
(2012) 01 RAJ CK 0069

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 1263 of 2011

Shyam Lal Jain

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 147

Citation : (2012) 2 WLN 418

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Nikhil Dungawat, for the Appellant; Anil Joshi, Public Prosecutor for the state and Mr. Bharat Shrimali, Advocate, the Respondent No. 2., for the Respondent

Judgement

Sandeep Mehta, J.—The present revision petition has been preferred by the petitioner challenging rejection of his appeal No. 73/2004 by the learned Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Udaipur, vide impugned judgment dt 16.09.2004. Whilst dismissing the appeal, the learned Special Judge upheld the conviction of the petitioner as recorded by the learned Additional Judicial Magistrate No. 1, Udaipur (North), Udaipur in Criminal Case No. 261/2002 by her judgment dt. 07.02.2004 convicting the petitioner for the offence under Sec. 138 of the Negotiable Instruments Act and sentenced him to six months' simple imprisonment and a fine of Rs. 5000/- along with a direction to pay the compensation of Rs. 1,20,000/- to the respondent-complainant. The facts, relevant and necessary for the disposal of the present revision petition are that the petitioner, on being convicted and sentenced by the learned Judicial Magistrate, preferred an appeal, which came to be heard by the learned Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Udaipur and the appeal filed by the petitioner was rejected.

2. It is disclosed from the record that the petitioner did not surrender subsequent to dismissal of his appeal, upon which Warrants of arrest were issued to secure

his presence and ultimately the petitioner was arrested and produced before the trial Court on 05.08.2011. In the meantime, it appears that the parties to the litigation compromised the matter between them and based on the compromise deed, another appeal (without disclosing the factum of the dismissal of the earlier appeal) was preferred by the petitioner, which came to be accepted by the learned Appellate Court based on the compromise and the petitioner was acquitted after depositing 10% of the amount of the cheque with the State Legal Service Authority. However, thereafter again the factum of earlier dismissal of the appeal was brought to the notice of the Appellate Court and the order of acquittal was withdrawn. Hence, the present revision petition.

3. Notice were issued to the respondent-complainant and he, in pursuance of the service of the notice, has filed an affidavit certifying the fact of the regarding compromise and a certified copies of the compromise were submitted to the appellate Court as also placed on the record of the revision.

4. Learned counsel for the parties submit that now the matter having been compromised between the parties, by the effect of Section 147 of the Negotiable Instruments Act, the sentence awarded to the petitioner be set aside and he be acquitted of the charge.

5. I have given my thoughtful consideration to the submissions made at the bar.

6. It is true that the second appeal filed by the petitioner before the learned Sessions Judge was filed whilst concealing the factum of rejection of the earlier appeal and thus, the learned Sessions Judge, rightly recalled the order of acquittal. The provisions of Section 147 of the Negotiable Instruments Act are mandatory and the offence under the Act has been made compoundable even without the permission of the Court. The Hon'ble Apex Court, in the case of Damodar S. Prabhu vs. Sayed Babalal H., (2010) 5 SCC 66, wherein the Hon'ble Apex Court issued certain directions to encourage litigants in cheque dishonour cases for compounding of cases during early stage of litigation.

7. The petitioner has already deposited 10% of the cheque amount. As per the directions of the Hon'ble Apex Court given in Damodar S. Prabhu's case (supra), now there would be no impediment for the Court not to act upon the compromise arrived at between the parties voluntarily.

8. Accordingly, the revision petition succeeds. The conviction of the petitioner, as recorded by the learned Judicial Magistrate No. 1 Udaipur (North), Udaipur in Criminal Case No. 261/2002 convicting and sentencing the petitioner for the offence under Sec. 138 of the Negotiable Instruments Act, is set aside. The petitioner has already deposited 10% of the cheque amount, as directed by the learned Sessions Judge Udaipur in the subsequent appeal with the State Legal Service Authority. Resultantly, the revision petition stands disposed of. The stay petition also stands disposed of.