

SUPREME COURT OF INDIA

Raju @ Sheikha Mohamed Sharif

Vs.

State of Maharashtra

CrI.A.No.15 of 2011

(Aftab Alam and R.M.Lodha,JJ.,)

05.01.2011

JUDGMENT

Aftab Alam,J.,

1. Leave granted.
2. The appellant stands convicted under section 138 of the Negotiable Instruments Act (hereinafter, the Act). He is sentenced to imprisonment for six months and payment of compensation of Rs.4,00,000/- with the direction Nature of imprisonment not specified by any of the courts. that in default of payment he would undergo imprisonment for a further period of one month.
3. The appellant gave a cheque dated November 5, 2003 for Rs.4,00,000/- to the complainant-respondent in repayment of a loan of the same amount earlier taken by him. The cheque on presentation before the bank was returned with the endorsement, "account closed." The respondent gave a notice to the appellant asking for payment of the cheque amount but the appellant did not make the payment. Hence, the respondent filed a complaint against the appellant under section 138 of the Act, giving rise to case bearing CC No.245/SS/2004. In the complaint case, the Special Metropolitan Magistrate and Judge of the Small Causes Court found and held that the complainant was able to establish the appellant's guilt and by judgment and order dated October 6, 2005, convicted him under section 138 of the Act and sentenced him to undergo imprisonment for six months. The court also directed the appellant to pay compensation of Rs.8,00,000/- under section 357(3) of the Code of Criminal Procedure and in default of payment of compensation, to undergo imprisonment for a period of one month. The court further directed that on realization of the amount of compensation, Rs.4,00,000/- would be paid to the complainant and the remaining amount would be credited to the State for the "loss and expenses incurred by both the parties".
4. Against the judgment of the trial court, the appellant preferred appeal (CrI. A. No.698 of 2005). The appeal was dismissed without any modification in conviction or sentence by judgment and order dated June 29, 2007. The appellant, then, moved the High Court in

Criminal Revision Application No.317 of 2007. The High Court by its judgment and order dated December 9, 2009 sustained the appellant's conviction. It, however, noted that during the pendency of the criminal revision, the appellant had deposited Rs.4,00,000/- in court which was withdrawn by the complainant by the permission of the court. The court further observed that in the facts of the case there was no specific loss caused to the State and, therefore, there was no justification for payment of the large sum of Rs.4,00,000/- as compensation to the State. It, accordingly, reduced the amount of compensation from Rs.8,00,000/- to Rs.4,00,000/-.

5. The appellant has now brought this matter to this Court. At the SLP stage notice was issued limited to the question of sentence. From the materials on record it appears that before the complainant gave the loan to the appellant (for the repayment of which the dishonoured cheque was issued by the appellant) there were business transactions between the appellant and the complainant's sister that had gone sour. As a matter of fact it was the defence of the appellant that having regard to the past events there was no question that the complainant would give him any loan and the whole case that the cheque was given in repayment of the loan was completely false. We are referring to the circumstance not to reconsider the appellant's conviction which we confirm but for the limited purpose of the due sentence. The appellant has faced the rigours of a criminal prosecution for the past six years and is said to have served out the substantive sentence of imprisonment for 39 days.

6. In the overall facts and circumstances of the case, we are satisfied that the ends of justice would be satisfied by reducing the substantive sentence of the appellant to the period already undergone by him. This would, however, be subject to the condition of payment of Rs.1,00,000/- as additional amount of compensation to the complainant.

7. We, accordingly, direct that the appellant's sentence of imprisonment be reduced to the period already undergone by him provided he deposits a sum of Rs.1,00,000/- in the trial court within 8 weeks from today failing which, he would be taken in custody to serve out the remaining period of sentence given to him by the High Court. If the amount of Rs.1,00,000/- is deposited as directed the entire amount would be paid to the complainant.

8. The appeal is dismissed subject to the modification in sentence.