

IN THE COURT OF THE SESSIONS JUDGE, BIRBHUM AT SURI.

Present : Shri Goutam Sengupta,
Sessions Judge,
Birbhum at Suri.

CRIMINAL REVISION NO.01/2015

Paschim Banga Gramin Bank (represented by Mr. Prasanta Majumder,
authorized officer)..... Appellant.

-Versus-

1. Nurul Amin Sk. Respondent No.1,
2. The State of West Bengal Respondent No.2.

Syed Samidul Alam Ld. Advocate for the appellant.

Kabirul Islam Ld. Advocate for the respondent.

The State of West Bengal is represented by Ld. P.P.

Date of delivery of judgment : 22-5-15.

JUDGMENT

Feeling aggrieved by the order/judgment passed by the Ld. Judicial Magistrate, 2nd Court, Suri, Birbhum in connection with complaint case being No. C.1629/2006 u/s 138 of the Negotiable Instruments Act dated 25.11.2014, Paschim Banga Gramin Bank filed an application invoking the jurisdiction of section 397/399 of the Cr.P.C. questioning the legality, correctness and propriety of the order of sentence passed by the Ld. Judicial Magistrate.

Before embarking of the judicial scrutiny the fact which gives rise to filing of this ^{Revision u.} ~~appeal~~ as well as case are necessary to be stated in short compass :

That the petitioner/complainant lodged a complaint

contd.....p/2

M. S. Gupta.
22.5.2015
Sessions Judge,
Birbhum

(2)

against the respondent/accused Nurul Amin complaining commission of offence punishable u/s 138 of the N.I. Act. Accused Nurul Amin Sk. took loan of Rs.5,920/- from the complainant/Bank and in order to repay the loan amount he issued a cheque of Rs.5,500/- in discharge of his liability. But that very cheque was dishonoured due to insufficient fund. Thereafter legal notice was issued by the complainant upon the accused, but the accused did not comply the notice. So, on observing all formalities complaint was lodged in the court of C.J.M., Birbhum at Suri. Ld. C.J.M., Birbhum after taking cognizance transferred this case to the court of Judicial Magistrate, 2nd Court, Suri, Birbhum. In turn after full trial Ld. Judicial Magistrate found the accused guilty and pleased to convict the accused for the offence punishable u/s 138 of the N.I. Act and sentenced to serve imprisonment till rising of the court and also to pay a fine of Rs.500/-, in default to serve S.I. for 7 (seven) days.

Being aggrieved by and dissatisfied with the flee bite order of sentence, complainant preferred this application challenging the legality and propriety of the order of sentence.

Perused the case-record with reference to materials on record. Considered the submissions of the Ld. Advocate of the petitioner/revisionist and Ld. Advocate of the respondent/accused as well as Ld. P.P.

In view of the submission of the parties, the only question comes up for determination whether or not Ld. Judicial Magistrate, 2nd Court, Suri, Birbhum is justified in awarding the sentence upon the accused.

Decision with reasons

At the time of argument, Ld. Advocate of the

contd.....p/3

M. Gupta.
22.5.2015
Sessions Judge,
Birbhum

petitioner submits that it is against the sentencing policy to award a flee bite punishment to the accused and punishment/sentence should be adequate and commensurate with the nature of the nature and gravity of the offence. In this instant case, Ld. Judicial Magistrate awarded sentence to serve imprisonment till rising of the court and sentenced to pay a fine of Rs.500/- and Ld. Judicial Magistrate did not award any compensation. So, order should be set aside and adequate punishment should be given. Ld. Advocate of the accused/convict submits that it is the discretion of the Ld. Judicial Magistrate to fix up the quantum of sentence and this court has no jurisdiction to interfere with the jurisdiction of the Ld. Judicial Magistrate. That apart, considering the gravity of the offence, the sentence which has been awarded to the accused/convict is just and proper.

Ld. P.P. on behalf of the State submits that the Ld. court below had taken any lenient view in awarding sentence, that should be just and proper. In this context, Ld. Advocate of the petitioner place reliance upon the decisions reported in 2000 Cr.L.J., 3814 (Smt. Bhabani v. D.C. Doddarangaiah); 2002 Cr.L.J., 1003 (Suganthi Suresh Kumar v. Jagdeeshan); 2006 Cr.L.J., 2489 (M.S. Sasipolycolours v. M/s Lakshmi Polymer); 2008 Cr.L.J.,1001 (Smt. K. Vasantha Kumari v. D. Debendra Reddy); 2010(2) C.Cr.L.R. (SC), 785 (K.A. Abbas v. Sabu Joseph); 2012(1) C.Cr.L.R. (SC), 7 (R.Vijayan v. Baby & others).

Considered the submissions of all sides. Perused the case-record with reference to materials brought on record. At the very outset of my discussion it is pertinent to point out that in this case only quantum of sentence is under challenge with that non-awarding of compensation has also been agitated.

