
(2010) 06 JH CK 0041
In the Jharkhand High Court
Case No : Criminal M.P. No. 246 of 2010

Prabhu Dayal Rai

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 28-06-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 147

Citation : (2010) 58 BLJR 914 : (2010) 4 Crimes 123

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Advocate : K.M. Verma and Lalan Kr. Singh, for the Appellant; APP. and Sant Kr. Jha, for O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—In this application filed u/s 482 Cr.P.C., the petitioner has prayed for a direction to be issued to the court below to accept the compromise petition filed by the parties in the pending litigation vide complaint case No. 27/94 and to pass appropriate orders u/s 147 of the Negotiable Instrument Act.

2. Heard learned Counsel for the petitioner and learned Counsel for the State.

3. It appears that the opposite party No. 2 had filed a complaint against the petitioner before the court below in which cognizance for the offence u/s 138 of the Negotiable Instrument Act was taken against the petitioner. The petitioner had appeared in the proceeding and had initially offered his contest.

4. After having faced trial in the case, the petitioner was convicted for the offence u/s 138 of the Negotiable Instrument Act and sentenced to undergo imprisonment for one year along with fine of Rs. 2 lakhs. Against the Judgment of conviction and sentence, the petitioner preferred an appeal before the concerned court. The appeal was dismissed confirming the order of conviction and sentence as passed by the trial court.

Against the Appellate Court's order, the petitioner preferred a criminal revision before this Court vide Cr. Revision No. 888 of 2006. The criminal revision application was also dismissed by this Court. Being faced with such severe consequences of the contested litigation, the petitioner entered into an out of court settlement with the complainant/opposite party No. 2. As it appears from the submissions made on behalf of the opposite party No. 2, the parties have compounded the offence pursuant to the compromise effected between them.

5. Learned Counsel for the petitioner informs that upon the revision application being dismissed by this Court, the petitioner surrendered before the court below and a joint compromise petition was filed with a prayer to accept the compromise and to pass appropriate orders for acquittal of the petitioner. The trial court appears to have though taken note of the compromise effected between the parties, but had referred the matter to the Permanent Lok Adalat. However, the Permanent Lok Adalat refused to entertain the case.

6. An objection has been sought to be raised on behalf of the counsel for the State that though the offence u/s 138 of the Negotiable Instrument Act is compoundable as per the provisions of Section 147 of the Act, but the compromise could be allowed only during the pendency of an appeal against the Judgment of conviction, if passed and since in the present case, the stage has crossed beyond appeal and revision and the Judgment of conviction and sentence has been finally confirmed even by this Court in the criminal revision application, the liberty to the parties to compromise the case is deemed to have been extinguished.

7. This view is no more acceptable. In the case of 2000 (1) OLR 400 (SC) and in a more recent Judgment of the Supreme Court in the case of K. Gyansagar v. Ganesh Gupta and Anr. 2006 (1) Cri.L.J. 948 while considering the extent of the provisions of Section 147 of the Negotiable Instrument Act and on considering the fact that the complainant having been satisfied after receiving his entire dues from the accused, has not opposed for the setting aside of the conviction and sentence of the accused, it has observed that " the parties should be permitted to compound the offence."

8. The facts of the present case also confirm that though at a belated stage, the parties have finally entered into a compromise and the complainant/opposite party No. 2 has also expressed his satisfaction that he has no further grievance against the accused and has no objection for setting aside the conviction and sentence of the accused.

9. Considering the aforesaid facts and circumstances, I find that the same do make out a case for invoking the inherent jurisdiction of this Court for setting aside the Judgment of conviction and sentence as passed by the trial court against the petitioner. Accordingly, this application is allowed. The Judgment of conviction and sentence, as passed against the petitioner by the trial court in complaint case No. 27/94 (T.R. No. 681/2005) for the offence u/s 138 of the

Negotiable Instrument Act, is hereby set aside and the accused petitioner is acquitted from the charge in respect of the said offence.