kankarbagh P.S.Case No. 403 of 2008 against Sanjay Singh, brother-in-law of Ashok Kumar Singh. It is also the case of the opposite party No.2 that there was settlement between the landlord and tenant



and landlord returned two cheques. However, it is reported that cheque No. 348590 was missing and accused has also produced the receipt but the same has not been marked as exhibit, rather marked for identification. Aforesaid defence has not been accepted by learned trial court and accepted the prosecution case that a cheque given to the complainant was bounced on its production. Considering the same, learned trial court he has convicted the accused opposite party No.2 and sentenced him as stated above.

10. Learned appellate court on perusal of the evidence in detail has come to the conclusion that it is specific case of the defence that the opposite party No.2 was tenant of Ashok Kumar Singh, uncle of the petitioner, of the shop since 1999 and for that he has issued three cheques bearing Nos. 348589 to 348591 to Ashok Kumar Singh on security and for vacating the said premises mar pit took place for which accused opposite party No.2 lodged Kankarbagh P.S. Case No. 403 of 2008 (Ext.A) against one Sanjay Singh, brother-in-law of Ashok Kumar Singh. Thereafter the matter was settled in the year 2008. The said Ashok Kumar Singh returned two cheques to opposite party No.2, however reported that cheque No. 348590 was missing, which would be returned after finding it out. Opposite party No.2 has produced the receipt signed by Ashok Kumar Singh Ext.(X). Learned appellate court has also noticed that document "X" bears the signatures of Ashok Kumar Singh and other persons, including DW 2 and signature of Ashok Kumar Singh has been proved by DW 2 and the same has not been challenged during course of trial, inspite of that, learned trial court has wrongly held that Ext.(X) has not been properly proved. Learned appellate court has also considered that the opposite party No.2-appellant in his cross examination in court as DW 1 has stated that cheques were issued as



security cheques to the landlord Ashok Kumar who did not return one of the cheques at the time of vacation of the premise and that has been misused by the complainant-petitioner.

11. In the above view of the matter, the appellate court found the following infirmities in the prosecution case : (1) prosecution failed to plead that how much money was advanced to the appellant-opposite party No.2 and on which date the same was advanced for repayment whereof the cheque in question was issued, (II) the prosecution evidence is contradicting each other materially regarding date of payment of advance money to the appellant, (III) there is admission of the prosecution that there is no paper of payment of such a huge amount which is contradictory to the requirement of the Income Tax Act, (IV) learned trial court has wrongly ignored Ext.(X) which has been proved by DW 2 and genuineness where of was not disputed by anyone. Ext.X clearly shows that the cheques were issued as security cheque to the uncle of the complainant at the time of creation of tenancy with the appellant-opposite party No.2. Considering the above infirmities and discussions made above as also relying upon the decision of Hon'ble Apex Court in the case of **John K. Abraham vs. Simon C. Abraham and another : (2014) 2 SCC 236**, learned Appellate Court has allowed the appeal filed by opposite party No.2.

12. On perusal of the evidence, as discussed above, it appears that in legal notice actual amount advanced to the appellant-opposite party No.2 has not been mentioned and there is no evidence to show as to when the same was handed over. On the other hand, as discussed by learned appellate court, Ext.(X), which has wrongly not been marked as Exhibit, rather for identification, that has been proved by DW 2, clearly disclosed that the



cheque was handed over along with two other cheques to the uncle of the complainant as a security of the tenancy and at the time of expiry of tenancy two cheques were handed over to the accused opposite party No.2 but one cheque he has not handed over and assured to return the same after finding it out and for misusing the said cheque the present case has been filed.

13. Considering the discussions made above, I find no illegality or error apparent on the face of the record. Accordingly, this revision application being devoid of merit is dismissed.

**(Vinod Kumar Sinha, J)**

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