

(2014) 02 DEL CK 0103
In the Delhi High Court
Case No : Criminal A. 863 of 2010

Harshvardhan Sarangapani	Vs	APPELLANT
Kotak Mahindra Prime Limited and Another		RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 325 357(3) 360 372 374
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2014) 3 BC 392 : (2014) 3 JCC(NI) 183 : (2014) 4 RCR(Civil) 117 :
(2014) 3 RCR(Criminal) 634

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Jain, J.—The notice sent to the appellant has been received back unserved. Earlier, the notice issued to him through counsel was also received back with an endorsement that he was no more the counsel for the appellant. In a complaint filed by the respondent Kotak Mahindra Private Limited u/s 138 of Negotiable Instruments Act, the appellant before this Court was sentenced to pay a fine of Rs. 1,000/-, on his pleading guilty to the charge. Being aggrieved from the said order, the respondent Kotak Mahindra filed an appeal being Criminal Appeal No. 13/2010. Vide impugned judgment dated 31.05.2010, the learned Additional Sessions Judge allowed the appeal and sentenced the appellant to undergo imprisonment till rising of the court and to pay fine of Rs. 1,000/-. He was also directed to pay Rs. 25,000/- as compensation to the respondent or to undergo SI for two months in default. Being aggrieved from the aforesaid judgment dated 31.05.2010, this appeal has been preferred by him.

2. The learned Additional Sessions Judge took note of the fact that no compensation had been awarded to the appellant before him. Referring to the decision of the Hon''ble Supreme Court in K.A. Abbas vs. Sabu Jopseph, Criminal Appeal No. 1052/2010, decided on 11.05.2010, whereby the Apex Court

recommended to the Trial Courts that besides convicting the accused in check bounce cases, compensation to the complainant should also be awarded so as to meet the ends of justice and noticing that the sentence imposed upon by the Metropolitan Magistrate was very minimal, directed compensation amounting to Rs. 25,000/-

3. Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") which was inserted w.e.f. 31.12.2009, gives a right to the victim to prefer an appeal against any order passed by the court acquitting the accused or convicting him for lesser offence or inadequate compensation and such appeal lies to the court to which an appeal ordinarily lies against an order of conviction of such court.

4. Section 374 of the Code, to the extent it is relevant, reads as under:

374. Appeals from convictions.

xxxx xxxx xxxx xxxx xxxx

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years [has been passed against him or against any other person convicted at the same trial], may appeal to the High Court.

(3) Save as otherwise provided in sub-section (2), any person,-

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or

(b) sentenced u/s 325, or

(c) in respect of whom an order has been made or a sentence has been passed u/s 360 by any Magistrate, may appeal to the Court of Session.

5. The appellant before this Court was not convicted by a Sessions Judge or Additional Sessions Judge nor was he sentenced to imprisonment for more than seven (7) years. His trial was conducted by a Metropolitan Magistrate and the sentence awarded to him by the learned Magistrate was fine amounting to Rs. 1,000/-. Even the enhanced sentence awarded by the learned Additional Judge was the sentence till rising of the court and fine amounting to Rs. 1,000/-. Additionally he was directed to pay Rs. 25,000/- as compensation to the respondent. Therefore, the present case is not covered by sub-section (2) of Section 374 of the code.

6. In view of the provisions of sub-section (3) of Section 374 of the Code, a person convicted on trial held by a Metropolitan Magistrate can file an appeal to the court of Sessions. The appellant before this Court, however, did not chose to challenge the order passed by the learned Metropolitan Magistrate. Even otherwise, he could have appealed only to the extent of legality and/or adequacy

of the sentence.

7. Section 375 of the Code which overrides the provisions of Section 374, reads as under:

375. No Appeal in certain cases when accused pleads guilty. Notwithstanding anything contained in section 374, where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal,-

(a) if the conviction is by a High Court; or

(b) if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence.

Since the appellant before this Court was convicted by a Metropolitan Magistrate on his pleading guilty, an appeal against the order of the learned Metropolitan Magistrate could be preferred before the court of Sessions and that too only with respect to the extent or legality of the sentence.

8. No appeal to this Court is envisaged against an order passed by the Sessions Judge/Additional Sessions Judge in an appeal against an order passed by a Metropolitan Magistrate. In fact, the scheme of the Code, contains no provision for a second appeal except to the extent provided u/s 379 of the Code where the High Court on an appeal reverses an order on acquittal and convicts and sentences a person to death or imprisonment for life or imprisonment for a term of ten (10) years or more. Therefore, the appellant, in my view, cannot challenge the order passed by the learned Additional Sessions Judge in an appeal filed by the respondent, by way of a second appeal to this Court. Since the appellant has chosen to file an appeal and not a revision petition or a petition u/s 482 of the Code, I need not go into the question as to whether such a petition by him would be maintainable against the order passed by the learned Additional Sessions Judge or not. Though Section 357(3) of the Code provides for award of compensation in those cases where fine does not form a part of the sentence imposed by the Court, whereas in the case before this Court fine, though meagre, was imposed upon the appellant, the correctness of the view taken by the learned Additional Sessions Judge in awarding compensation cannot be examined by this Court since a second appeal to this Court is not envisaged in the scheme of the Code.

For the reasons stated hereinabove, the appeal is dismissed as not maintainable.