

SUPREME COURT OF INDIA

Nihali Devi

Vs.

State Govt. of NCT of Delhi

Crl.A.No.1100 of 2012

(Aftab Alam and H.L.Gokhale, JJ.)

25.07.2012

JUDGMENT

Aftab Alam, J.

1. Delay condoned.

2. Leave granted.

3. The appellant is convicted under Section 138 of the Negotiable Instruments Act, 1881. She was sentenced by the trial court to two years' simple imprisonment; in addition she was also directed to pay a sum of Rs.1,20,000/- to the complainant as compensation. In appeal, the conviction and sentence was maintained and her revision before the High Court was dismissed as barred by limitation by 565 days.

4. According to the complainant, in August, 2003, he had advanced a loan of Rs.1,00,000/- to the appellant for the repayment of which she gave him two cheques dated March 25 and April 1, 2005 for Rs.40,000/- each. Both the cheques, on presentation to the bank, were dishonored for want of sufficient funds. When the appellant failed to make payment after due notice, he filed a complaint (CC No.8382/2005) in the Court of Metropolitan Magistrate, New Delhi. The appellant was put on trial and by judgment and order dated November 14, 2007, she was convicted and sentenced, as aforesaid.

5. She filed an appeal (CA no.24/2007) before Sessions Court. During the pendency of the appeal the appellant, in small installments, deposited a sum of Rs.49,000/- towards the amount of compensation fixed by the trial court. The appeal was, however, dismissed by the judgment and order dated November 15, 2008, passed by the Additional Sessions Judge-02.

6. Against the appellate order, the appellant filed a revision after a delay of 565 days which, as noted above, was dismissed on grounds of limitation.

7. In the facts of this case, we are of the view that the High Court ought to have condoned the delay in filing the revision and examined her case on merits. We should have, therefore, set aside the High Court order and remitted the case for disposal on merits, in accordance with law. We, however, refrain from taking that course as that would only prolong the suffering of the parties and add one more case to the docket of the High Court. We, accordingly, proceed to dispose of the matter.

8. It may be noted here that learned counsel for the appellant confined his submissions only to the question of sentence. In this regard, the relevant facts are that the appellant is a woman and is over 66 years of age. Before the trial court she actually admitted her liability to pay the amounts of the two cheques. It, however, appears that it was on account of her highly strained financial condition that she was unable to make the payment. Her two sons had died earlier. During the pendency of the appeal her daughter who was suffering from cancer was undergoing treatment and understandably the appellant was all through by her bed side. The daughter finally passed away on April 15, 2011. Even in those circumstances she was trying to pay the compensation amount to the complainant, even though in small installments. In that position, it is not difficult to imagine that she was unable to follow the proceedings in the appeal and was not even aware when it was finally dismissed. That was one of the reasons for the delay in filing the revision before the High Court which the High Court, unfortunately, did not take into account.

9. At the time of filing the special leave petition she had deposited a sum of Rs.50,000/- out of the compensation amount of Rs.1,20,000/-. Hence, this Court directed her to deposit the remaining amount of Rs.70,000/- as the condition to allow her prayer for exemption from surrendering. She filed proof of deposit of the remaining amount on October 18, 2011, and the full amount of compensation i.e. Rs.1,20,000/- now remains deposited in the court below which the complainant - respondent No.2 is free to withdraw.

10. In the aforesaid facts and circumstances, it appears to us that the sentence of two years' imprisonment given to the appellant is unduly harsh. It is clear to us that she is a victim of tragic circumstances and she never intended not to repay the amounts for which she issued the two cheques in favour of respondent No.2. We, accordingly, set aside the sentence of imprisonment awarded to the appellant and substitute it by a fine of Rs.25,000/- which, she must pay within four months from today, failing which she will have to undergo simple imprisonment for 15 days. Out of the amount of fine, if deposited, Rs.20,000/- will be paid to the complainant, which he would be free to withdraw.

11. In the result, the appeal is disposed of with the aforesaid modification and reduction in the appellant's sentence.

