

(2017) 03 RAJ CK 0141
In the Rajasthan High Court
Case No : 290 of 2015

Nand Lal S/o Shri Ramkishan

APPELLANT

Vs

Rajendra Kumar S/o Shri Khetaram, & Antr.

RESPONDENT

Date of Decision : 28-03-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 397](#), [Section 401](#) -
Negotiable Instrument Act, 1981, Section 138

Citation : (2017) 03 RAJ CK 0141

Hon'ble Judges : P.K. Lohra

Bench : SINGLE BENCH

Advocate : Trilok Joshi, O.P. Rathi, Rakesh Matoria

Judgement

1. Petitioner-complainant has preferred this revision petition under Section 397 read with Section 401 Cr.P.C., challenging impugned judgment dated 22nd of November 2014, passed by Additional Sessions Judge, Raisinghnagar, District Sriganaganagar (for short, "learned appellate Court"), whereby learned appellate Court has affirmed judgment dated 22nd of March 2011, rendered by Judicial Magistrate, First Class, Srivijaynagar (for short, "learned trial Court"), acquitting accused-respondent for offence punishable under Section 138 of the Negotiable Instrument Act, 1981 (for short, "Act of 1981") by extending him benefit of doubt.

2. Facts, in brief giving rise to this petition, are that petitioner filed a complaint before learned trial Court against respondent No.1 stating therein that he was in good terms with accusedrespondent and he loaned a sum of Rs.1,50,000/- to the respondent for his domestic purposes, who assured him that he would return back the borrowed money as early as possible. Against the said borrowings, on 10th of November 2014, accusedrespondent issued a cheque bearing No.17044, however, when the said cheque was presented before the Bank, same was dishonored with the remark that "matter under litigation". Thereafter, on 28th

March 2005, the petitioner-complainant sent a legal notice to the accused-respondent, which was received by him on 2nd of April 2005.

3. In order to support his case, petitioner-complainant examined one witness and exhibited eight documents. On the other hand, accused-respondent examined two witnesses and produced documentary evidence. After hearing learned counsel for the parties, learned trial Court, vide judgment dated 22nd of March 2011 acquitted the accused-respondent by extending him benefit of doubt.

4. Being aggrieved and dis-satisfied with the verdict of acquittal dated 22nd of March 2011, petitioner approached learned appellate Court and the learned appellate Court, after examining the matter de-novo and upon reappraisal of evidence available on record, fully concurring with the findings and conclusions of learned trial Court rejected the appeal. It is, in that background, petitioner has approached this Court.

5. I have heard learned counsel for the parties and thoroughly scanned the entire record of the case.

6. Upon examining the matter threadbare, in my opinion, learned appellate Court has not committed any manifest error in appreciation of evidence while upholding the judgment rendered by learned trial Court. In the instant case, at the threshold, matter is examined by learned trial Court threadbare, and upon considering the materials available on record, it recorded a definite finding that prima facie complainant failed to prove his case beyond all reasonable doubts. The learned trial Court found the plea taken by accused-respondent of sterling worth so as to acquit him for the offence under Section 138 of the Act of 1981. Challenge laid to the verdict of acquittal did not find favour of the learned appellate Court. The learned appellate Court on reappraisal of evidence also noticed no infirmity in the judgment of learned trial Court and consequently upheld the same.

7. There remains no quarrel that trial in relation to offence under Section 138 of the Act of 1981 is a summons trial and a Court is required to adjudicate culpability of an individual for the said offence in terms of the requirements prescribed therein.

8. In totality, I am unable to find any illegality or impropriety in appreciation of evidence by both the Courts below. Moreover, in the backdrop of facts and circumstances of the case, it is rather difficult to comprehend that the conclusions drawn by both the Courts below are inherently improbable so as to interfere with the impugned judgment. The legal position is no more res integra that the verdict of acquittal is not to be tinkered with until and unless Court comes to the conclusion that appreciation of evidence by the Court below is perverse or inherently improbable. Normally, on appreciation of evidence, if any conclusion is drawn by the Court below, then, in that eventuality even if any other view is possible, the appellate or revisional Court is not expected to take the same to upset the verdict of acquittal.

9. Resultantly, the petition fails and same is hereby dismissed.