

(2014) 11 JH CK 0112

In the Jharkhand High Court

Case No : Criminal Revn. No. 1083 of 2014 and I.A. Nos. 6010, 6114 and 5770 of 2014

Vinayak Prasad Mishra

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401 — Negotiable Instruments Act, 1881 - Section 138

Citation : (2015) 2 BC 441 : (2016) 1 Crimes 125

Hon'ble Judges : Amitav Kumar Gupta, J.

Bench : Single Bench

Advocate : Rita Kumari and Neetu Singh, for the Appellant

Final Decision : Allowed

Judgement

Amitav Kumar Gupta, J. Learned Counsel appearing on behalf of the petitioner submitted that he does not want to press I.A. No. 5770 of 2014, which has been filed under Sections 397 & 401 of the Code of Criminal Procedure. Accordingly, I.A. No. 5770 of 2014 stands dismissed, as not pressed.

2. This Criminal Revision Application is directed against the order dated 29.9.2014, passed by the learned Principal Sessions Judge, Pakur in Cr. Appeal No. 41 of 2013, whereby and whereunder the learned Principal Sessions Judge affirmed the judgment and order dated 5.10.2013 passed by learned Sub-Divisional Judicial Magistrate, Pakur in P.C.R. Case No. 142 of 2008 whereby the petitioner was convicted and sentenced to undergo imprisonment for a period of 2 years and to pay Rs. 1,20,000/- as compensation to the complainant/O.P. No. 2 under Section 138 of Negotiable of Instruments Act.

3. The brief facts of the complainants' case is that on 22.1.2008 the complainant/O.P. No. 2 approached the petitioner, Rajeev Ranjan, who happens to be the Proprietor of M/s. Gaytri Traders and deals in business of cement, iron rod, etc., to deliver iron rod and cement and assured the petitioner that he would make

the payment of the said items through cheque, accordingly, the petitioner, in good faith, delivered the said items worth Rs. 60,256/- to the complainant/O.P. No. 2; that as against the said amount, the O.P. No. 2 paid Rs. 256/- in cash and for the balance amount i.e. Rs. 60,000/-, he issued a cheque No. CCB 00091, 809536 dated 22.1.2008 of the S.B.I., Bazar Branch, Pakur in favour of the petitioner, but when the said cheque was presented before the Bank for encashment by the O.P. No. 2, the said cheque was dishonoured by the Bank due to "Insufficient Fund" in the account of the drawer, whereafter the O.P. No. 2 sent a legal notice on 23.5.2008 to the petitioner and subsequently a P.C.R. Case was filed before the C.J.M., Pakur, due to non-payment of cheque amount by the petitioner, which was transferred to the Court of learned Judicial Magistrate, Pakur, who took cognizance under Section 138 of the N.I. Act whereafter the case was transferred to the Court of learned Sub-Divisional Judicial Magistrate, Pakur.

The learned Sub-Divisional Judicial Magistrate, Pakur on the basis of the evidence and material available on record, found the petitioner guilty for the offence under Section 138 of N.I. Act and sentenced him to undergo imprisonment for a period of 2 years and also ordered to pay Rs. 1,20,000/- as compensation to the complainant/O.P. No. 2, which was affirmed by the aforesaid impugned order.

4. Learned Counsel for the petitioner has submitted that good sense has prevailed between the parties and they have settled their disputes outside the Court and they have filed joint compromise petition being I.A. No. 6010/2014, on account of amicable settlement of their dispute; that the petitioner on 18.11.2014 has paid Rs. 1,20,000/- to the complainant/O.P. No. 2. The complainant/O.P. No. 2 has now no grievance against the petitioner. It has further been submitted that the order dated 29.9.2014, passed by the learned Principal Sessions Judge, Pakur in Cr. Appeal No. 41 of 2013 and order dated 5.10.2013 passed by learned Sub-Divisional Judicial Magistrate, Pakur in P.C.R. Case No. 142 of 2008 may be quashed in view of the fact that the parties on their free will have compromised the case. It has also been submitted that since the offence under Section 138 of the Negotiable Instruments Act, is compoundable in nature thus in view of the compromise the offence be allowed to be compounded.

5. Learned Counsel for the O.P. No. 2 admitted that both the parties have amicably settled the dispute and Rs. 1,20,000/- has been received by O.P. No. 2. It is also admitted that the complainant/O.P. No. 2 has no grievance against the petitioner and the offence be allowed to be compounded.

6. Admittedly O.P. No. 2, the complainant and the petitioner have resolved the dispute by amicably settling the matter and considering that the offence under Section 138 of the Negotiable Instruments Act is compoundable in nature as such, the compromise between the parties is accepted and the offence is allowed to be compounded. In the attending facts and circumstances of the case and for the ends of justice, the impugned order and judgment dated 5.10.2013 passed

by learned Sub-Divisional Judicial Magistrate, Pakur in P.C.R. Case No. 142 of 2008, as also the judgment dated 29.9.2014, passed by the learned Principal Sessions Judge, Pakur in Cr. Appeal No. 41 of 2013, are hereby, set aside on the basis of the compromise between the parties. Consequently, the petitioner above named is acquitted of the accusation. The petitioner is on bail and he is discharged from the liabilities of his bail bond. In the result, the Cr. Revision application, as well as the Interlocutory Applications being I.A. No. 6010 of 2014 and I.A. No. 6114 of 2014 stands allowed and is, hereby, disposed of.