

(2016) 01 RAJ CK 0107

In the Rajasthan High Court

Case No : Criminal Revision Petn. No. 443 of 2015.

Vinod Kumar Sharma

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 29-01-2016

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138
Probation of Offenders Act, 1958 — Section 12, 3

Citation : (2016) ACD 344 : (2016) 2 CriLR 901 : (2016) 2 NIJ 170 : (2016) 3 RCRCivil 36 : (2016) 3 RCRCriminal 142 : (2017) 1 RLW 129

Hon'ble Judges : Mahesh Chandra Sharma, J.

Bench : Single Bench

Advocate : Santosh Kumar Jain with Ishwar Jain, Advocates, for the Appellant;
Meenakshi Pareek, Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

Mahesh Chandra Sharma, J. - This revision petition has been filed against the impugned judgment and order dated 11.2.2014 passed by learned Special Judge, SC/ST Cases, Ajmer in Cr. Appeal No. 02/2014 whereby he has partly allowed the appeal by affirming the order of conviction and setting aside the order of sentence dated 24.12.2013 passed by learned Judl. Magistrate, Ajmer in Cr. Case No. 145/2012 (345/2008) whereby the learned trial court has convicted and sentenced the petitioner as under;

U/S. 138 of N.I. Act: Six months SI and fine of Rs. 1.0 lac and in default of fine to further undergo one month SI.

2. Briefly stated facts of the case are that the respondent filed a complaint before the trial court under Section 138 of N. I. Act with the allegation that three cheques of Rs. 40,000/-, Rs. 16,000/- and Rs. 16,000/- were given to him by the petitioner, but when he deposited the said cheques, same were dishonoured due to insufficient fund. Thereafter he sent a notice to the petitioner. Since after expiry of notice period, amount was not paid, he filed a complaint under Section

138 of N. I. Act. Upon that complaint, trial court took cognizance against the petitioner. The statement of accused petitioner was recorded under Section 313, Cr. P. C. The trial court after hearing both the parties, vide order dated 24.12.2013 convicted and sentenced the petitioner as mentioned above.

3. Aggrieved against the order of trial court dated 24.12.2013, the petitioner preferred an appeal before the Distt. and Sessions Judge, Ajmer which was later on transferred to the court of Special Judge, SC/ST Case, Ajmer. The learned Appellate Court vide impugned order dated 11.2.2014 partly allowed the appeal affirming the order of conviction and set aside the order of sentence. The benefit of Section 3 of Probation of Offenders Act was also extended to the petitioner. Against the said order dated 11.2.2014, this revision petition has been filed.

4. Learned counsel for the appellants has contended that the parties had already entered into compromise and petitioner had already paid cheques to the respondent, and this fact is also mentioned in para No.5 of the impugned order dated 11.2.2014 which fortifies that parties had entered into compromise. Para 5 of the judgment reads as under:

Vernacular Matter Omitted

5. It has also been contended that the petitioner is a Government employee working as Junior Engineer in Railway Department, hence either the impugned order dated 11.2.2014 should be set aside, or the benefit of Section 12 of Probation of Offenders Act should be given to the petitioner so that this order will not come in the way of petitioner in future in any manner.

6. Earlier this matter was listed before this court upon an application filed under Section 5 of Limitation Act, and this court issued notice on that application and same were served upon the respondent, but nobody appears on behalf of the respondent.

7. Learned Public Prosecutor for the State has opposed the same and contended that the impugned order passed by the trial court is just and proper. Hence there is no need to interfere with the impugned judgment.

8. I have heard learned counsel for the parties and carefully perused the relevant material available on record.

9. Looking to the facts and circumstances of the case and keeping in mind the arguments of learned counsel for the petitioner that the benefit of Section 3 of the Probation of Offenders Act has been awarded to the petitioner, the matter has been compromised between the parties, the accused petitioner is not the habitual offender, no case is made out against him, but since respondent is not present, hence I do not think it just and proper to set aside the order passed by court below, but I think it just and proper to give benefit of Section 12 of the Probation of Offenders Act to the petitioner so that this order will not come in the way of petitioner in future in any manner.

10. In the result, the revision petition is partly allowed with the following directions:

i) The conviction of the petitioner is maintained.

ii) The accused petitioner is extended the benefit of Section 12 in addition to Section 3 of the Probation of Offenders Act, so that the impugned judgment will not affect his future in any way.

iii) The accused petitioner is on bail. His bail bonds are cancelled and he need not to appear now.

iv) Impugned judgment of the trial court stands modified, as indicated here-in-above.