
(2008) 05 JH CK 0006
In the Jharkhand High Court

Raj Narayan Pradhan and Ram Kishore Mishra	APPELLANT
Vs	
State of Jharkhand and Another	RESPONDENT

Date of Decision : 15-05-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 29, 357
Negotiable Instruments Act, 1881 (NI) — Section 138, 139, 142

Citation : (2008) 3 JCR 280

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Judgement

D.K. Sinha, J.—Both the criminal revisions are taken together for disposal arising out of common judgment and order passed by the 2nd Additional Judicial Commissioner, Ranchi in Criminal Appeal No. 51 of 2000, whereby and whereunder. though the conviction of the appellant Ram Kishore Mishra (petitioner in Cr. Rev. No. 922 of 2004) recorded by the trial Court in C-33/96 for the charge u/s 138 of the Negotiable Instruments Act was affirmed but the compensation imposed upon the accused jointly to the tune of Rs. 2,42,000/- was reduced to the tune of Rs. 5,000/- upholding his sentence being one year rigorous imprisonment.

2. Brief fact of the case as narrated in the complaint case No. C-33/96 by the complainant Raj Narayan Pradhan (petitioner in Cr. Rev. No. 836 of 2004) was that Ram Kishore Mishra (petitioner in Cr. Rev. No. 922 of 2004) and one Lalit Kumar Thakur (since dead) were Secretary and Treasurer respectively in Pandra Co-operative House Construction Committee. They jointly delivered a cheque No. 931793 of Rs. 1,21,000/-, drawn on Punjab National Bank, Argora Colony, Ranchi, in favour of the complainant Raj Narayan Pradhan. When the complainant tendered the cheque in question in the Bank. It was returned unpaid on 20.12.1995 with the endorsement "Insufficient Fund". Complainant sent lawyer's notice on 29.12.2005 to both the accused Ram Kishore Mishra and Lalit Kumar Thakur which was received by them on 1.1.1996 but they did not opt to repay the debt amount within the statutory period which was due to the

complainant and having been dissatisfied with their reply, the complainant Raj Narayan Pradhan instituted complaint case No. C-33/96 in the Court of C.J.M. alleging inter alia, that the accused persons deliberately and willfully neglected to pay his dues. Both the accused Ram Kishore Mishra and Lalit Kumar Thakur were put on trial after framing of charge u/s 138 of the Negotiable Instruments Act and the complainant could be able to prove the charge successfully u/s 138 of the Negotiable Instruments Act against both the accused. After hearing the parties, they were sentenced to undergo rigorous imprisonment for one year each and were further directed to pay compensation to the tune of Rs. 2,42,000/- under Section 357 of the Code of Criminal Procedure jointly which was double of the cheque amount under provision of law. Having been dissatisfied with the judgment of conviction and order of sentence passed against them, one of the convicts Ram Kishore Mishra preferred Criminal Appeal No. 51 of 2000 before the 2nd Additional Judicial Commissioner, Ranchi against the complainant being respondent. The co-convict Lalit Kumar Thakur was made proforma respondent. By a detailed order passed by the learned 2nd Additional Judicial Commissioner, Ranchi, the judgment of conviction and order of sentence by way of rigorous imprisonment recorded against the appellant Ram Kishore Mishra (Petitioner in Cr. Rev. No. 922 of 2004) though was affirmed in appeal but the compensation amount of Rs. 2,42,000/- was reduced to the fine of Rs. 5,000/- by observing that Judicial Magistrate cannot award a sentence of imprisonment exceeding three years and fine exceeding Rs. 5,000/- and that learned Trial Magistrate exceeded the limit of fine which required interference.

3. Mr. A.K. Das, learned Counsel for the petitioner in Cr. Rev. No. 836 of 2004 submitted that the appellant Court-below has grossly erred by not granting compensation to the petitioner as envisaged u/s 357 of the Code of Criminal Procedure read with Section 138 of the Negotiable Instruments Act and misconstrued the provisions of fine as laid down u/s 138 of the Negotiable Instruments Act, 1881 which is more clarified in a decision reported in (2001) 2 SCC 595.

