

# SUPREME COURT OF INDIA

Susanta Dey

Vs.

Babli Majumdar

CrI.A.No.2103 of 2008

Abhay Manohar Sapre and Dinesh Maheshwari, JJ.,)

28.03.2019

## JUDGMENT

### **Abhay Manohar Sapre, J.,**

1. This appeal is directed against the final judgment and order dated 11.04.2008 passed by the High Court of Calcutta in Criminal Revision No.3048 of 2005 whereby the High Court allowed the criminal revision filed by respondent No.1 herein and while setting aside the order of the Appellate Court, awarded simple imprisonment for two months to the appellant herein and directed him to pay a sum of Rs.3 lakhs by way of compensation to respondent No.1.

2. The appeal involves a short point as would be clear from the facts mentioned hereinbelow.

3. Respondent No.1 (complainant) filed a complaint (CR No.298/1995) under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as “the Act”) against the appellant herein in the Court of Judicial Magistrate, 1st Court, Jalpaiguri, West Bengal.

4. By order dated 29.06.2004, the Judicial Magistrate allowed the complaint and held the appellant guilty for commission of an offence punishable under Section 138 of the Act and sentenced him to undergo simple imprisonment for two months along with a fine of Rs. 5000/- and in default of payment of fine, to further undergo simple imprisonment for one month and also awarded a compensation of Rs. 3 Lakhs payable to respondent No.1 (complainant) by the appellant (accused).

5. The appellant felt aggrieved and filed Criminal Appeal No. 7/2005) in the Court of Sessions/Magistrate. By order dated 12.07.2005, the Appellate Court allowed the appeal and while setting aside the order dated 29.06.2004 of the Judicial Magistrate remanded the case to the Judicial Magistrate for giving an opportunity to both the parties to adduce fresh evidence and then decide the complaint.

6. Respondent No.1 (complainant) felt aggrieved and filed revision in the High Court at

Calcutta. By impugned order, the High Court allowed the revision and while setting aside the order of the Appellate Court, awarded simple imprisonment for 2 months to the appellant herein and also directed him to pay Rs. 3 Lakhs by way of compensation to respondent No.1.

7. It is against this order, the appellant (accused) has felt aggrieved and filed this appeal by way of special leave in this Court.

8. Heard Mr. Vijay Kumar, learned counsel for the appellant, Mr. Pijush K. Roy, learned counsel for respondent No.1 and Mr. Avishkar Singhvi, learned counsel for respondent No.2.

9. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the impugned order remand the case to the Appellate Court for deciding the appeal afresh on merits in accordance with law.

10. In our opinion, the High Court was not justified in allowing the revision filed by respondent No.1 and awarding sentence to the appellant herein and compensation to respondent No.1. The reasons are not far to seek as mentioned hereinbelow.

11. First, the only question before the High Court in the revision filed by respondent No.1(complainant) was as to whether the Appellate Court was justified in remanding the case to the Judicial Magistrate for giving them an opportunity to adduce evidence. In other words, the question before the High Court was whether the remand order of the Appellate Court was legal or not.

12. Second, instead of deciding the aforementioned question, the High Court proceeded to decide the complaint itself on its merits and while allowing the complaint, sentenced the appellant (accused) with simple imprisonment for 2 months along with a direction to pay compensation of Rs. 3 Lakhs to respondent No.1 (complainant). It was, in our view, not legally permissible.

13. Third, if the High Court had examined the issue of remand and held the same to be legal, it could have directed the Magistrate to decide the complaint in terms of the directions given by the Appellate Court. However, if the remand had been held illegal, the High Court was under a legal obligation to remand the case to the Appellate Court to decide the appeal afresh on merits with a view to decide as to whether the Magistrate was justified in allowing the complaint and awarding sentence. The reason being that the Appellate Court once decided to remand the case to the Magistrate did not go into the merits of the case.

14. In the light of the aforementioned three reasons, we are of the considered opinion that the High Court committed jurisdictional error in allowing the revision filed by respondent No.1. The impugned order, therefore, deserves to be set aside.

15. We, also perused the order of the Appellate Court dated 12.07.2005 (running in 25 pages) with a view to find out as to whether it was justified in remanding the case to the Magistrate.

16. Having perused the order, we are of the view that the Appellate Court erred in remanding the case to the Magistrate.

17. In our view, there was neither any need and nor any occasion to remand the case to the Magistrate. In other words, we are of the view that there was enough material before the Appellate Court on the basis of which the appeal on merits could have been decided one way or the other instead of remanding the case to the Magistrate for deciding it afresh.

18. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order and the order dated 12.07.2005 of the Appellate Court are set aside. Criminal Appeal No. 7/2005 filed by the accused (appellant herein) is restored to its original file.

19. The Appellate Court is directed to decide the appeal afresh on merits in accordance with law on the basis of the material already on record.

20. It is, however, made clear that the Appellate Court will decide the appeal strictly in accordance with law without being influenced by any observations made by the Appellate Court in the order dated 12.07.2005 as also in the impugned order of the High Court and this order.

21. Let the appeal be decided within six months from the date of appearance of the parties before the Appellate Court on 15.04.2019.