

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1576 of 2019

Arising Out of PS. Case No.-71 Year-2011 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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SANTOSH KUMAR @ SANTOSH PD. Son of Hira Lal Sah Resident of
Village - Parariya, P.O.- Burhwal, P.S.- Karakat (Garauri), District- Rohtas

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Sanjay Kumar @ Sajay Prasad, Son of Ram Bchan Prasad, Resident of
Village - Gorari, District- Rohtas

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Advocate

For the Respondent/s : Mr. Narsingh Tanti, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 06-03-2024 Having heard the learned advocate on behalf of the

petitioner and the private opposite party, this Court likes to

record that the petitioner before this Court, is the complainant of

Complaint Case No. 71 of 2011. In order to discharge the

existing debt of liability, the opposite party no. 2 paid an

account payee cheque of Rs. 3,16,780/- to the petitioner. The

petitioner deposited the said amount to its banker but it was

returned dishonored and the cheque was bounced. After

following the legal requirements contented in the proviso to

Section 138, the complainant/opposite party filed a complaint

under Section 138 of the Negotiable Instrument Act within the

statutory period of time, as contemplated in Section 142(b) of



the N.I. Act. The trial court upon hearing, convicted the petitioner and sentenced him to suffer simple imprisonment for one and a half years and to pay a fine of Rs. 5,00,000/- It was also directed that the said amount of Rs. 5,00,000/- if realised, be paid to the complainant.

2. The petitioner challenged the said order in Cr. Appeal No. 53 of 2015, the said appeal was disposed of vide Judgment dated 21.04.2018, affirming the judgment of the trial court passed by the learned Judicial Magistrate-Ist Class, Rohtas at Sasaram, in Complaint Case No. 71 of 2011.

3. The accused/petitioner has filed the instant revision assailing the order of the appellate court. In course of hearing, the petitioner paid a sum of Rs. 1,25,000/- to the opposite party no. 2, on the basis of an order dated 3rd March 2020. Today, the petitioner has approached this Court to compound the offence, directing the opposite party no. 2, to accept the draft of Rs. 2,00,000/- towards the fine, and the rest of the fine amount may be waived.

4. Learned advocate, on behalf of the opposite party No. 2, on the other hand submits that a loan was taken in the year 2010, in order to discharge his liability, the cheque in question was issued sometime in the month of November 2010.



The said cheque was bounced. A subsequent cheque for 1,61,000/- dated 11th December 2010, was also bounced.

5. This made the complainant to file a complaint case which was registered as Complaint Case No. 71 of 2011. The trial court by his judgment dated 1st July 2015, directed the accused/petitioner to pay Rs. 5,00,000/-(Five lakhs only) to the complainant. He did not comply with the said order. Again, the said order was affirmed in criminal appeal vide a judgment dated 21st April 2018. In spite of the appellate court's judgment, the accused did not pay the fine. It is submitted by the learned advocate for the opposite party to consider if the amount of Rs. 3,16,780/- was kept in a Bank account in fixed deposit, what would have been the amount of money which may be received by the opposite party no. 2.

6. On the contrary, it is submitted by the learned advocate for the petitioner that the petitioner is suffering from financial hardship. He sells clothes as a vendor and earns a little amount of money and it is not possible for him to pay the entire fine amount of Rs. 5,00,000/- (Five lakhs only). In order to show his bonafide, he somehow managed Rs. 2,00,000/- and made a Draft of the said amount in the name of the complainant.

7. I have considered the case of both the parties. The



complainant has suffered huge financial loss due to non-payment of money and bouncing of cheques. At the same time, considering the spirit of Section 147 of the N.I. Act, the instant revision is disposed of directing the petitioner to pay a Demand Draft of Rs. 2,00,000/- today to the learned advocate for the opposite party. The petitioner is further directed to pay a sum of Rs. 1,00,000/- to the opposite party no. 2, within four weeks from the date of this order.

8. On payment of the said sum, the petitioner's liability under Section 138 of the N. I. Act will be considered as fulfilled. In such a case, the petitioner needs not be sent to suffer imprisonment for one and a half years for non-payment of the cheque amount. On payment of the said amount, the trial court shall perform the offence under Section 147 of the Negotiable Instrument Act, be filed by both the petitioner and the opposite party.

9. Though, the learned advocate for the opposite party submits that the petitioner should be directed to pay the entire fine amount. This Court, under its inherent power under Section 482 of the CrPC, considering the financial position of the petitioner has passed the above order for amicable settlement of the matter.



10. With the above order, the instant revision application is disposed of.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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