
(2021) 04 JH CK 0170

In the Jharkhand High Court

Case No : Criminal Revision No. 612 Of 2012, I.A. No. 1710 Of 2012

Chandra Shekhar Mandal

APPELLANT

Vs

State of Jharkhand And Anr

RESPONDENT

Date of Decision : 17-04-2021

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2021) 04 JH CK 0170

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Ritesh Kumar, Tarun Kumar, Nawal Kishore Pandey

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the parties.

2. This revision petition has been filed against the judgment dated 30.04.2012 passed by learned Additional District and Sessions Judge, Hazaribagh in Cr. Appeal No. 194 of 2011, whereby the learned appellate court confirmed the judgment of conviction and modified the amount of fine amount of Rs. 10,000/- and directed the petitioner to pay compensation of Rs.76,000/-.

The petitioner was convicted vide judgement dated 02.09.2011 passed by learned Judicial Magistrate, 1st Class, Hazaribagh in C. Case No. 845 of 2009 under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo S.I. for six months and pay fine of Rs. 10,000/-.

3. The case of the complainant in brief is that on 10.01.2009 accused took Rs. 1,15,000/- from the complainant on the pretext of getting the complainant's son admitted in Sagar Institute of Research and Technology, Bhopal (Electronic Branch). The son of the accused was already studying in the aforesaid institute and therefore the accused approached the complainant at his residence at Chouparan and assured the complainant that his son would get admission in the

said institute for which the complainant had to pay Rs. 1,15,000/- towards admission fee, tuition fee, hostel charges etc. The complainant fell into this trap and gave Rs. 1,15,000/- to the accused. The accused and his son Rajesh Kumar gave a money receipt to the complainant and also entered into an agreement with the complainant. Later, the accused failed to get admission of the complainant's son in the said institute. After the pressure given by the complainant and other common friends, accused returned Rs. 39,000/- to the complainant on 27.04.09 and for the rest amount gave a cheque of Rs. 76,000/- drawn on S.B.I. Bokaro, Branch. However, when the complainant deposited the said cheque in his account at Bank of India, Chouparan Branch, it was dishonoured on 21.05.09 due to reason "Payment stopped by the drawer." Thereafter, the complainant gave a demand notice to the accused through his advocate by registered post but the accused in his reply to the said notice refused to return the cheque amount to the accused. Hence, the complaint case was filed.

4. The learned courts below gave consistent findings and convicted the petitioner for offence under Section 138 of Negotiable Instruments Act, 1881. The learned appellate court recorded the findings as follows: -

"11. Thus, from the oral and documentary evidence available on record it is quite clear that the cheque dated 27.04.09 was presented in the bank well within period of its validity. It has also been clearly proved that complainant gave a demand notice to the accused within 30 days of the receipt of the information regarding the dishonour of the cheque. The complainant gave 15 days' time to the accused to return the cheque amount but the accused refused to do so. Thus, all the basic ingredients of the offence under Section 138 N.I. Act have been fully established by the complainant.

12. The accused, as stated above has not adduced any evidence in his defence. He has taken plea that the complainant had forced him to issue the said cheque. According to the accused the cheque was issued by him due to coercion and pressure put on him by the complainant and his friends. In my view, this is not a ground on which the accused shall be absolved of his liability. In his reply to the demand notice (Ext. '6') the accused has clearly admitted that the cheque in question was issued by him. This accused in his statement recorded under Section 313 Cr. P.C. has further admitted that he had issued the said cheque in favour of the complainant and had written to the bank to stop its payment. U/s 139 of the N.I. Act there is always a presumption in favour of the holder of the cheque that he has received the cheque for the discharge, in whole or in part, of any debt or other liability. The accused had totally failed to rebut that presumption.

13. On the basis of evidence discussed above, I am of the opinion that the complaint has been able to prove its case beyond all reasonable doubts."

5. Learned counsel for the parties submit that the matter relates to conviction of

the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and a joint compromise petition is on record being I.A. No. 1710 of 2012 wherein it has been mentioned that opposite party No. 2 has received the claim amount and he has no grievance against the petitioner. Learned counsels jointly submit that the present case may be disposed of in view of the compromise. Learned counsel appearing on behalf of the opposite party No. 2 has also submitted that he has no objection if the conviction, sentence as well as compensation against the petitioner is set aside.

6. Considering the submissions made on behalf of the parties and considering the fact that the petitioner and the opposite party no. 2 have entered into compromise amongst themselves and the matter relates to conviction of the petitioner under Section 138 of the Negotiable Instruments Act, the present case is disposed of in view of the compromise, and the order of conviction and sentence passed by learned trial court in C. Case No.845 of 2009 as well as the order of sentence and compensation imposed against the petitioner by the learned Additional District and Sessions Judge, Hazaribagh in Cr. Appeal No. 194 of 2011 is hereby set aside.

7. Accordingly, the present revision petition is hereby disposed of. I.A. No. 1710 of 2012 also stands disposed of.

8. The petitioner is discharged from the liability of his bail bonds.

9. Let the lower court records be sent back to the learned court below.

10. Let this order be communicated to the learned court below through FAX.