IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (U/S) No.6 of 2019

Arising Out of PS. Case No.-1563 Year-2008 Thana- PATNA COMPLAINT CASE District-Patna

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SHAMBHU PRASAD, Male, aged about 46 years, Son of Sri Kapil Deo Prasad Resident of Emarat Kohinoor Apartment, Flat No. T/9, Road No.36, P.O.-Anisabad, P.S.-Gardanibagh, District-Patna.

... ... Appellant/s

Versus

1. The State of Bihar Bihar
2. Sanjay Kumar, Son of Ramesh Prasad Resident of Flat no. G-10, Emarat Kohinoor Apartment, Road No.36, P.O.-Anisabad, P.S.-Gardanibagh, District-Patna at present residing at village-Arkdivariya, P.S.-Tekari, District-Gaya.

... ... Respondent/s

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Appearance :

For the Appellant/s : Ms. Soni Shrivastava, Adv.
Mr. Ravi Bhardwaj, Adv.
Ms. Madhuri Kumari, Adv.

For the Respondent/s : Ms. Abha Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 15-10-2019

Heard learned counsel for the appellant as well as learned A.P.P.

Instant appeal has been preferred at the end of the complainant against the judgment of acquittal dated 13.10.2018 passed by the A.C.J.M., Patna in connection with Complaint Case No. 1563(C)/2008 (Shambhu Prasad vs. Sanjay Kumar).

In order to properly appreciate the submission having made at the end of the appellant, salient feature as is coming out from the materials having placed at the end of the appellant is to be taken note of.

As pleaded appellant- the complainant and respondent no.2, being the occupant of Emerat Kohinoor Apartment, were known to each other since before and in the aforesaid background, it is the plea of the appellant that at an earlier occasion respondent no.2 alongwith his father approached him for having financial help which he declined. However, there was persistent effort and during course thereof, were joined by the other family members on whose assurance he succumbed and provided Rs.2,50,000/-. It is further case of the appellant/ complainant that in token thereof, three postdated cheques were issued by respondent no.2 which, he tendered for deposit in his account but, the same was dishonoured and cause has been shown in the slip issued by the bank. Then thereafter, notices were served. Respondent no.2 had not replied. However, the others replied and then, followed with filing of the complaint petition.

It is evident that the order of cognizance was challenged at the end of remaining accused persons whereupon, the same was quashed whereupon the prosecution sustained only against respondent no.2 which ultimately let in acquittal on the ground so enumerated in the judgment impugned.

Learned counsel for the appellant has vehemently challenged the finding recorded by the learned lower court. The first and foremost is that the finding so recorded at the end of the learned lower court at para-11 that source have not been disclosed is not integument with Section 138 of the N.I.Act and further, respective memo issued by the Bank divulging the reason 'insufficient fund' not exhibited in accordance with law, was nothing but a misnomer as was issued by the Bank in ordinary course of business and so, would have been taken into consideration as permissible within Evidence Act coupled with Section 146 of the Act and so, challenged the same being cryptic one.

This appeal relates with judgment of acquittal and so, unless and until there happens to be perversity to that extent which nullify the finding so recorded by the learned lower court, in routine manner could not be interfered with. In likewise manner, whenever there happens to be two version, the version having in favour of the accused is to be accepted.

Taking into account the aforesaid principle, the complaint petition has been gone through in consonance with the evidence of the complainant who has examined himself as C.W.2. After going through the same, it is evident that neither in the complaint petition nor during course of evidence there happens disclosure at the end of the complainant, on which date he got information from the Bank, whether notice was issued within the statutory period, whether notice was issued under registered manner or any other alternative option has been chosen, the prosecution has been launched within the statutory period. Learned counsel for the appellant has tried to explain the same that by examining C.W.4 the receipt has been exhibited. However, in examination-in-chief the said witness had not disclosed that the notice was issued through registered mode though, during cross-examination at some occasion in casual manner registry, would have been cited. Presumption of registered notice is only available in terms of Section 26 of the General Clauses Act read with Section 114 of the Evidence Act and none others. Apart from this, the conduct of the complainant also suggests some other kind of activity more particularly, after having first cheque bounced, there happens to be complete silence at his end with regard to subsequent conduct, that means to say, whether he had approached respondent no.2, informed him regarding non-honouring of the cheque, having any assurance at his end, again placed another cheque which also got bounced, again indulged in similar activity, then third cheque was placed even then followed the same attire and then, as is evident for all three incident, a common legal notice was issued.

Considering the conduct of the appellant more particularly, wrapping the whole scenario in such manner whereunder mandatory compliance within the statutory period remained unexposed, the instant Memo of Appeal lacks merit and is accordingly dismissed.

(Aditya Kumar Trivedi, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
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