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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

IO in CRA-AS-98-2015

Date of Decision : October 18th , 2016

Raj Kumar Arora

.... Appellant

Versus

Smt. Veena Sethi

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Sanjay Nagpal, Advocate,
for the appellant.

Mr. Vikas Kumar, Advocate
for the respondent.

SHEKHER DHAWAN, J.

Present reference has been made by Judicial Magistrate Ist Class,
Faridabad vide letter No. 71 dated 15.2.2016 in Complaint bearing No.
RBT No. 6432 dated 1.6.2010 titled – **Raj Kumar Arora Vs. Smt.**
Veena Sethi, under Section 138 of the Negotiable Instruments Act, 1881[for
short, “the Act”].

2. Facts relevant for the purpose of decision of present reference;
that Raj Kumar Arora, complainant filed complaint bearing RBT No. 6432
dated 1.6.2010 titled – **Raj Kumar Arora Vs. Smt. Veena Sethi** under

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Section 138 of the Act on the ground that Cheque bearing No.112381 dated 2.8.2002 for a sum of Rs.1,00,000/- was issued in his favour. The said cheque was for consideration and was dishonoured and the payment was not made despite notice.

3. The complaint, after trial was dismissed by Judicial Magistrate Ist Class, Faridabad vide judgment dated 23.11.2010 and respondent -Veena Sethi was acquitted of the charge. The appeal filed by Raj Kumar Arora was also dismissed by learned Additional Sessions Judge, Faridabad vide judgment dated 8.5.2012. The complainant preferred the above mentioned appeal against acquittal, which was allowed vide judgment dated 23.09.2015 passed by this Court and the judgment dated 23.11.2010 passed by Judicial Magistrate Ist Class, Faridabad acquitting the respondent, was set-aside. At the time of disposal of the present appeal, the following order was passed by this Court :-

“13. In view of above, the present appeal accepted and judgment of acquittal recorded by learned Magistrate dated 23.11.2010 thereby acquitting the respondent stands set-aside.

14. Respondent-accused shall surrender before the trial Court within two weeks and if not, she shall be taken into custody and the trial Court is directed to pass appropriate orders to carry out the remaining point of sentence by the accused.”

4. Learned Magistrate has made the present reference seeking clarification on the point of awarding of sentence to the accused.

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5. Learned counsel for the appellant-complainant submitted that the respondent be awarded punishment as provided under the Act.

6. Learned counsel for the respondent submitted that the respondent is a widow lady of the age of 63 years and has already suffered much agony of law by facing protracted trial of more than 14 years by now. Thus, a lenient view on the point of sentence be taken as no purpose shall be served by sending the respondent behind the bars.

7. After hearing learned counsel for the parties and considering the matter in its totality, this Court is of the considered view that gravity of a complaint under the Act cannot be equated with an offence under the provisions of the Indian Penal Code or other criminal offences. An offence under Section 138 of the Act is almost in the civil nature of a civil wrong which has been given criminal overtones.

8. Keeping in view the fact that the respondent-accused is an old widow lady and has already faced lengthy trial of more than 14 years, this Court is of the considered view that no purpose shall be served by sending the respondent-accused to jail, but the respondent shall make payment of fine of Rs.2,00,000/- i.e., double the amount of the cheque in question. The fine shall be deposited in the Court of learned trial Magistrate within a period of fifteen days from the date of receipt of copy of this order and the said amount shall be received by the complainant-appellant as compensation. In case, the respondent-accused fails to make the aforesaid payment of fine, she shall undergo Rigorous Imprisonment for a period of 6 months.

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9. Reference stands disposed of in the above terms.

(SHEKHER DHAWAN)
JUDGE

October 18th, 2016
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes