

(2012) 06 AHC CK 0041
In the Allahabad High Court

Mahendra Pal Sharma Prop. Kiran Enterprises

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 25-06-2012

Acts Referred:

Citation : (2012) 06 AHC CK 0041

Hon'ble Judges : Yogesh Chandra Gupta, J

Final Decision : Disposed Of

Judgement

Yogesh Chandra Gupta, J.—Heard learned counsel for the revisionist, learned A.G.A. and perused the record.

2. The revisionist stands convicted under Section 138 of Negotiable Instrument Act, 1881 (hereinafter the "the Act"). He is sentenced to imprisonment for one year and with a fine of Rs. 50,000/. It was further directed that on deposit of the aforesaid fine, Rs. 30,000/ shall be paid to the complainant as compensation and the remaining amount would be credited to the State.

3. In short, the accused revisionist who was due in a sum of Rs. 25,000/, issued a cheque dated 01.06.2004 in favour of the complainant in respect of that liability. When the cheque was presented for encashment, the same was returned unpaid with an endorsement of "insufficiency of funds". Complainant gave a notice to the revisionist asking for payment of the cheque amount but the accused revisionist did not make the payment. Hence, the complainant filed a complaint giving rise to Criminal Case No. 653 of 2008.

4. In complaint case the Additional Chief Judicial Magistrate, Court No. 4, Meerut, found and held that the complainant was able to establish the revisionist's guilt and by his judgment and order dated 18.11.2010 / 25.11.2010 convicted the revisionist under Section 138 of the Act and sentenced him to undergo imprisonment for one year and to pay a fine of Rs. 50,000/. It was further directed that out of the aforesaid amount of fine, Rs. 30,000/ shall be paid to complainant as compensation.

5. Against the judgment of the trial Court the accused revisionist Mahendra Pal Sharma, preferred Criminal Appeal No. 452 of 2010. The appeal was dismissed by the Additional Session Judge, Court No. 12, Meerut, without any modification in conviction and sentence by judgment and order dated 30.05.2012.

6. Now by way of this revision the accused revisionist is before this Court, challenging the aforesaid orders dated 18.11.2010 / 25.11.2010 and 30.05.2012 passed by the Additional Chief Judicial Magistrate, Court No. 4, Meerut, and the Additional Session Judge, Court No. 12, Meerut, respectively.

7. However during arguments, the learned counsel for the revisionist did not press this revision on merits, he has concentrated his argument on the point of sentence only.

8. It is submitted by the learned counsel for the revisionist that the gravity of complaint under Negotiable Instrument Act cannot be equated with the offence under I.P.C. or other criminal offences. This offence is almost in the nature of a civil wrong which has been given criminal overtones. It is further submitted that the revisionist has no antecedent of the same nature and as such a lenient view may be taken against the revisionist. It is further submitted that in the matter, the revisionist is already in jail since 30.05.2012.

9. Considering all the facts and circumstances of the case and nature of the offence, I find that it would meet the ends of justice if the sentence of imprisonment awarded to the revisionist is modified and reduced.

10. The revision is accordingly dismissed. The conviction recorded against the revisionist under Section 138 of the Act is confirmed, but the sentence of imprisonment as awarded by the trial Court is reduced to the period already undergone by the revisionist. The revisionist shall be released if not confined in some other case. The sentence of fine of Rs. 50,000/ as awarded by the trial Court is maintained. In default of payment of fine the revisionist shall undergo simple imprisonment of one month. The revisionist is given one month's time to deposit the said amount of fine in the learned trial Court failing which the revisionist shall be taken into custody to serve out the default imprisonment. Upon such deposit being made the complainant will be at liberty to withdraw Rs. 30,000/ as directed by the Courts below. In case the revisionist prefers to undergo default imprisonment, the trial Court will be at liberty to realise from the revisionist the amount of compensation (Rs. 30,000/) awarded to the complainant in accordance with law and pay the same to the complainant.

11. With the aforesaid observation the revision stand finally disposed of.

12. Office is directed to inform the Court below accordingly.