
(2009) 10 RAJ CK 0011

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 734 of 2009

Sangam Sales Agency

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2011) 1 Crimes 635

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Chauhan, J.—The Petitioner has challenged the order dated 30.03.2009 passed by the learned Sessions Judge, Ajmer whereby the learned Judge has upheld the conviction order passed by the ACJM No. 2, Ajmer, but has given the benefit of probation to the accused person under the Probation of Offenders Act, 1958.

2. The brief facts of the case are that the Petitioner is carrying on the business of greeting cards. The accused-Respondent No. 2 purchased some goods from the Petitioner and in discharge of his liability, he issued a cheque, bearing No. 848014, dated 28.11.2004 amounting to Rs. 4,000/- drawn on Indian Bank, Bhilwara. On 02.05.2005, the Petitioner presented the cheque before the aforesaid Bank, but the same could not be realised. It was returned as unpaid. The same was received by the Petitioner vide memorandum dated 17.05.2005. After receiving the cheque as unpaid, the Petitioner sent a notice on 25.05.2005 which was received by the accused-Respondent No. 2. on 26.05.2005. Even after the receipt of the aforesaid notice, the amount of cheque has not been paid. Therefore, the Petitioner filed a complaint before the ACJM No. 2, Ajmer u/s 138 of Negotiable Instruments Act. On 07.07.2005, the learned trial court took cognizance against the accused-Respondent No. 2. In support of his complaint,

the Petitioner produced both oral and documentary evidence. After considering the evidence, vide order dated 04.02.2009, the learned trial court convicted and sentenced the accused-Respondent No. 2 for three months of simple imprisonment and also imposed a penalty of Rs. 3,000/-. The accused-Respondent No. 2 filed an appeal before the learned Sessions Judge, Ajmer against the order dated 04.02.2009. Simultaneously, the Petitioner also filed a revision petition for enhancement of the sentence and penalty imposed by the trial court on the accused-Respondent No. 2. Vide judgment dated 30.03.2009, the learned appellate court partly allowed the appeal. It enhanced the penalty amount to Rs. 7,000/-, and granted the benefit of probation to the accused-Respondent No. 2. Hence, this petition before this Court.

3. Mr. Ajay Gupta, the learned Counsel for the Petitioner, has vehemently argued that in a conviction u/s 138 of Negotiable Instruments Act, a person cannot be given the benefit of probation. Initially, he argued that such a bar is contained in Section 138 of Negotiable Instruments Act. However, after reading the provision of Section 138 of the Act, he changed his position and contended that there is a bar under the Probation of Offenders Act, 1958. However, the learned Counsel could not locate such a bar in the said Act. Hence, his contention is that u/s 360 Code of Criminal Procedure, a number of conditions need to be satisfied before the benefit of probation can be given to the accused-Respondent. Lastly, he has argued that since the complainant, the Petitioner, had suffered litigation for five long years, therefore, the benefit should not have been extended to the accused-Respondent No.

4. Heard the learned Counsel for the Petitioner and perused the impugned order.

5. Admittedly, there is No. bar, either in Section 138 of Negotiable Instruments Act, or in the Probation of Offenders Act, which prevents the court from giving the benefit of probation to a person convicted under u/s 138 of Negotiable Instruments Act. Moreover, the Probation of Offenders Act is a social beneficial piece of legislation, which was meant to ensure that the reformatory theory of punishment would be applied. In appropriate case, where the trial court is convinced that the accused has committed the crime for the first time, that there is No. possibility of lapsing into a life of crime, and if other conditions laid down by law are satisfied, the trial court would be justified in granting benefit of probation to the accused. Merely because the complainant has suffered litigation for five long years, this by itself cannot be a ground for denying the benefit of a social piece of legislation to the accused. Moreover, there is a misapprehension in the mind of the Petitioner when he contends that a grant of probation amounts to an acquittal. In fact, probation is granted only after the conviction is upheld, but where the court is of the view that the accused person need not undergo the sentence awarded to him.

6. The learned Counsel has relied upon the case of *In The matter Of: Rajneesh Aggarwal v. Amit J. Bhalla* 2001 Cri.L.R. (SC) 127 to buttress his contention that the person once convicted u/s 138 of the Act cannot be absolved of his criminal

liability. However, the said case is inapplicable to the facts of the present case for the simple reason that while holding the conviction, the learned Judge has not absolved the Respondent No. 2 of his criminal liability. While granting the benefit of probation, he has merely directed the Respondent No. 2, not to undergo the sentence awarded by the trial court and to maintain peace and good behavior and to adhere to the conditions imposed by the learned Judge. Therefore, the case of In The matter Of: Rajneesh Aggarwal (supra) is inapplicable to the present case.

7. For the reasons stated above, the petition is devoid of any merit. It is, hereby, dismissed.