4. Learned Counsel suggested that , the appellant Court while reducing quantum of fine to the extent of Rs. 5,000/-, though was correct in view of the pecuniary jurisdiction of a Judicial Magistrate. 1st Class in respect of imposition of fine but the appellant Court erred by not shifting the balance amount as compensation amount to be paid by the accused persons jointly under the provisions of Section 357 of the Code of Criminal Procedure.

5. On the other hand, learned Counsel Mr. S.N. Tiwary for the petitioner Rain Kishore Mishra in Cr. Rev. No. 922 of 2004 submitted that both the lower-Courts (trial and appellate) erred in law by illegally admitting the impugned memo issued by the Bank in evidence without formal proof of the same (being the private document) and did not appreciate the documents Exts. "A" series produced by the accused. The learned Counsel exhorted that the complainant had obtained a large sum towards construction of houses beyond Rs. 1,21,000/-

against the receipts Ext. "A" series but this defence of the convict petitioner was ignored by the Courts below.

6. The impugned judgment was further assailed on the ground that in spite of the fact that first two ingredients for the offence u/s 138 of the Negotiable Instruments Act, though were not fulfilled, but the petitioner Ram Kishore Mishra was convicted in spite of his consistent defence that the cheque in question was forcibly obtained by Raj Narayan Pradhan (petitioner in Cr. Rev. No. 836 of 2004) to which communication was made to the drawee Bank (Punjab National Bank) as well as the local police by letters under certificate of posting. It was the specific case of the petitioner Ram Kishore Mishra in Cr. Rev. No. 922 of 2004 that he was not the Secretary of the Housing Committee at the relevant time of alleged occurrence and such finding that he was acting on behalf of the Committee was based upon surmises and conjectures in absence of any corroborative evidence.

7. Chapter-XVII of the Negotiable Instruments Act, 1881 deals with penalties in case of dishonour of certain cheques for insufficiency of funds in the accounts Section 138 of the Negotiable Instruments Act reads as under:

138. Dishonour of cheque for insufficiency, etc. of funds in the account.? Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless?

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity; whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

This chapter was incorporated for penalties in case of dishonour of cheques as

referred to hereinabove with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument. Once a cheque is issued by the drawer, a presumption u/s 139 must follow and merely because the drawer issues a notice to the drawee or to the bank for stoppage of the payment it will not preclude an action u/s 138 of the Act by the drawee or the holder of the cheque in due course. The period for sending the notice demanding payment is to be reckoned from the date of receipt of intimation of dishonour on the last presentation and it is on the basis of this action alone a complaint would be maintainable. In the instant case, petitioner Ram Kishore Mishra in Cr. Rev. No. 922 of 2004 did not raise the maintainability of the complaint filed by the complainant Raj Narayan Pradhan raising the issue that it was brought about after statutory period of 15 days. On the other hand, plea was taken that the memo issued by the Bank was admitted in evidence without its formal proof and without appreciation of documents Ext. "A" series.

8. A plain reading of the documents Ext. "A" series, filed on behalf of the convict petitioner Raj Kishore Mishra, I find that the complainant Raj Narayan Pradhan had received quite a large sum towards the cost of construction work of the House Construction Committees as contractor through cheques and in cash on various dates. I further find that a cheque No. REC 931789 was issued by one Vikash Kumar in favour of the complainant Raj Narayan Pradhan on 20.11.1995 for a sum of Rs. 1,21,000/- which was cancelled and it was marked Ext. "B". But the questioned cheque of the same series vide cheque No. REC 931793 issued on 20.11.1995 has been admitted to be signed by the Treasurer Lalit Thakur and the Secretary Ram Kishore Mishra in favour of the complainant Raj Narayan Pradhan which was returned unpaid with the endorsement of the bank (Ext. 3). Both the Exts. 2 and 3 were proved on 26.2.1997 by the complainant himself without objection raised and therefore the finding of fact given by the Courts below does not call for interference. Yet, it was explained and replied by the Secretary (convict petitioner) and the Treasurer of the Housing Co-operative Committee with reference to admitted document Ext. 10 that the cheques in question were obtained by use of undue pressure upon them.

