2026:AHC:210899

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 3444 of 2017

Raj Kumar Jain

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Revisionist(s) : Sundeep Shukla, Tapan Kumar Mishra
Counsel for Opposite Party(s) : G.A.

Court No. - 86

HON'BLE JAI KRISHNA UPADHYAY, J.

1. This criminal revision has been filed by the revisionist - **Raj Kumar Jain** against the judgement and order dated 23.3.2017 passed by the Additional Sessions Judge, Court No.7, Meerut in Criminal Appeal No. 114 of 2016, and the order dated 5.7.2016 passed by the Additional Chief Judicial Magistrate, Court No.2, Meerut in Complaint case No. 4255 of 2014 (Devendra Kumar vs. Raj Kumar Jain) under Section 138 Negotiable Instrument Act, PS Daurala, District Meerut whereby the revisionist was convicted and sentenced for simple imprisonment of one year and a fine of Rs. 1,00,000/-

2. The facts of the case, in brief, as disclosed in the complaint moved by the complainant Devendra Kumar are that the accused requested a loan of Rs. 3,00,000/- from the complainant for the expansion of his business. The complainant lent total Rs. 2,90,000/- for six months, wherein Rs. 1,90,000/- in cash were given on 02.06.2003 and Rs. 1,00,000/- in cash were given on 18.08.2003, however, as promised, the accused did not return the said money within six months. Being compelled, the complainant sent a notice on 20.05.2004 for the return of the money and placed his matter before society. Before service of the notice, on 22.05.2004 at around 9:00 AM, the accused along with one person, Shri Naveen, reached the commercial establishment of the complainant 'Jindal Kirana Store', New Colony, Modipuram, Meerut. Out of the total money, Rs. 1,00,000/-, was handed over by him through a post-dated cheque bearing No. 105935 dated 20.06.2004 drawn on "The Bank of Rajasthan Ltd.", Jain Nagar Branch, Meerut and promised to pay the remaining amount of Rs. 1,90,000/- within three months. Further, the

complainant deposited remaining amount of Rs. 1,90,000/- through cheque in his bank account on 06.08.2004, which was returned dishonored to the complainant with an endorsement memo stating "insufficient funds". Thereafter, completing necessary formalities, the aforesaid complaint was filed.

3. In support of the complaint, the complainant got his own statement recorded under Section 200 Cr.P.C. and under Section 202 Cr.P.C.. He submitted documentary evidence like, the original cheque, original bank deposit receipt, original bank return memo, carbon copy of the notice, original registered receipt, and A.D. receipt, etc. On the basis of averments made in the complaint, the statement of the complainant and documentary evidence available on record, the revisionist was summoned under Section 138 Negotiable Instrument Act. The complainant examined himself before the Court as P.W.-1, and no other witness was produced. The statement of accused Rajkumar Jain under section 313 CrPC was recorded, in which he denied the allegations and claimed trial. He got examined himself as D.W.-1 in defense evidence.

4. The learned trial court upon scrutiny of the evidence on record concluded that the case of prosecution was proved beyond reasonable doubt against the accused revisionist and recorded conviction and sentence against him, as mentioned here-in-above. Against the order of conviction and sentence, the revisionist preferred a criminal appeal before the Appellate Court, which also affirmed the order of the trial court with certain modification. Hence, this criminal revision.

5. Heard Sri Sundeep Shukla, learned counsel for the revisionist, learned A.G.A. and perused the impugned judgment and order.

6. The only submission on behalf of the revisionist is that for the offence under Section 138 Negotiable Instrument Act the trial Court has imposed maximum sentence upon accused-revisionist for one year out which the revisionist has served about four months. It is also submitted that neither accused revisionist is habitual offender nor was convicted in any other case. Thus, it was submitted by learned counsel for the accused-revisionist that sentence awarded by the trial Court vide impugned judgment and order be modified and accused-revisionist be released in this matter on the basis of imprisonment already undergone. It is next submitted that fine imposed by the trial court has already been deposited by the accused-revisionist.

7. On the other hand, learned A.G.A. supporting the findings recorded by trial Court and affirmed by the appellate Court in the impugned judgment and orders submitted that there is no infirmity or illegality in the impugned judgement and orders. Prosecution has proved its case beyond reasonable doubt. The trial Court has awarded sentence to the revisionist according to the gravity of the offefnce committed by him.

8. I have considered rival submissions made by learned counsel for the parties and have gone through the entire record carefully.

9. Since learned counsel for the accused revisionist did not challenge the findings recorded by trial Court in the impugned judgment and order regarding guilt of accused-revisionist for the alleged offence and confined his argument only to the sentence awarded by trial Court to accused-revisionist, I do not propose to scrutinize the entire evidence minutely in this regard. However, a perusal of entire record including the impugned judgment and orders shows that trial Court has considered in detail the entire evidence available on record regarding guilt of accused-revisionist for the said offence and the appellate Court has also considered the matter in detail and affirmed the judgment and order passed by the trial court with certain modification and keeping in view the offence committed by accused-revisionist, I am also of the opinion that prosecution was able to establish the guilt of accused-revisionist for the aforesaid offence beyond reasonable doubt. The findings recorded by the trial Court to constitute offence under Section 138 Negotiable Instruments Act against accused-revisionist are correct and the same do not warrant interference by this Court.

10. So far as the question of sentence is concerned, it is a well settled principle that sentence must be just and should simultaneously follow the principle of proportionality between the crime and the punishment. Punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the court but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect - propensity to become a social threat or nuisance, and sometimes lapse of time in the

commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the valuebased social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner.

11. It has been observed by the Hon'ble Apex Court that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which have been indicated hereinbefore and also have been stated in a number of pronouncements by Apex Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment. A court, while imposing sentence, has to keep in view the various complex matters in mind. In respect of certain offences, sentence can be reduced by giving adequate special reasons but the special reasons have to rest on real special circumstances. (vide ***: Raj Bala vs. State of Haryana & Ors passed in Special Leave Petition (Crl.) Nos. 4099-4100 of 2015***).

12. In the instant case, the alleged incident took place above 23 years ago. Accused-revisionist alone cannot be held responsible for long delay in disposal of this case. Revisionist is not a previous convict. It was stated that accused revisionist remained in custody for about four months. He is about 60 years of age and is suffering from old age ailments. He has no criminal history to his credit. Considering all aspects of the matter, no useful purpose would be served by sending accused-revisionist to judicial custody at this stage, rather it would be appropriate that sentence of one year imprisonment awarded by the trial court be reduced to the period already undergone by him. It is also clear that the fine imposed by the trial court has already been deposited by the accused-revisionist.

13. Accordingly, this criminal revision is **partly allowed** and the sentence awarded by the learned trial Court is hereby reduced to the period already

undergone by the revisionist. His personal bonds and bail bonds are cancelled and sureties are discharged.

14. A copy of this order be transmitted to the court concerned.

October 8, 2026
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(Jai Krishna Upadhyay,J.)

Digitally signed by :-
MAHBOOB SAFI
High Court of Judicature at Allahabad