

(2014) 11 PAT CK 0078

In the Patna High Court

Case No : Criminal Misc. No. 18810 of 2008

Sristydhara Neogy and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2015) 2 BC 406

Hon'ble Judges : Ashutosh Kumar, J.

Bench : Single Bench

Advocate : Pankaj Kumar Sinha, Advocate, for the Appellant; Rao Kundan Kr. Karmvir and Syed Ashfaq Ahmad, for the Respondent

Final Decision : Allowed

Judgement

Ashutosh Kumar, J. Heard Mr. Pankaj Kumar Sinha, learned Advocate for the petitioners and learned Advocate for the State. The petitioners, who are the husband and wife amongst themselves have challenged the order dated 16.2.2008 passed by the learned Additional Sessions Judge-cum-Fast Track Court-IV, Munger in Criminal Revision No. 2 of 2008, whereby the order of the learned Judicial Magistrate, 1st Class, Munger in Case No. 855C of 2007, taking cognizance under Sections 406 and 420 of the Indian Penal Code was upheld. The order of cognizance dated 3.10.2007, referred to above, has also been challenged in this petition.

2. The allegation in the Complaint Petition is that because of earlier acquaintance with the petitioners, the complainant-opposite party No. 2 gave a loan of Rs. 3,27,000/- for the purposes of setting up a machinery and against such grant of loan, six post-dated cheques were issued by the petitioners. When the amount was sought to be withdrawn from the account of the petitioners, the opposite party No. 2, to his dismay found that the funds were not sufficient in the account of the petitioners for which those cheques came to be dishonoured. However, later the Bank, with which the petitioners maintained the account, came out with

the stand that because of instructions to stop the payment, those cheques could not be honoured.

3. During the course of arguments, this Court could lay its hands upon an order of the Apex Court, whereby the petitioners were asked to pay the amount in question, to be deposited in the Treasury, under protest.

4. From the perusal of the records, it appears that six post-dated cheques were issued by the petitioners in view of loan of Rs. 3,27,000/- from the complainant-opposite party No. 2. The petitioners have put up a defence that complainant opposite party No. 2 is the supplier of chicken and, under an oral agreement, he was required to supply chicken uninterruptedly and only thereafter he would be entitled to have the cheques issued by the petitioners encashed. This is the defence of the petitioners.

5. The case of the prosecution is that a loan was demanded and in order to secure such loan, the petitioners gave post-dated cheques. The fact that instruction was issued at their hands for stopping the payment, makes the case under Sections 420 and 406 of the Indian Penal Code.

6. However, considering the fact that the loan amount has already been paid, though under protest by the petitioners, no useful purpose would be served to put the petitioners on trial.

7. However, it is made clear that by quashing of the order taking cognizance as against the petitioners and the revisional order, which sustained the order taking cognizance, would not entitle the petitioners to have such amount released in their favour.

8. The present application is being allowed only on the consideration that the money which is due to the opposite party No. 2 has already been deposited by the petitioners at the stage of seeking bail.

9. The opposite party No. 2 would be at liberty to make necessary application for release of such amount. The application stands allowed.