

(2023) 06 GAU CK 0089

In the Gauhati High Court

Case No : Criminal Revision Petition No. 245 Of 2022

Akhilesh Kumar Yadav

APPELLANT

Vs

State Of Assam And Anr.

RESPONDENT

Date of Decision : 27-06-2023

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138, 143A, 148

Citation : (2023) 06 GAU CK 0089

Hon'ble Judges : Susmita Phukan Khaund, J

Bench : Single Bench

Advocate : R. Dev, U.K. Deka, D. Das

Final Decision : Dismissed

Judgement

1. Heard Mr. R. Dev, learned counsel for the petitioner as well as Mr. D. Das, learned Addl. P.P. for the State respondent No. 1. Also heard Mr. U.K. Deka, learned counsel for the respondent no. 2.

2. The petitioner Shri. Akhilesh Kumar Yadav is aggrieved by the order dated 11.03.2022 passed in Criminal Appeal No. 03/2022 by the learned Sessions Judge, Jorhat, directing the petitioner to pay 20% of the fine amount of Rs. 30,00,000/- (Thirty lacs) within 11.05.2022. It is submitted that the petitioner had preferred an appeal against the judgment and order dated 19.02.2022 passed by the learned Chief Judicial Magistrate, Jorhat in connection with N.I. Case No. 278/2019 convicting the appellant/petitioner under Section 138 N.I. Act and sentencing him to undergo simple imprisonment for a period of one year and to pay a fine of Rs. 30,00,000/- as compensation to the respondent.

3. Per contra, the learned counsel for the respondent has contended that the petitioner/appellant is wasting the time and resources of the judicial machinery only to delay his conviction and punishment thereof. The impugned order was passed on 11.03.2022 and till date, the petitioner has been delaying the conviction, more so, when the order of conviction and sentence was passed by

the learned trial Court on 19.02.2022. The petitioner has relied on a decision of the Hon'ble Supreme Court in G.J. Raja Vs. Tejraj Surana reported in (2019) 19 SCC 469, wherein, it has been observed that:-

"24. In the ultimate analysis, we hold Section 143A to be prospective in operation and that the provisions of said Section 143A can be applied or invoked only in cases where the offence under Section 138 of the Act was committed after the introduction of said Section 143A in the statute book. Consequently, the orders passed by the Trial Court as well as the High Court are required to be set aside. The money deposited by the Appellant, pursuant to the interim direction passed by this Court, shall be returned to the Appellant along with interest accrued thereon within two weeks from the date of this order."

4. On the contrary, the learned counsel for the respondent has submitted that the judgment of the Hon'ble Supreme Court in G.J. Raja's case was decided on the point of interim compensation under Section 143A of the N.I. Act, which was held to be prospective in operation. It was held that section 143A can be applied or invoked only in cases, where the offence under Section 138 of the Act was committed after the introduction of said Section 143A in the statute book. Section 148 of the N.I. Act was not held to be prospective in operation. It has been held by the Hon'ble Supreme Court in Surinder Singh Deswal @ Colonel S.S. Deswal and Others. Vs. Virender Gandhi and Another reported in (2020) 2 SCC 514 that:-

"Having observed and found that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of Section 138 of the N.I. Act was being frustrated, the Parliament has thought it fit to amend Section 148 of the N.I. Act, by which the first appellate Court, in an appeal challenging the order of conviction Under Section 138 of the N.I. Act, is conferred with the power to direct the convicted Accused - Appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. By the amendment in Section 148 of the N.I. Act, it cannot be said that any vested right of appeal of the Accused - Appellant has been taken away and/or affected. Therefore, submission on behalf of the Appellants that amendment in Section 148 of the N.I. Act shall not be made applicable retrospectively and more particularly with respect to cases/complaints filed prior to 1.9.2018 shall not be applicable has no substance and cannot be accepted, as by amendment in Section 148 of the N.I. Act, no substantive right of appeal has been taken away and/or affected. Therefore the decisions of this Court in the cases of Garikapatti Veeraya (supra) and Videocon International Limited (supra), relied upon by the learned senior Counsel appearing on behalf of the Appellants shall not be applicable to the facts of the case on hand. Therefore, considering the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act stated hereinabove, on purposive interpretation of Section 148 of the N.I. Act as amended, we are of the opinion that Section 148 of the N.I. Act as amended,

shall be applicable in respect of the appeals against the order of conviction and sentence for the offence Under Section 138 of the N.I. Act, even in a case where the criminal complaints for the offence Under Section 138 of the N.I. Act were filed prior to amendment Act No. 20/2018 i.e., prior to 01.09.2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the N.I. Act would be frustrated. Therefore, as such, no error has been committed by the learned first appellate court directing the Appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court considering Section 148 of the N.I. Act, as amended."

5. Reverting back to this case, it is held that the petitioner is aggrieved by the impugned order because the complaint petition was filed before the amendment of 2018. However, in view of the decision of the Hon'ble Supreme Court in Surinder Singh Deswal @ Colonel S.S. Deswal (supra), it is held that the petitioner's grievance is not amenable to revisional jurisdiction.

6. It is true that the complaint petition was filed on 21.06.2017. A close scrutiny of the scanned copies of the LCR reveals that the complaint petition was filed on 21.06.2017 but the amendment came into effect on 01.09.2018. The impugned order passed on 11.03.2022 and since then, the appeal is pending for hearing, as the appellant had preferred a revision petition against the impugned order. Without going into the merits of the case, it is held that the petition is devoid of merits. I would not like to interfere with the order dated 13.03.2022 passed by the learned Sessions Judge, Jorhat. It is true that a minimum amount of compensation that is 20% of the compensation amount if deposited does not take away substantive rights of the petitioner.

7. In view of my foregoing discussions, this petition stands dismissed.