

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Criminal Revisional Jurisdiction)

Criminal Revision No. 592 of 2016

Hazari Prasad, son of late Dhaneshwar Sahu, resident of village-Aamtarh,
PO and PS-Ratu, District-Ranchi (Jharkhand) ... Petitioner

Versus

1. The State of Jharkhand
2. Md. Mustafa Ansari, son of Shekh Ayub Ansari, resident of village-Barka
Toli, PO and PS-Ratu, District-Ranchi (Jharkhand) ... Opposite Parties

CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

For the Petitioner : Mr. Sanjay Kumar Singh, Advocate
For the State : Mrs. Mahua Palit, APP

Order No. 07/Dated: 22nd June 2022

The petitioner is aggrieved of the order dated 28th March 2016 passed in Criminal Appeal No. 17 of 2015.

2. By this order, conviction of OP No. 2 in Compliant Case No. 1045 of 2010 under section 138 of the Negotiable Instrument Act, 1881 (in short, NI Act) has been set aside by the appellate Court.

3. Complaint Case No. 1045 of 2010 was instituted on 7th June 2010 on the allegation that the cheque bearing No. 871312 drawn on Bank of India dated 6th May 2010 issued by OP No. 2 was returned unpaid on 8th May 2010 with the endorsement "insufficient fund". The learned trial Magistrate raised presumption under section 139 of the NI Act to hold the accused guilty under section 138 of NI Act for which he was sentenced to SI of one year with a direction to pay compensation of Rs. 2 lacs to the complainant.

4. The appellate Court held that the accused was able to rebut the presumption under section 139 of NI Act and therefore the complainant was required to prove the case beyond all reasonable doubt.

5. Mr. Sanjay Kumar Singh, the learned counsel for the petitioner reiterating the plea taken by the complainant before the Courts below would submit that issuance of cheque by OP No. 2 has not been denied and while so case pleaded by the complainant that he gave Rs. 2 lacs to OP No. 2 stands proved.

6. Section 139 of NI Act provides that unless the contrary is proved it shall be presumed that the holder of the cheque received the cheque for discharge of any debt or other liability, in whole or in part. In normal circumstances where the drawer of a cheque does not dispute his signature over the cheque and there is no suspicious circumstance in the case the presumption under section 139 of NI Act is raised against the drawer of the cheque. Once a presumption under section 139 of NI Act is raised by the Court onus lies on the accused to show through preponderance of probability that no presumption merely on the basis of signature of the accused appearing on the cheque can be raised. By now it is well settled that the onus on the accused to rebut a legal presumption such as under section 139 of NI Act is not so onerous as in a criminal case and the accused can lead evidence or show from the materials on record that there is a possibility that the case pleaded against him is not correct.

7. In the present case, the appellate Court has found that the name, date etc. on the cheque which bears signature of OP No. 2 were not filled up by him. OP No. 2 has all along taken a stand that the cheque in question was issued by him as security for purchase of land.

8. The appellate Court further referred to judgment in "*Tata Steel Limited (Cement Division) v. The State and Anrs.*" 2012 (1) Cr. R. 264 Jhar. to hold that in the suspicious circumstances which have surrounded the case of the complainant benefit of doubt shall be extended to the accused.

9. Having examined the materials on record, this Court finds no ground to interfere in the matter. The revisional powers of the High Court are very limited and only in exceptional cases where it is shown to the Court that the judgment under challenge has caused miscarriage of justice the Court would interfere in the matter. The primary reason behind limitation on the revisional jurisdiction has been incorporated under section 401 Cr.PC which provides that the revisional Court shall not convert an order of acquittal into one of conviction in exercise of the revisional powers.

10. The presumption under section 139 of NI Act is akin to general rule of evidence incorporated in section 106 of the Evidence Act. This provision of the Evidence Act has been discussed elaborately by the Hon'ble Supreme Court in "*Shambhu Nath Mehra v. The State of Ajmer*" AIR 1956

SC 404 to hold that the reverse presumption against the accused cannot be raised automatically and it is burden of the prosecution to establish a *prima facie* case for raising a presumption under section 106 of the Indian Evidence Act, 1872.

11. As this Court finds, the case pleaded by the complainant is surrounded by several suspicious circumstances and the appellate Court rightly held that the complainant was not able to establish a *prima facie* case so as to raise a presumption under section 138 of NI Act against OP No. 2.

12. For the aforesaid reason, finding no merit in the present criminal revision petition, Criminal Revision No. 592 of 2016 is dismissed.

(Shree Chandrashekhar, J.)

Tanuj/-