

(2016) 09 AHC CK 0125
In the Allahabad High Court
Case No : Criminal Revision No. 2960 of 2016

Anokhey Lal Saini

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 27-09-2016

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2017) ACD 14 : (2016) 10 ADJ 411 : (2017) 1 BC 775 : (2017) 2 DCR 54

Hon'ble Judges : Pramod Kumar Srivastava, J.

Bench : Single Bench

Advocate : Krishna Kumar Singh, Advocate, for the Revisionist; G.A, for the Opposite Parties

Final Decision : Partly Allowed

Judgement

Pramod Kumar Srivastava, J.—Heard Sri. K.K. Singh, and Sri. M.B. Mathur, learned counsels for the revisionist, learned AGA for opposite party no.-1 State, Sri. Rajesh Yadav, Advocate who has filed vakalatnama on behalf of opposite party no. 2, and perused the records.

2. Criminal complaint case no. 1333 of 2014 (Vibhor Agrawal v. Anokhey Lal Saini) was filed by complainant. The trial was concluded, after affording opportunity of hearing to accused the Additional Chief Judicial Magistrate, Court No. 6, Moradabad had convicted the accused Anokhey Lal for charge under section 138 N.I. Act by judgment dated 18.4.2016, and sentenced him with simple imprisonment of six months and fine of Rs. 2,00,000/- (in default of payment of fine, two months additional simple imprisonment). Trial court had also directed that from the amount of fine, Rs. 1,90,000/- will be paid to complainant and remaining Rs. 10,000/- would go to State Government.

3. Against the judgment of trial court, criminal appeal no.63 of 2016 (Anokhey Lal v. State of U.P. and Another) was preferred, which was heard and dismissed

by the judgment dated 9.9.2016 of Sessions Judge, Moradabad.

4. Against the judgments of trial court as well as lower appellate court, present revision has been preferred.

5. Learned counsel for the revisionist contended that from evidences, the prosecution case was not proved, therefore the revision should be allowed. His alternative argument was that since it is first fault of revisionist, who has no other criminal history and he is an old man, the punishment of six months' imprisonment is on higher side, therefore, this sentence should be modified and mitigated.

6. So far contentions of revisionist side on point of proof of charges are concerned, from perusal of record, it appears that there has been concurrent finding of trial court as well as lower appellate court that charges against revisionist Anokhey Lal relating to allegations of section 138 N.I. Act are proved. These findings were given by lower courts after appreciation of evidences and after using judicial mind. By such appreciation of evidences, after discussing the arguments of defence side, the lower courts had reached to conclusion that prosecution case was proved. Such concurrent finding should not be interfered in revision for the reason that on those evidences there may be probability of reaching to a conclusion different from that of trial court, especially when the findings of lower courts are not infirm or perverse. Therefore, judgments on point of conviction are confirmed.

7. This contention of learned counsel for the revisionist is found acceptable that appropriate reasons were not discussed by trial court or lower appellate court at the time of passing sentence. But the reason of this may be that being summons case, accused-revisionist was not entitled for right of hearing on point of quantum of sentence like that of warrant cases or sessions triable cases. It also appears that at the time of argument before trial court or lower appellate court, contentions on point of sentences were not placed before concerned courts.

8. The cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused and all other attending circumstances are relevant facts which would enter into the area of consideration. The undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.

9. Although, in summons trial cases, no specific provision is there for hearing on

point of sentence, but it is always appropriate that in interest of justice, trial courts should consider relevant factors, which may have effect on quantum of sentence. These points are being considered at this stage.

10. There has been no criminal history of the revisionist. It is also found that although revisionist is an elderly man, and also has his family to maintain. He is in Government service, and after this conviction his employment is at jeopardy. He had issued the cheque for repaying the amount of loan due against him. He is in jail for about more than two weeks. These points should be considered for mitigating his sentence. Apart from it, the counsel for the revisionist informs that revisionist is ready and willing to pay amount due against him and sentence of imprisonment may be mitigated. After considering these facts, it appears appropriate that after deposition of amount of fine awarded by trial court, his sentence of imprisonment is modified for sentence already undergone.

11. On the basis of above discussion, this revision is partly allowed. The conviction of revisionist Anokhey Lal in Complaint Case No. 1333 of 2014 is confirmed, but his sentence is modified. His imprisonment for the charge under section 138 N.I. Act is modified to period already undergone by this time, and fine of Rs. 2,00,000/-. In default of payment of which, he will undergo additional imprisonment for four months. From the amount recovered from revisionist Rs. 1,90,000/- will be paid to complainant as compensation, and remaining amount would go to State Government.

12. Office is directed to immediately send the copy of this order to trial court for compliance.