(2011) 05 PAT CK 0111

In the Patna High Court

Case No : Criminal Appeal No. 5 of 2009

Raj Shekhar Singh APPELLANT

Vs

The State of Bihar and Another RESPONDENT

Date of Decision : 19-05-2011

Acts Referred:
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : AIR 2012 Patna 28 : (2011) 59 BLJR 3119

Hon'ble Judges : Dharnidhar Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharnidhar Jha, J.—The present appeal is directed against the judgment of acquittal passed by the learned Judicial Magistrate, Bhagalpur on 08.12.2008 in Complaint Case No. 881 of 2004, Trial No. 680 of 2008 by which the solitary accused of the case, who is the Respondent herein, was acquitted of the charge u/s 138 of the Negotiable Instrument Act. The facts of the case was that the complainant was approached by the Respondent seeking to borrow Rs. 1,50,000/- as Amanat for his business saying that he will return the said amount in the month of May 2004 and he assured him for giving post dated cheque, one of the value of Rs. 50,000/- and the other of the value of Rs. 59,860/-. The total amount being 1,09,860/- the cheques were, as per the complaint petition dated 30.05.2004. The complainant presented the two cheques for encashment in Canara Bank on 2.6.2004 but the same was returned with information ''in sufficient fund'' on 09.06.2004. Thereafter, the complainant demanded the money and the same was assured to be returned within 3-4 days, but nothing came out and, lastly, he sent legal notice to the Respondent seeking him to pay the borrowed amount but that was not done which resulted in filing of the complaint petition.

2. During the course of the trial two witnesses were examined by the complainant Raj Shekhar Singh. He examined himself as complainant''s witness

No. 1 and other witness Ravindra Kumar came to support him as his witness No. 2.

3. The point upon which the learned trial court acquitted the Respondent was that there was some interpolation in the date of the cheques and that was probably made by the complainant for filing the case because the date which was appearing on the two cheques, which was bearing the date on 31.05.2004 because if the borrowed amount was to be withdrawn, there could not be any necessity to issue the two cheques. The other reason given by the court below was that on bare perusal of the dates which were appearing on the two cheques, it was evidently clear that interpolation was made in the month of the dates and that was not appearing on the counter foils of the two cheques which were produced before the court while the Respondent was examining himself as D.W.1. Another deficiency which appears also taken into account was of non-production of the written agreement or Amanatee Chittha which has been mentioned in the complaint petition.

4. It was contended by the learned Counsel appearing on behalf of the Appellant/ complainant that the learned trial Judge was simply misreading the interpolations which were not apparently available from the perusal of the two cheques and he was unnecessarily acquitting the Respondent on the ground of non-production of the Amanatee Chittha. It was contended that the reasons on which the interpolations were inferred by the court below could itself be available from the cheque as there might be certain other bold numerals which were appearing thereon which may justify the appearance of bold numerals which appear at the place of month and years on the two cheques.

5. The learned Counsel appearing for the Respondent has submitted that the reasons assigned by the learned trial Magistrate in paragraphs-11 and 12 of the judgment in support of the finding of acquittal appears a view which was reasonably possible and as such there was no need for this Court to interfere with the judgment of acquittal. It was further contended that interpolations was inherently apparent from the simple perusal of the cheques as the date were interpolated as regarded the dates of their respective issue like, 30.06.2004 and 30.08.2004. Interpolation was made, as it was necessary to be made as the complaint petition would not have been entertained as it would have not met mere requirements of law.

6. On perusal of the two cheques which have been marked Exts-3 and 3/1, it appears that there was some interpolations in the place where the numerals indicating the month of the year has to be put in. It appears that in Ext-3/1 the date 30-05-2004 has been interpolated after erasing the particular digit over which numeral-5 has been written. Likewise, in Ext-3 also the numeral at the left for month has been erased to overwrite numeral-5. The reason given by the learned trial Judge that there was no need for Respondent to issue two cheques on the same date for paying the amount of Rs. 50,000/- and 59,860/- appears reasonably correct in as much as if the cheques were post dated and they were

meant to make payments of two different amounts, there was no need of issuing two cheques of the two amounts on the same date. The reason must have been to pay up the borrowed amount in two installments, each separated from the other by same or similar period of time. As such, there must have been some distance in period of issue of the cheques and as such in the dates. There is some over writings in the numeral of the year as also the amount, but when the very fact of interpolation has been accepted by the trial court which appears justified then could it not be a case that in order to justifying the interpolation or in order to making it acceptable to a reasonable person, some other digits might have also been written in the same fashion as was interpolated to create the evidence of camouflaging the act. This inference is simply available to me when I scrutinize the amount Rs. 50,000/- after which there is a sign of "equal to" and that is succeeded by 00. The last of the ''00'' appears over written. Likewise, the numeral 9 in the amount of Rs. 59,860/- also appears over written so as to making it probable and consistent with the other over writings on the cheques that it could be in usual course and it was not a subsequent act.

7. The Amanatee Chittha was not produced. The contention was that a copy of it was placed on the record. But the difficulty is that it was not brought on record properly by following the rules of Evidence Act. At any rate, if the Amanatee Chittha was an agreement so as to setting down the terms of payment of borrowed amount then the court was rightly making an enquiry as to why that was not properly brought on record. Mere issuance of cheques and bouncing back of it is not an offence, unless the requirements of discharging in whole or part ''any debt or other liability'' is alleged and established by evidence. The contention of the learned Counsel for the Respondent that the necessity of changing the dates was there so as to making the filing of the complaint petition in consonance of the provisions of law also appears reasonably acceptable as if the cheques had been issued with some date in the month of June, 2004 or August, 2004. In that case the very complaint petition could not have been maintainable before any court of law.

8. These are some of the reasons in addition to those which were assigned by the learned trial court that this Court finds no necessity to interfere with the judgment of acquittal.

9. In the result, the appeal appears of no merit and the same is dismissed.

