

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1321 of 2019

Arising Out of PS. Case No.-271 Year-2006 Thana- BAGHA District- West Champaran

RAJESH KUMAR SINGH S/o Rajnandan Singh R/o village- Ramdham,
Ward No. 22, P.S.- Bagaha, District- West Champaran

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Jai Prakash Yadav S/o Narsingh Yadav Resident of Badripatti, Bankatwa,
P.S.- Bagaha, District- West Champaran

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Awadhesh Kumar Pandey, Advocate
For the State	:	Mr. Sanjay Kr.Tiwary-1, (APP)
For the O.P. No.2	:	Mr. Bimlesh Kumar Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 07-02-2024 Heard learned advocate for the petitioner and learned

Additional Public Prosecutor for the State as well as learned

advocate for the opposite party no.2

2. The instant revision is directed against the

judgment and order of acquittal passed by the learned

Additional Sessions Judge, Bagaha, West Champaran in

Criminal Appeal No.57 of 2016 on 13.08.2019 by the learned

Additional Session Judge, 1st Court, Bagaha, West Champaran

before dealing with the question of legality, validity and

propriety of the impugned order, let me discussed the following

facts.

3. In disputably the petitioner looks after a business of



brick kiln, the said brick kiln business remains in the name of the mother of the petitioner. It is also not disputed that the petitioner took some bricks from the opposite party no.2 and in order to discharge his date and liability, he issued three cheques in favour of the petitioner. The date of issuance of the said cheques have not been mentioned and I do not find the dates of issuance of cheques in the impugned order also. However, it is found from the record that the petitioner deposited the said cheques to his banker for encasement. The said cheque was dishonor and the informant came to know from the dishonor memo issued by the bank regarding the said fact on 23rd October, 2006.

4. It is a case of the petitioner/informant that on 04.11.2006 he is not his brother to the opposite party no.2 requesting him to make payment of the said amount but denied to discharge his liabilities. Thereafter, on 06.11.2006 the petitioner lodged an F.I.R. before the jurisdictional police station on the basis of which charge sheet was filed under Section 417, 403 of the I.P.C. and Section 138 of the Negotiable Instruments Act. Subsequently, the petitioner sent notice under the provision of Section 138(c) of the N.I. Act on 16.12.2006. After expiry of the statutory period, when the opposite party no.2 failed to make



payment, the petitioner filed a Court Complaint under Section 190(1)(a) to which the learned Magistrate took cognizance and issued process.

5. When it was ascertained that over the self and cause of action a police case as well as a complaint case was instituted, both the cases were amalgamated and under the provision of Section 210 the said cases were tried as cases instituted on police report. Both the cases were tried as cases instituted on police report.

6. Both the cases were registered as G.R. Case No. 984 of 2006, the learned Magistrate in his judgment dated 04.08.2016 held the opposite party guilty for committing offence under Section 138 of the N.I. Act. Subsequently, he was convicted and sentence to suffer simple imprisonment for three months, he was also directed to pay fine of Rs.6,75,000/- to the petitioner.

7. The opposite party no.2 filed an appeal being Cr. Appeal No.57 of 2016 assailing the judgment and order of conviction and sentence passed by the Trial Court. The Court of Appeal reversed the judgment and order of conviction and sentence and recorded an order of acquittal in favour of the opposite party.



8. Being aggrieved, the petitioner has preferred the instant revision.

9. The learned advocate for the petitioner submits before me that the Court of Appeal failed to consider the factual aspect of the case and dismiss the appeal only on technical ground. Therefore, the order passed by the Appellate Court should be interfered with as it was passed on wrong appreciation of factual evidence on record.

10. Though, charge was framed against the accused under Section 417 and 403 of the I.P.C., the Trial Court did not find him guilty and recorded an order of acquittal of the said charges in favour of the opposite party no.2, no appeal was filed assailing the order of acquittal passed in favour of the opposite party no.2 of the charges under Section 417/403 of the I.P.C. Therefore, this Court does not want to exercise its revisional jurisdiction on the said two charges, the order of acquittal of which has not been assailed by the petitioner in the first court of appeal or before this Court. Any discussion on this point will be only academic and unnecessary for the purposes of settlement of the point for consideration in the instant revision.

11. In the instant revision, the point for consideration is as to whether an accused can be convicted under Section 138



of the N.I. Act on a case instituted on police report. Section 138 of the N.I. Act runs thus:-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.-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 be extended to two years], with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

- (a) the cheque has been presented to the bank within a period of six months' from the date on which it is drawn or within the period of its validity, whichever is earlier;
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and



(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”

12. Proviso to Section 138 of N.I. Act calls out certain conditions, namely :-

(i) the payee or holder of the cheque in due course shall present to the bank within a period of six months from the date on which it was drawn or within the period of its validity, whichever is earlier.

(ii) the payee or the holder of in due course of the cheque than makes a demand for the payment of said amount of money by giving a notice within 30 days of the receipt of information by the complainant from the bank regarding return of the cheques as unpaid.

(iii) the drawer of such cheque fails to make payment of the said amount to the payee within 15 days of the receipt of the said notice.

13. Thus the proviso to Section 138 of the N.I. Act or the pre-conditions to attract the penal provision under Section 138 of the N.I. Act. Section 142 of the N.I. Act deals with the cognizance of offences under Section 138 of the N.I. Act. Section 142 runs thus :-

“142. Cognizance of offence.- [(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -



(a) no Court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]

(c) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138.]

[(2) The offence under section 138 shall be inquired into and tried only by a Court within whose local jurisdiction, -

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.- For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.]”



14. A plain reading of Section 142 of the N.I. Act states that no court is permitted to take cognizance of offence under Section 138 of the N.I. Act, except upon a complaint in writing made by the payee or the holder in due course of the cheque within one month of the day on which the cause of action arises under clause (c) of the proviso to Section 138 of the N.I. Act. The amending provisions of the N.I. Act includes a proviso to clause (b) of Section 142(1) stating inter-alia that a complaint for the offence punishable under Section 138 of the N.I. Act may be accepted by the Court even after the period of one month if the complainant is able to show that he was prevented by sufficient cause to file an application.

15. Therefore, the scheme of the N.I. Act, 1981 clearly envisage a provision where a competent Court of the learned Magistrate can take cognizance of offence punishable under Section 138 of the N.I. Act only upon filing of a complaint within the meaning of Section 2(d) of the Cr.P.C. A report of a police officer after investigation disclosing commission of non-cognizable offence shall be deemed to be a complaint. However, clause (a) of Section 142 of the N.I. Act contemplates filing of a complaint only. Section 142 of the N.I. Act does not provide for filing of a complaint by a payee or



holder in due course to the police for investigation under Section 155 or 156 of the Cr.P.C. Hence, no cognizance could not have been by the Court of the learned Magistrate for commission of an offence under Section 138 of the N.I. Act on the basis of which an F.I.R. instituted in the police station, investigation of which ended in filing charge sheet.

16. In view of the fact that the initial cognizance is bad, I do not find any reason of interference against the judgment passed by the learned Court of Appeal in Cr. Appeal No.57 of 2016 on 13.08.2019. Accordingly, the instant revision is dismissed on contest.

(Bibek Chaudhuri, J)

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