

(2014) 05 RAJ CK 0008

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 336 of 2013

Ved Prakash

APPELLANT

Vs

K. Lal and Sons Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Negotiable Instruments Act, 1881 (NI) — Section 138 139

Citation : (2015) 3 RLW 2031

Hon'ble Judges : M.C. Sharma, J

Bench : Single Bench

Advocate : Sandeep Taneja, Advocate for the Appellant; Pankaj Gupta, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

M.C. Sharma, J.

1. This Cr. Revision Petition has been filed by the petitioner against the judgment dated 22.2.2013 passed by Addl. Sessions Judge No. 13, Jaipur Metropolitan, Jaipur in Appeal No. 1/2012, whereby the appellate Court allowed the appeal filed by the accused respondents and set-aside the judgment dated 13.7.2012 passed by the trial Court convicting the accused respondent for the offence under Section 138 of NI Act and sentencing him to undergo 1 years" SI with fine of Rs. 80,000/-; in default of payment of fine, to further undergo 1 month"s SI. Brief facts of the case are as under:

"Complainant-petitioner filed a complaint under Section 138 of NI Act against the accused respondents. The trial court after recording the statement of complainant took cognizance against the accused under Section 138 of NI Act. The trial court framed charges against the accused, who denied for the same and claimed for trial. The prosecution produced its witnesses and got exhibited some documents. Thereafter the statement of the accused person were recorded under Section 313 Cr.P.C. After hearing both the sides, the learned trial Court passed

the judgment dated 13.7.2012 convicting the accused person for the offence under Section 138 of NI Act and sentencing him as indicated above. Thereafter the accused preferred an appeal before the appellate court. The appellate court vide judgment dated 22.2.2013 set-aside the conviction and sentence of the accused respondent as awarded by the trial Court."

2. Against the said judgment of the appellate court dated 22.2.2013, this revision petition was preferred.

3. Learned counsel for the petitioner has contended that the judgment dated 22.2.2013 passed by the appellate court is contrary to the facts, law and material available on record and thus, deserves to be quashed and set-aside. He has further contended that the appellate court committed a legal error in setting aside the judgment and order passed by the trial court and in acquitting the accused respondents. He has further contended that the appellate court grossly erred in holding that the onus was upon the petitioner complainant to prove that the respondent company had taken money from him. The said finding of the Appellate court is contrary to the provisions of the statutory provision of Section 139 of the N.I. Act and thus, deserves to be quashed and set-aside. He has further contended that the appellate court materially failed to consider that admittedly the signature on the cheque was of the respondent No. 2 and the cheque was of the respondent company. The respondent No. 2 carries on business of the respondent company and is responsible for day to day affairs of the respondent company. The money was taken, by the respondent No. 2 for business requirements. Thus, it is evident that there is legally enforceable debt due from the respondents to the petitioner and for the discharge of the same, the cheque in question was given by the respondents. The dishonour of the cheque and non payment of the same after the service of the statutory notice, constitutes offence under Section 138 of N.I. Act, as has been committed by the respondents. He has further contended that the appellate court grossly failed to appreciate that after the institution of the complaint by the petitioner against the respondents, the respondents filed a false and fabricated FIR against Mr. Rakesh Suman and the petitioner alleging misuse of the cheque by them in which the police authorities have filed the final report and as such the police has also considered the story of the respondents as false and fabricated. He has further contended that the appellate court failed to consider that the respondents did not give any reply to the statutory notice issued by the petitioner under Section 138 of N.I. Act, which was duly served upon the respondents. Therefore, the impugned judgment is liable to be quashed and set-aside and the accused respondent(s) should be convicted for the alleged offence. In support of his contentions, he has placed reliance on the following judgments:

"(i) Rangappa Vs. Sri Mohan,

(ii) I.C.D.S. Ltd. Vs. Beena Shabeer and Another,

(iii) Anil Sachar and Another Vs. Shree Nath Spinners P. Ltd. and Others etc., ."

4. On the other hand, learned counsel for the respondents has opposed the same. He has contended that the appellate court, after due appreciation of evidence, has passed the judgment, hence no interference is required by this Court in the judgment passed by the appellate court.

5. The court's attention was also drawn on the following judgment of the Hon'ble Supreme Court:--

Umrao Vs. State of Haryana and Others, in which the Lordships of the Supreme Court has observed in para 26 that "it is now well settled that if two views are possible, the appellate court should not interfere with the judgment of acquittal passed by the court below:--"

6. Looking to the evidence just discussed above, it can easily be said that the prosecution has not been able to prove its case against the accused respondents and the learned appellate Court was right in acquitting the accused respondents for the alleged offence. I have no reason to dissent from the finding of acquittal recorded by the learned appellate Court as the same appears to be reasonable and plausible in the facts and circumstances of the case.

7. It may be stated that in appeal against acquittal though powers of the High Court to reassess the evidence and to reach its own conclusions are as extensive as in an appeal against an order of conviction, yet as a rule of prudence, it should always give proper weightage and consideration to the views of the trial judge as to the credibility of the witnesses; the presumption of innocence in favour of the accused, right of the accused to the benefit of any doubt and thus, High Court should not ordinarily disturb the order of acquittal.

8. Having gone through the impugned judgment passed by the learned appellate court, I find that the learned appellate court has given cogent reasons for not finding the case of the prosecution proved against the accused respondents. Therefore, I do not want to interfere with the impugned judgment passed by the learned appellate court and the revision petition filed by the complainant-petitioner is liable to be dismissed.

9. Accordingly, the revision petition filed by the complainant-petitioner fails and the same is hereby dismissed, after confirming the judgment of the appellate court acquitting the accused respondents. Stay application also stands dismissed accordingly.