

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1087 of 2019

Arising Out of PS. Case No.-2549 Year-2008 Thana- PATNA COMPLAINT CASE District-
Patna

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Jyoti Shankar Prakash, Son of Late Dr. Madan Mohan Prasad, R/O- Old Post
Office Lane, P.S.- Patrakar Nagar, Kankarbagh, Distt.- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Smt. Asha Prasad, Wife of Sri Madan Gopal R/O- Durgapur House, Road
No.- 13B, Rajendra Nagar, P.S.- Kadamkuan, Distt.- Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Uttam Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Ram Sumiran Rai, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

9 27-02-2024 In the instant revision, the opposite party has not

turned up in spite of service of notice and finally, paper
publication. Therefore, this Court proceeds to dispose of the
instant revision on the basis of the submission made by the
learned advocate for the petitioner.

2. It is not in dispute that in order to pay the existing
debt and/or discharge existing liabilities, the petitioner issued a
cheque of Rs. 3,01,000/- in favor of the opposite party. The said
cheque was dishonoured. Subsequently, on compliance of the
proviso to Section 138, The opposite party instituted a complaint
against the petitioner. It is found from the lower court's record
that during the pendency of the case, the petitioner already paid
the entire cheque amount to the opposite party/complainant. The



said fact is recorded in paragraph 15 of the judgment passed by the trial court. Subsequent to this judgment, the petitioner preferred an appeal. The appellate court affirmed the judgment directing the petitioner to pay a fine equivalent to the cheque amount of Rs. 3,01,000/-. It is contended by the learned advocate for the petitioner that during trial of the case, on the basis of a talk of compromise, entire fine amount was paid. The trial court did not consider the said fact and imposed fine equivalent to the cheque amount. The court of appeal also failed to consider that the petitioner has already deposited the cheque amount.

3. This Court has considered the submissions made by the learned advocate for the petitioner. It is stated in Section 138 of the Negotiable Instrument Act that where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part of any debt or other liability is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to



have committed an offence and shall without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to 10 years or with fine which may extend to twice the amount of the cheque or with both.

4. Both the trial court and the appeal court imposed fine upon the petitioner equivalent to the cheque amount.

5. Both courts did not consider that the petitioner had already paid the cheque amount. Considering such aspect of the matter, this Court modifies the order of imposition of fine directing the petitioner to pay a fine of Rs. 25,000/- to the opposite party or by deposit the same amount in the court within three weeks from the date of this order. On failure of payment of such amount, the petitioner shall undergo simple imprisonment for six months.

6. With above order, the order of sentence passed by the trial court and affirmed by the appellate court is modified.

7. Accordingly, the instant revision application is disposed of.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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