

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.171 of 2022

Arising Out of PS. Case No.-2574 Year-2016 Thana- VAISALI COMPLAINT CASE
District- Vaishali

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Ajit Kumar Singh Son of Shri Sumangal Singh Resident of Village - Ufraul,
P.s.- Desari, Distt.- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Subodh Kumar Son of Late Yogendra Rai, Resident of Village - Saharia,
P.s.- Desari, Distt.- Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mukesh Kumar Singh, Adv.
	:	Mr. Rakesh Prabhat, Adv.
For the State	:	Mr. Ajay Kumar Jha, APP.
For the O.P. No.2	:	Mr. Binod Kumar, Adv.
	:	Mr. Amar Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 04-04-2023

Heard learned counsel for the petitioner and
learned counsel for the State.

The present Criminal Revision Application has
been filed for setting aside the judgment and order dated
07.12.2021 passed in Cr. Appeal No. 15 of 2020 (arising out of
Complaint Case No. 2574 of 2016) by Additional District and
Sessions Judge-VII, Vaishali at Hajipur by which the judgment
and sentence dated 04.03.2020 passed in Complaint Case No.
2574 of 2016 has been affirmed.

Learned counsel for the petitioner submits that

from both original Court as well as Appellate Court the petitioner has lost. Counsel submits that the cheque amount has been provided by petitioner to opposite party no.2 as a security without date. He further submits that the cheque amount, which has been handed over to a person as a security without date, if produced without his permission before the bank and bounced then it does not amounts to Section 138 of N.I. Act and in this view of the matter, both the orders are illegal, incorrect and fit to be set aside.

Counsel for the opposite party submits that the stand which he has taken here in the High Court is not the stand of the petitioner at trial level as well as appellate level. From the pleadings and the case discussed by the original court and appellate court, it transpires that the case of present petitioner is otherwise he has taken the stand before the court that the duly signed cheque of petitioner has lost for which he has filed *Sanha* as well as filed an application before the bank that his cheque should be stopped from clearance but bank has not taken care and issued cheque returning memo in violation of the instructions but in support of the pleadings, no document was produced before the court.

After listening the argument of both the parties and

going through the record, I found subsistence in the argument of the opposite party no.2. It is well settled that the parties cannot change his stand at different stages differently. The consistent case of the petitioner on which the finding has come by the two courts concurrently against him, he has no right to develop the third case at revisional level.

In this view of the matter, I am not inclined to interfere and this revision application is hereby dismissed.

It goes without saying that Section 138 of N.I. Act is a compoundable offence according to Section 147 of N.I. Act which states as follows:-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.

This section be read with the case of ***Damodar S. Prabhu Vs. Sayed Babalal H.*** decided on May 03, 2010 by three Judges Bench of Hon'ble Supreme Court in ***Cr. Appeal No. 963 of 2010 with Cr. Appeal No. 964-966 of 2010*** which narrates that compounding is permissible at any stage of the trial including at revisional stage also if parties interested to compound.

With this observation, the present Cr. Revision
Application stands dismissed.

(Dr. Anshuman, J.)

Ritik/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	04.04.2023
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