

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-1138-2018 (O&M)

Date of decision : 26.3.2018

Narender Kumar

... Petitioner

VERSUS

Ved Parkash Goyal and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Jitender Dhanda, Advocate,
for the petitioner.

RAJ SHEKHAR ATTRI, J.(Oral)

After conclusion of the trial, the petitioner was convicted and sentenced by the learned Magistrate vide order of conviction and sentence dated 21/28.10.2016 as under :

“Keeping in view the statement made by the convict, court is of the considered opinion that ends of justice would be met if compensation to the tune of cheque amount, is given to the complainant. Hence, the convict is ordered to pay the compensation to the tune of cheque amount that is ₹ 12,00,000/ (₹ Twelve lacs only) to the complainant.”

Thereafter, the present petition preferred criminal appeal before the first appellate court which was disposed of by learned Additional Sessions Judge, Hisar vide judgment dated 16.2.2018 with the following observations : -

“15. As a sequel to the findings on the point of determination, the appeal filed by the appellant is allowed and order on sentence dated 28.10.2016 passed by the Court of Ms. Indu Bala, the then Judicial Magistrate Ist Class, Hisar, is set aside.

The matter is remitted to the learned lower Court for passing the order on sentence afresh after hearing both the parties in accordance with statutory provisions of law. However, nothing observed herein shall have any bearing on the merits of the complaint. The appellant and respondent are directed to appear before the learned lower Court on 05.03.2018. The parties are left to bear their own costs.”

It has been strongly argued that although the complainant has not filed any appeal yet the first appellate court has remanded the case for re-trial.

This Court has given its thoughtful consideration to the rival contentions.

Section 138 of Negotiable Instruments Act provides two kind of sentence i.e. (a) imprisonment for term which may extend to two years and (b) fine which may extend to twice of the amount of the cheque or with both. In this case, neither fine has been imposed nor imprisonment has been awarded as required under Section 138 of Negotiable Instruments Act, instead, only compensation to the tune of ₹ 12 lacs has been awarded. To the mind of this Court, this was not the proper sentence as required under law.

Section 386 (b) of Code of Criminal Procedure which provide as under : -

“386. Powers of the Appellate Court --

(a) x x x

(b) in an appeal from a conviction -

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent

jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

The first appellate court has observed that sentence under Section 138 of Negotiable Instruments Act on the accused by the Court was mandatory if compensation has to be awarded. Therefore, the case was remanded for pronouncing sentence in accordance with law.

Section 386 (b) (iii) provides that with or without altering the finding, alter the nature or the existing, or the nature and extent, of the sentence, but not so as to enhance the same.

Moreover, the first appellate court is also empowered to order re-trial. In the circumstances of the case, this Court is of the view that no sentence was imposed and order of learned Magistrate suffers from illegality, irregularity and infirmity. Therefore, the impugned order dated 16.2.2018 does not suffer from any illegality and does not require any interference by this Court, as such, the present petition is dismissed.

(RAJ SHEKHAR ATTRI)
JUDGE

March 26, 2018

Paritosh Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No