IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.868 of 2017

Arising Out of PS. Case No.-3259 Year-2011 Thana- VAISALI COMPLAINT CASE District-Vaishali

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Manoj Kumar, Son of Umakant Prasad Nirala @ Umakant Nirala, Resident of Mohalla Indrapuri Colony, Yusufpur, Behind R.N. College, Hajipur, Ward No. 14, P.S. - Hajipur Town, District – Vaishali. Permanent Resident of Village-Chakoli, P.S.- Mahua, District- Vaishali.

... ... Petitioner

Versus

1. The State of Bihar
2. Anil Kumar Singh, Son of Late Rajeshwar Singh, Resident of village-Rampur Singnara, P.S.- Mahua, District- Vaishali.

... ... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Ajay Kumar Tiwari, Advocate
For the State	:	Mr. Tarkeshwar Nath Thakur, APP
For the O.P. No. 2	:	Mr. Y.C. Verma, Senior Advocate
		Mr. Madhav Raj, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

16 12-12-2023 Heard learned counsel for the petitioner, Mr. Y.C. Verma, learned Senior Counsel assisted by Mr. Madhav Raj, learned counsel for the complainant-opposite party no. 2 and learned APP for the State.

2. By filing this revision application, the petitioner is seeking setting aside of the judgment and order dated 14.05.2017 passed by learned Sessions Judge, Vaishali at Hajipur in Cr. Appeal No. 23 of 2016 whereby and whereunder the learned Sessions Judge, Vaishali has been pleased to affirm the judgment and order dated 18.03.2016 passed by learned Judicial Magistrate, 1st Class, Vaishali at Hajipur in Complaint Case No.

3259 of 2011, Trial No. 2013 of 2016. The learned Magistrate has vide the impugned judgment convicted the accused-petitioner in Section 138 of the Negotiable Instrument Act (hereinafter referred to as the ‘N.I. Act’) and passed the sentence of double amount of the cheque i.e. Rs.10,00,000/- which the petitioner would be liable to pay to the complainant-opposite party no. 2.

3. A perusal of the materials available on the record would show that the opposite party no. 2 filed a complaint case against the present petitioner who is the Director of a business entity, namely, Nirala Filling Station. It is said to be a sole proprietorship firm and the petitioner being friendly to the complainant-opposite party no. 2 was taking some financial help/assistance.

4. As per the complaint, the complainant made available a sum of Rs.3,00,000/- and Rs.4,30,000/- to the petitioner on 09.01.2010 and 24.01.2011 respectively. This amount was given through cheque and on demand the accused-petitioner issued a cheque of Canara Bank, Hajipur which was an account payee cheque no. 733023 for a sum of Rs.5,00,000/- withdrew on 05.09.2011.

It is alleged that when the complainant submitted the said cheque to his banker for encashment, the banker of the complainant informed him that the cheque stood dishonored on presentation because the account has been left dormant. The bank sent the intimation through registered post to the complainant whereafter the complainant sent a written demand notice to the accused but the same was alleged returned by the accused with the collusion of the postal department. The complainant himself visited at the house of the accused on 15.11.2011 and informed him about the dishonor of the cheque but the accused-petitioner refused to pay the amount. Thereafter, the complaint case was filed.

5. It further appears from the records that after taking cognizance, summons were issued to the accused-petitioner, he appeared but instead of making payment of the cheque amount, he took a plea that the complainant had stealthily taken away the blank cheque from the shop of the accused-petitioner.

6. The accusation was explained to the accused who denied the accusation and claimed to be tried. The records would show that the complainant produced altogether three witnesses including himself who supported the complainant's case. In course of evidence, the complainant proved the following documents:- Exhibit '1'- Signature of the complainant on complaint; Exhibit '2'- Passbook; Exhibit '2/1'- Signature of the accused on cheque; Exhibit '3'- Bank return memo; Exhibit '4'- Signature of the advocate on notice.

7. The defence proved Exhibit 'A' and Exhibit 'A/1' and produced four witnesses.

8. The learned trial court having examined the evidences on the record concluded that the complainant had been able to prove his case beyond all reasonable doubts and the defence could not prove that the cheque in question was a stolen cheque. Accordingly, the learned trial court convicted the accused and passed the impugned judgment.

9. The appeal preferred by the accused was heard by learned Sessions Judge, Vaishali in Cr. Appeal No. 23 of 2016. The learned Appellate Court having examined the materials on the record reiterated that the plea of the accused as regards theft of the cheque is unfounded. The learned Appellate Court also examined the Exhibit 'A' and Exhibit 'A/1' which are the defence documents showing some transactions between the complainant and the accused and found that those transactions were of the prior date. As regards the entries made in Exhibit 'B', it has been concluded that those were not signed by the complainant and the entry appears to be forge and fabricated and the same has been entered at the bottom of the register (Exhibit 'B'). It was one of the contention on behalf of the complainant that from open eyes, it may be held that the entry was manipulated.

10. Before the learned Appellate Court, it was submitted on behalf of the defence that the accused was usually keeping the cheques with signature in his drawer and this was the cheque which was stolen away by the complainant, the learned court held that the burden lied upon the accused-appellant to prove the said fact as in this regard, no FIR had been lodged and no information about the stolen or lost cheque had been given to any bank authority. Referring to Section 106 of the Evidence Act, the learned Appellate Court held that the burden to prove this fact which was within the knowledge of the accused lies upon him.

11. Learned counsel for the petitioner has once again assailed the impugned judgments on the solitary ground that it was a stolen cheque which was misused by the complainant. It is submitted that there was no enforceable date, hence, the learned court below have committed an error in passing the impugned judgments.

12. On the other hand, learned senior counsel for the complainant-opposite party no. 2 submits that it is a well-proved case. The witnesses, who deposed on behalf of the accused, including his brother Manish Kumar (DW-4) have categorically stated that the complainant was providing financial help to the accused in running of the Filling Station. DW-4 in his evidence has though stated about the stolen cheque but he has not stated as to on which date how many cheques were stolen away. The court found that the accused had no courage to produce himself before the court as a witness and no evidence was laid to prove that as regards theft of the cheque, any FIR was lodged or any information was given to the Bank.

13. This Court finds that the complainant has proved the cheque, signature on which of the accused is not in dispute. Further, the complainant has proved the cheque return memo and the notice. Thus, this Court is of the opinion that the learned trial court as well as the Appellate Court are correct in saying that the complainant has been able to prove his case beyond all reasonable doubts.

14. This Court finds no illegality or infirmity much less any perversity in the impugned judgments. This case does not warrant any interference in the revisional jurisdiction of this Court.

15. This revision application has no merit. It is dismissed accordingly.

16. Let the lower court records be sent back.

(Rajeev Ranjan Prasad, J)

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