

IN THE HIGH COURT OF JUDICATURE AT PATNA
SLA No.61 of 2019

Arising Out of PS. Case No.-538 Year-2013 Thana- COMPLAINT CASE District- Araria

RAJIV RANJAN SINGH, Son of Sachchidanand Singh @ Sachidanand Singh, Resident of Village - Shivpuri, Ward No. 09, Araria P.S. and District - Araria

... .. Appellant/s

Versus

1. THE STATE OF BIHAR
2. Arvind Tiwari, Son of Late Deavendra Nath Tiwari, Resident of Mohallah - Chauhan Tola, Khuskibag, P.S. and District - Purnia

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Abhijeet Gautam, Advocate
For the Respondent/s	:	Mr. Zeyaul Hoda, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

3 19-02-2020 Heard learned counsel for the parties.

This application, for Special Leave to file Appeal against acquittal, under Section 378(4) Cr.P.C., is barred by limitation of 18 days. The delay is explained in I.A. No. 01 of 2019, an application under Section 5 of the Limitation Act.

Hence, the delay is condoned.

Accordingly, I.A. No. 01 of 2019 stands disposed of.

Appellant had filed Complaint Case No. 538 of 2013 against respondent no. 2 alleging therein that on 29.11.2011, appellant had given friendly loan to respondent no. 2 of rupees three lacs fifty thousand cash through two cheques of rupees seventy-five thousand each.

Those cheques were not brought on the record.



Further case of the appellant/complainant is that respondent no. 2 had issued a refund cheque of rupees three lacs eighty-seven thousand in January, 2013 which dishonoured due to insufficient fund. Thereafter, Pleader Notice was sent to the respondent no. 2. However, no response was received from respondent no. 2.

The aforesaid fact can be gathered from the statement of the complainant on oath.

The impugned judgment reveals that only documentary evidence brought on the record on behalf of the complainant was Ext. 1, an agreement between the parties wherein opposite party no. 2 admitted that he had returned rupees one lac thirteen thousand and rupees three lacs eighty-seven thousand is still due with him.

In concluding paragraph no. 36 of the impugned judgment, the learned Trial Judge has observed as follows:-

“From a bare reading of section 420 IPC, it is clear that to make an offence under this section, it must be proved that the complainant parted with his property acting on a representation which was false to the knowledge of the accused and that the



accused had a dishonest intention. According to the complainant in the present case, he had given a friendly loan of Rs.5,00,000/- to the accused and accused had given a cheque of Rs.3,87,000/- to discharge his liability. The further case of the complainant is that the cheque was dishonoured due to insufficiency of funds. However, as discussed above, the complainant failed to prove that he had given a loan of Rs.3,50,000/- to the accused and accused had given the cheque in question to him to discharge his liability. Thus, the ingredient of section 420 IPC that the complainant parted with his property acting on a representation of the accused, has not been proved. Accordingly, the ingredients of section 420 IPC are not fulfilled.”

Evidently, the appellant has failed to prove that the cheque issued by respondent no. 2 in favour of the appellant was for payment of “outstanding dues”. Therefore, offence under Section 138 of the Negotiable Instrument Act is apparently not made out.



Likewise, offence under Section 420 of the Indian Penal Code was also not proved in absence of material to substantiate that there was dishonest and fraudulent intention on the part of the respondent no. 2 at the time of getting friendly loan from the complainant.

Therefore, I do not find any merit in appeal against acquittal. Accordingly, permission to appeal is refused. This application stands disposed of.

(Birendra Kumar, J)

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