
(2014) 12 RAJ CK 0155
In the Rajasthan High Court
Case No : Cr. Revision Petition No. 587/1999

Dhyan Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

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

Citation : (2015) 1 WLN 254

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Advocate : Tribhuvan Gupta, Advocate for the Appellant; L.R. Upadhyaya, Public Prosecutor, Advocate for the Respondent

Judgement

Vijay Bishnoi, J.—This criminal revision petition is listed for disposal in the spirit of Lok Adalat.

2. This criminal revision petition under section 397 read with section 401 CrPC has been filed by the petitioner while challenging the judgment dated 02.7.1999 passed by the Additional Sessions Judge No. 1, Udaipur (for short "the appellate court" hereinafter) in Cr. Appeal No. 2/1999, whereby the appeal filed by the petitioner against the judgment dated 18.12.1998 passed by the Judicial Magistrate No. 2 (South), Udaipur (for short "the trial court" hereinafter) in Cr. Case No. 58/1998 has been dismissed.

3. The trial court has held the petitioner guilty of commission of offence under section 138 of the Negotiable Instrument Act and imposed a fine of Rs. 38,000/-. The appellate court while dismissing the appeal preferred by the petitioner has affirmed the order passed by the trial court.

4. On 01.12.2014, learned counsel for the petitioner has informed this Court that the whole amount of Rs. 38,000/- has already been deposited by the petitioner before the trial court and as per the information, the said amount has already

been disbursed to the respondent No. 2. On that day, counsel for the petitioner sought time to get instructions from the petitioner whether he wants to get the matter decided in the spirit of Lok Adalat or not. Time as prayed for was granted and the matter was adjourned for today.

5. Today, the learned counsel for the petitioner has informed that the petitioner does not want to get the matter decided in the spirit of Lok Adalat and has instructed him to argue the matter on merits.

6. Heard on merits.

7. Learned counsel for the petitioner has submitted that at the time of issuance of cheque in question to the respondent No. 2, mental condition of the petitioner was not good and he was suffering from some mental illness and the complainant taking benefit of the said condition, had got the cheque executed by the petitioner. It has also been argued that the respondent No. 2 has failed to prove before the trial court that the cheque was issued by the petitioner against any liability, dues or outstanding and in such circumstances, the trial court has grossly erred in convicting the petitioner for the offence punishable under section 138 of the N.I. Act. The learned counsel for the petitioner has further argued that the appellate court has not taken into consideration this aspect of the matter and has illegally affirmed the order passed by the trial court.

8. Heard learned counsel for the petitioner and perused the impugned order and also meticulously examined the record.

9. The learned trial court has taken into consideration the defence of the petitioner that at the time of issuance of the cheque, the petitioner was not in a good mental state, however, the learned trial court has observed that the petitioner has not disputed his signatures on the cheque in question. The cheque was filled in by P.W. 2-Bhuwan Chand in presence of the complainant and the petitioner and the petitioner voluntarily put his signatures on the said disputed cheque. The petitioner has failed to prove that at the time of execution of the cheque, his mental condition was not good. The trial court has observed that the complainant has proved that the petitioner had given the cheque to him in lieu of a loan given in cash and when the said cheque was submitted before the bank, the same was not honoured due to insufficiency of fund in the bank account.

10. After taking into consideration the documentary evidence produced by both the parties, the trial court has held that the petitioner has issued the cheque in favour of respondent No. 2 in lieu of loan of Rs. 30,000/- and the same has not been honoured by the bank on account of insufficiency of fund. The finding recorded by the trial court has been affirmed by the appellate court after screening the evidence produced by the parties before the trial court.

11. After examining the material available on record, this Court does not find any illegality in the finding of fact recorded by the trial court and affirmed by the appellate court to the effect that the petitioner had issued a cheque in favour of

respondent No. 2 in lieu of loan advanced to him and the said cheque was not honoured by the bank due to insufficiency of fund. The finding of fact recorded by the trial court and affirmed by the appellate court is based on the evidence produced by the complainant and the said finding of fact cannot be said to be perverse in any manner.

12. Hence, this Court does not find any merit in this revision petition and the same is hereby dismissed. Stay petition also stands dismissed.