Before scrutinizing the legality, propriety and adequacy of the punishment, let me survey the sentencing policy of our country.

4. Sutta.
22.5.2015
Sessions Judge,
Birbhum

(4)

In our country a very wide discretion in fixing the degree of punishment is allowed to the Trial Judge except for the offence wherein fixed quantum of punishment is prescribed by law. Most of the offences, the policy of the law is to fix a maximum penalty which is intended only for the worst case and to leave to the discretion of the Trial Judge, The determination of the extent to which a particular case the punishment awarded should approach to or recede from the maximum limit. The exercise of this discretion is matter of prudence. It should not be arbitrary, whimsical, it must be supported by reason and logic. If that very discretion is not properly used, then a court having superior jurisdiction or having superintending power is at liberty to alter that very quantum. It is the trite of law that in carrying out the task of reviewing sentence, however, the court of appeal will generally not interfere unless the sentence is one not warranted in law or unless there has been some error in principle. The sentence should be such that gives proper effect to the object of the legislation, neither it should be excessive nor it would be flee bite. It should be condign and commensurate with the nature and gravity of the offence and court should adopt a pragmatic and realistic approach while awarding a sentence. It has often come to our notice that quantum of punishment for commission of a similar type of offence varies from minimum to maximum. Even where same sentence is imposed, the principle applied are found to be different. Similar discrepancies have been noticed in regard to imposition of fine also. Our Apex Court in the case of Soman v. State of Kerala observed that

“Giving punishment to the wrongdoer is at the heart of criminal justice delivery, but in our country it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assess the trial court in meeting out the just punishment to the accused facing trial before it after he is held guilty to the charge.”

Be that as it may, now let me switch over to the case

contd.....p/5

H. Gupta.
22.5.2015.
Sessions Judge,
Birbhum

(5)

in hand. In the instant case, accused was held guilty for committing an offence punishable u/s 138 of the N.I. Act and with regard to punishment of this type of cases Three-Judge Bench of Hon'ble Supreme Court in Damodar S. Prabhu v. Syed Babalal H. 2010(5) S.C.C. 663 opined that the object sought to be achieved by the provision of section 138 and the purpose underlying the punishment provided therein, unlike other crimes punishment of section 138 cases is meant more to ensure payment of money rather than to seek retribution. Complainant's interest lies primarily in recovering the money, rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available any remedy for the holder of the cheque. In another case of Hon'ble Supreme Court reported in 2002 Cr.L.J. 1003 Mr. Justice K.T. Thomas speaking for the Bench deprecated the award of flee bite sentence and pleased to remit the case back to trial court for awarding appropriate sentence.

Borrowing the wisdom of the Hon'ble Apex Court with reference to money involved in this case, if we consider the quantum of sentence awarded in this case by the Ld. Trial Magistrate, in my opinion, is certainly a flee bite sentence and Ld. Magistrate ought to have considered the issue of compensation. But Ld. Judicial Magistrate failed to exercise his jurisdiction in awarding compensation and did not award any compensation and I do not find any reason in the impugned judgment for what he did not award any compensation. So, this is clear conflict with the settled principle of law. The imprisonment till the rising of the court, in fact, is not a realistic approach and for what reason Ld. Judicial Magistrate had taken so lenient view that had not been found place in his judgment. So, in my opinion, the awarding of such lenient sentence and not-awarding of compensation is not tenable in law and that deserve reversal in to to and toeing with the direction given by the Hon'ble Apex Court, I also propose to remit the

contd.....p/6

4. Supp.
22.5.2015.

Sessions Judge,
Birbhum

case back to the trial court, as because imposition of sentence and fine totally comes within the purview of the discretion of the ld. trial court. So, I leave the matter to his discretion and direct Ld. Magistrate on hearing the parties once again in the matter of sentence pass sentence which is condign as per observation made in the body of the judgment.

In fine, motion succeeds.

Hence, it is

ORDERED

that the revisional application be and the same is allowed on contest but without cost.

That the only sentencing/operating part of the judgment passed in connection with C. Case No.1629/2006 dated 25.11.2014 by the Ld. Judicial Magistrate, 2nd Court, Suri, Birbhum is hereby set aside and the case is sent back to the trial court on limited remand only on the point of imposition of sentence and fine and compensation.

Ld. Trial Court is directed upon giving notice to the parties and hearing the parties once again in the matter of sentence, pass appropriate sentence which is condign/appropriate and commensurate with the nature of the case and ^{present- u.} ~~case~~ position of law.

Let a copy of this judgment along with L.C.R. be sent to the trial court for information and taking necessary action.

Dictated & corrected
by me.

H. Gupta.

Sessions Judge,
Birbhum.

22.5.2015.

Sessions Judge,
Birbhum

H. Gupta.

Sessions Judge,
Birbhum.

22.5.2015

Sessions Judge,
Birbhum