

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.478 of 2019

Arising Out of PS. Case No.-1181 Year-2017 Thana- SASARAM NAGAR District- Rohtas

Md. Rizwan Alam Son of Md. Nisar Alam, Resident of Village- Mohalla-
Dargah Road, P.S.- Hilsa, District- Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Shashi Kant Mishra, Son of Late Nand Kumar Mishra, Resident of Village-
Huraka P.S.- Tilauthu, District- Rohtas at Sasaram.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajani Kant Pandey, Advocate
For the Respondent/s : Mr. Asha Kumari, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 18-12-2023 The instant Revision is directed against an order dated 8.2.2019, passed in GR. No. 2079 of 2017 arising out of Sasaram Town (Tilauthu) P.S. Case No. 1181 of 2017 by the learned Additional Chief Judicial Magistrate, Rohtas discharging the accused from the offences punishable under Sections 406, 420, 504, 506 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act.

2. The informant/petitioner has assailed the aforesaid order in the instant Revision. It is revealed from the formal F.I.R. that on 6.4.2015 and on 20.4.2015, the defacto complainant paid a sum of Rs. 1 lakh and a sum of Rs. 5 lakh,



total being 6 lakh to the accused on condition that he would repay the said amount by driving his bolero vehicle on rental basis in a local government hospital. It was decided that 50 per cent of the amount which the accused would receive would be paid to the petitioner for repayment of loan amount. Subsequently, on 30.7.2016, the accused issued a cheque in favour of the defacto complainant amounting to Rs. 20,000/-. And on 24.4.2017, another cheque was issued amounting to Rs. 1 lakh by the accused in favour of the defacto complainant. The defacto complainant deposited said cheques within its validity period but both the cheques were dishonoured. Subsequently, the defacto complainant went to the house of the accused demanding repayment of the said sum which he paid to the accused on credit, but the accused begged for some more time. Again, the defacto complainant went to his house to claim the said amount after sometime and at that point of time, the accused abused him with filthy language, thereafter, the defacto complainant on 25.8.2017 submitted a written complain before the jurisdictional police station under Sections 406, 420, 504, 506 of the Indian Penal Code read with Section 138 of the Negotiable Instruments Act.

3. I have heard the learned Advocate for the



petitioner. At the outset, I like to record that no case under Section 138 of the Negotiable Instruments Act is maintainable on police report in view of the provision contained in Section 142(1) of the Negotiable Instruments Act. On dishonour of cheque, issuance of demand notice, non-payment of cheque amount within statutory period of time, the payee of the cheque or holder of the cheque in due course is required to file a complaint before the jurisdictional court. Thus a complaint is maintainable in respect of an offence under Section 138 of the Negotiable Instruments Act, the trial Court was absolutely wrong in taking cognizance of offence under Section 138 of the Negotiable Instruments Act on the basis of police report.

4. It is contended by the learned Advocate for the petitioner that the learned court below wrongly discharge the accused under Sections 406, 420, 504, 506 of the Indian Penal Code. Though, there is sufficient ingredient of offence in the F.I.R. as well as in the case diary.

5. It is needless to say that offence under Section 138 of the Negotiable Instruments Act is the fulcrum of the present case, upon which, allegation under Sections 406, 420, 504, 506 of the Indian Penal Code stand. It is found from the F.I.R. itself that there was an oral agreement of repayment of the



money which the accused took as loan from the defacto complainant by receiving the amount from a government hospital against plying a bolero vehicle on rent. It was agreed by and between the parties that 50 per cent of such amount would be paid to the defacto complainant. The said amount was not paid, therefore, the offence under Sections 406, 420, 504, 506 of the Indian Penal Code is said to be made out. If the F.I.R. closely perused, it would suggest that an oral agreement was executed by and between the parties regarding payment of money for running a business of plying vehilce in some government concerned and repayment of the said money in installment from the amount which would be received by the accused. The accused allegedly violated the agreement.

6. Considering the dispute in such angle one can irregistably conclude that it is a dispute of civil nature and no criminal liability is attributed against the accused. Considering such aspect of the matter, I do not find any ground to admit the instant Revision.

7. Though, the reasons stated by the learned Additional Chief Judicial Magistrate, Rohtas while allowing an application under Section 239 of the Cr.P.C. does not appear, he has come to the right conclusion.



8. In view of such circumstances, the instant
Revision is dismissed.

(Bibek Chaudhuri, J)

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