
(2011) 07 JH CK 0081

In the Jharkhand High Court

Case No : Criminal M.P. No. 1068 of 2009

Alok Kumar Dubey

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320(8), 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 147

Citation : (2011) 4 JCR 318

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The petitioner has invoked the inherent power of this Court u/s 482 of the Code of Criminal Procedure with the prayer for the quashment of the entire criminal proceeding of the petitioner arising out of Complaint Case No. 792 of 2008 lodged at the instance of the complainant-O.P.No.2 for the alleged offence u/s 138 of the Negotiable instrument Act, pending in the Court of Shri R.S.Mishra, Judicial Magistrate, 1st Class, Ranchi wherein prima fade case was found by the order dated 7.7.2008.

2. The prosecution story in short was that the petitioner-accused had taken various items and materials from the complainant worth Rs. 5,50,065.00/- and in lieu of that he issued cheques for the supply of materials. It was the case of the complainant that a sum of Rs. 2,40,000/-(Two lakh forty thousand) was paid to the complainant in cash and for payment of the rest of the amount the petitioner-accused issued further two cheques amounting to Rs. 1,25,000/- (One lakh twenty five thousand) each but the same could not be honoured on account of insufficiency of the fund hence the case u/s 138 of the Negotiable Instrument Act.

3. During pendency of this Misc. Petition, the Opposite Party No. 2-complainant appeared and then filed I.A. No. 1174 of 2011 stating therein that as per the order dated 9.11.2009 the petitioner-accused has already depoisted Demand

Draft of Rs. 2,50,000/- drawn in favour of the complainant-Opposite Party No. 2. As a matter of fact, the petitioner had himself offered to pay the said amount and now the complainant-O.P. No. 2 wants to withdraw the said amount in terms with the direction of this Court hence a suitable order may be passed.

4. By filing a supplementary affidavit, the complainant-O.P. No. 2 further submits that the petitioner is satisfied with the amount of D.D. drawn in his favour, as such, order may be passed for the release of the Demand Draft of Rs. 2,50,000/- in his favour and accordingly the prayer that has been made in I.A. No. 1174 of 2011 may be allowed.

5. Heard Mr. A.K. Padney, learned counsel appearing on behalf of the petitioner and Mr. Rohit Ranjan Sinha, appearing on behalf of the complainant-O.P. No. 2.

6. Having been satisfied with the contents of the Interlocutory Application filed wherein the Complainant-O.P. No. 2 expressed his agreement to accept the Demand Draft of Rs. 2,50,000/- deposited in the Court below, on his full and final satisfaction, this petition is allowed in terms of the Interlocutory Application No. 1174 of 2011 and the supplementary petition filed by the Complainant-O.P. No. 2 and in view of his affirmation expressed therein. The petitioner is directed to revalidate the Demand Draft of Rs. 2,50,000/- with the leave of the Court below within the period of two weeks so that the O.P. No. 2 may make withdrawal. With this observation, the petitioner Alok Kumar Dubey is acquitted under the provision of Section 147 of the Negotiable Instrument Act read with Section 320(8) of the Code of Criminal Procedure in Complaint Case No. 792 of 2008, pending in the Court of Shri R.S. Mishra, Judicial Magistrate. 1st Class, Ranchi or his successor. Accordingly, both the petitions are allowed.