9. As regards jurisdiction of a Judicial Magistrate, First Class in imposition of punishment by way of sentence of imprisonment and of fine, Section 29(2) of the Code of Criminal Procedure speaks:

The Court of a Magistrate of the First Class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees or of both.

10. I find that the lower appellate Court erred by construing and not properly appreciating the provisions of Section 357(3) of the Code of Criminal Procedure dealing with the provisions for compensation to the aggrieved. A similar situation fell for consideration mid the Hon'ble Apex Court in Pankajbhai Nagjibhai Patel v. State of Gujarat and Anr. reported in (2001) 2 SCC 595 observed:

17. Even that apart a Magistrate who thinks it fit that the complainant must be compensated with his loss lie he can resort to the course indicated in Section 357 of the Code. This aspect has been dealt with in Bhaskaran case as follows:

31. However, the Magistrate In such cases can alleviate the grievance of the complainant by making resort to Section 357(3) of the Code. It is well to remember that this Court has emphasized the need for making liberal use of that provision (Hari Singh v. Sukhbir Singh). No limit is mentioned in the sub-section and therefore, a Magistrate can award any sum as compensation. Of course while fixing the quantum of such compensation the Magistrate has to consider what would be the reasonable of compensation payable to the complainant. Thus, even if the trial was before a Court of a Magistrate of the First Class in respect of a cheque which covers an amount exceeding Rs. 5000 the Court has power to award compensation to be paid to the complainant.

18. In our view this question does not now pose any practical difficulty. Whenever a Magistrate of the First Class feels that the complainant should be compensated he can after imposing a term of imprisonment, award compensation to the complainant for which no limit is prescribed in Section 357 of the Code.

11. In the facts and circumstances, I observe that the 2nd Additional Judicial Commissioner, Ranchi failed to appreciate the provisions of Section 357 of the Code of Criminal Procedure vis-a-vis Section 29(2) of the Code of Criminal Procedure in the backdrop of non-obstante clause contained in Section 142 of the Negotiable Instruments Act which deals with cognizance of offence arising out of Negotiable Instruments Act with special procedure in respect of taking of cognizance of the offence and the Judicial Magistrate may direct the convict to compensate the complainant u/s 138 of the Negotiable Instruments Act which may extend to twice the amount of the cheque which returned unpaid to the pavee or the holder in due course. It would not be out of place to mention that the petitioner Ram Kishore Mishra (Cr. Rev. No. 922 of 2004) has mainly relied upon the Ext. which under certificate of posting in respect of the communication made to the local police as well as drawee bank. Such certificate which was obtained after a long time does not disclose the nature of communication and therefore, it is a weak piece of evidence. Ram Kishore Mishra even failed to produce copies of the letters claimed to be sent to such two authority in support of his contention.

12. In view of the facts and the provisions of law as discussed hereinabove, I find that the learned 2nd Additional Judicial Commissioner, Ranchi grossly erred by reducing the compensation amount of Rs. 2,42,000/- to the fine of Rs. 5,000/- only without any rhyme and reason perhaps out of ignorance of law and such modification in sentencing portion passed by the first appellate Court cannot sustain; In the result, by upholding the judgment and order passed by the learned Judicial Magistrate in complaint case No. C-33/96 recorded by Sri S.S. Rao, Judicial Magistrate, 1st Class, Ranchi on 29.3.2000, sentencing portion of

the order passed by Sri J.K.N. Tiwary, 2nd Additional Judicial Commissioner, Ranchi in Criminal Appeal No. 51 of 2000 on 28.6.2004 is set aside with the modification that the petitioner Ram Kishore Mishra in Cr. Rev. No. 922 of 2004 shall be liable to pay only Rs. 1,21,000/- as compensation apart from the punishment of imprisonment and fine imposed against him by the trial Court and upheld by the Court appeal. Above criminal revisions are disposal of in the manner indicated above.