
(2008) 03 JH CK 0056
In the Jharkhand High Court

Sisi Baha Topno

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 31-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 357
Negotiable Instruments Act, 1881 (NI) — Section 138, 147

Citation : (2008) 4 BC 289 : (2008) CriLJ 3346 : (2008) 2 JCR 483 : (2009) 5 RCR(Criminal) 242

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—Petitioner has preferred this criminal revision against the impugned judgment and order dated 8.6.2007 passed by 4th AJC-cum-Special Judge, No. II, CBI (AHD), Ranchi in Cr. Appeal No. 78 of 2007, whereby and whereunder, judgment of conviction of the petitioner u/s 138 of N.I. Act and sentence thereto passed by Sri R.S. Mishra, Judicial Magistrate, 1st Class, Ranchi in T.R. No. 251 of 2007 arising out of Complaint Case No. 310 of 2005 was affirmed.

2. Short fact of the case was that the complainant-opposite party No. 2 Prof. Janardan Prasad filed a complaint petition before the Court stating therein that he was working as Lecturer in Gossner College, Ranchi whereas petitioner was the Principal of the said College. The petitioner had earlier approached him for some personal loan and accordingly, complainant-opposite party No. 2 Prof. Janardan Prasad paid a sum of Rs. 1,74,000/- to the petitioner on 30.8.1998 in cash and the petitioner agreed to repay the said loan amount without interest preferably within two months but the amount could not be returned to him within the stipulated period. Complainant persuaded the matter and ultimately it was alleged that the petitioner issued two cheques in his favour drawn on Indian Overseas Bank, Club Road Branch, Ranchi duly signed by herself in presence of

the wife of the complainant-opposite party No. 2. When the cheques were presented for payment, both the cheques bounced and returned unpaid with an endorsement "Insufficient Fund" and in that manner petitioner defrauded the complainant-opposite party No. 2 deliberately with mala fide intention. The trial Court convicted the petitioner after full trial for the charge u/s 138 of the N.I. Act and sentenced him to undergo simple imprisonment for six months and to pay Rs. 1,00,000/- (One Lakh) to the complainant-opposite party No. 2 by way of compensation u/s 357(3) of the Code of Criminal Procedure.

3. Against the dismissal of the appeal by the Court of 4th AJC, Ranchi as aforesaid, petitioner preferred the instant criminal revision. Complainant-opposite party No. 2 entered appearance by executing vakalat-nama in favour of Mr. Arvind Kr. Lall, Advocate and a compromise petition was filed by presenting LA. No. 756 of 2008 u/s 320(6) of the Code of Criminal Procedure duly signed by both the parties and supported by their respective affidavits. With the permission of the Court Mr. Arvind Kr. Lall, counsel for the complainant-opposite party No. 2 identified the signature of the opposite party No. 2 Prof. Janardan Prasad on the affidavit. It was contended in the compromise petition that dispute was settled with the intervention of friends and well wishers and a joint compromise was executed on 27.3.2008. The petitioner in terms of the compromise has already paid a sum of Rs. 1,50,000/- to the complainant-opposite party No. 2 and the balance amount to the tune of Rs. 24,000/- was agreed to be paid in the next six months under the surety of one Avay Chaman Khalkho, who is son-in-law of the petitioner. The amount of compensation of Rs. 1,00,000/- was waived by the complainant- opposite party No. 2 and in support thereof a memo of compromise agreement was executed before the Notary and the same has been brought on the record.

4. Mr. M.K. Dey, learned Counsel for the petitioner, submitted that in view of the compromise petition and that the issues have been resolved craves indulgence of this Court by according exemption to the petitioner to surrender, in view of the decision reported in 2008 (1) E Cri C 201 (Jhr) (Anil Kumar v. State of Jharkhand and Anr.) wherein the petitioner was exempted from surrendering in the similar circumstances of resolution of disputes between the parties and also on the fact that the offence u/s 138 of N.I. Act in which petitioner has been convicted, is compoundable u/s 147 of the Act.

5. Mr. Arvind Kr. Lall, learned Counsel appearing on behalf of the opposite party No. 2 fairly conceded to the submissions made for and on behalf of the petitioner and submitted that parties have entered into amicable settlement of dispute and that the petitioner has already paid a sum of Rs. 1,50,000/- as a part payment which was accepted by the opposite party No. 2 and the remaining amount to the tune of Rs. 24,000/- shall be paid by the petitioner in the next six months. In view of the said development the learned Counsels jointly submitted that the compromise petition be allowed, petitioner be exempted from surrendering in the Court below and he be acquitted in terms of the compromise under provisions of

Section 320(8) of the Code of Criminal Procedure.

6. Having regard to the facts and circumstances of the case and upon conscious consideration of the arguments advanced hereinabove, the sentence of imprisonment imposed upon the petitioner is set aside. The compensation amount to the tune of Rs. 1,00,000/- imposed upon the petitioner has already been waived by the opposite party No. 2 on receipt of Rs. 1,50,000/- as contained in the compromise agreement dated 27.3.2008 which was executed in presence of the Notary with the condition that the balance amount to the tune of Rs. 34,000/- was agreed to be paid within next six months.

7. In that view of the matter and in terms of the agreement arrived at between the parties, petitioner is acquitted u/s 320(8) of the Code of Criminal Procedure with the exemption to surrender in Complaint Case No. 310 of 2005 corresponding to T.R. No. 251 of 2007.

8. This criminal revision is allowed. Accordingly, I.A. No. 756 of 2008 stands disposed of.