
(2011) 12 UK CK 0067
In the Uttarakhand High Court
Case No : Criminal Revision No. 224 of 2005

Raj Kumar

APPELLANT

Vs

State of Uttaranchal and another

RESPONDENT

Date of Decision : 19-12-2011

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2011) 12 UK CK 0067

Hon'ble Judges : Servesch Kumar Gupta, J

Bench : Single Bench

Judgement

Servesch Kumar Gupta, J.—Heard Mr. J.S. Virk, Advocate for the revisionist and Mr. P.S. Bohara, Brief Holder for the State/respondent no.1. However, none has turned up on behalf of respondent no.2/ complainant.

2. This matter is too old. The revision was filed way back in the year 2005 and at the time of filing of revision, the accused was granted interim bail by this Court.

3. This revision has been directed against the judgment and order of learned Additional Sessions Judge, Kashipur dated 10.11.2005, dismissing the criminal appeal no.24 of 2005. By way of the said judgment, the learned Additional Sessions Judge affirmed the judgment of Judicial Magistrate, Kashipur dated 21.7.2005, rendered in Criminal Complaint Case No.960 of 2003, Mohd. Jalis Vs. Raj Kumar.

4. Learned Magistrate tried the accused Raj Kumar for the offence of Section 138 of the Negotiable Instruments Act, 1881 (hereinafter will be called as the Act) which was based on account of dishonour of the cheque to the tune of Rs.70,000/, issued by accused to the complainant on 17.2.2003. The accused was a drawer of the cheque from Allahabad Bank, Branch Pirumbara, Nainital. When the cheque was presented by the complainant for encashment, the same was returned by the Bank with the endorsement of "insufficient funds" in the account of the drawer of the cheque.

5. This Court has gone through the merit of the judgments passed by the courts below. The main plea contended on behalf of the accused was that after dishonour of the cheque, the notice was issued on 20.3.2003 but the same was never served upon the accused. This sole plea, which was raised from the very beginning up to the status of this revision, is not tenable in view of the precedent laid down by the Hon''ble Apex Court in the case of C.C. Alavi Haji Vs. Palapetty Muhammed and Another, . In the aforesaid judgment, the Constitutional Bench of the Hon''ble Apex Court held that where the Drawer claims not to have received the notice sent by post, as envisaged u/s 138 (b) and (c) of the Act, but received copy of the complaint with the summons, then it was incumbent upon the drawer of the cheque to make the payment within 15 days of the receipt of the summons, failing which he is barred to raise this plea. Then he cannot contend that there was no proper service of the notice upon him.

6. So, in view of the above, this revision is devoid of any merit and liable to be dismissed. The revision is dismissed on merits.

7. Learned counsel for the revisionist has entreated to reduce the quantum of sentence in the circumstances that he has already undergone at least 10 days of imprisonment since 10.11.05 to 20.11.05.

8. Having a look upon the quantum of sentence, the Court feels that the payee Mohd. Jalis has not been benefited in any manner on account of the default committed by the accused/ drawer of the cheque. So, in that context, the quantum of punishment, as passed by the courts below, is not a balanced one. Taking into account the cheque amount of Rs.70,000/- and its date of issue, i.e. 17.2.2003, this Court deems it fit that the amount of Rs.2.00 lacs should be levied upon the accused/revisionist Raj Kumar. Out of this amount of Rs.2.00 lacs, so, recovered, a sum of Rs.1.50 lacs will be paid as compensation to the complainant Mohd. Jalis while Rs.50,000/- will be deposited in the Government Treasury, as fine.

9. If the revisionist deposits the amount of Rs.2.00 lacs within three months from today before the trial court, then the sentence, passed by the courts below, will stand modified accordingly, failing which the revision will be deemed to have been dismissed, even on the question of quantum of punishment.

10. Subject to above, the revision is finally disposed of. Let a copy of this order along with the lower court record be sent back.