

Sunil Vs. Raiskhan Another

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Court : Mumbai Aurangabad

Decided On : Feb-21-2013

Judge : K.U. Chandiwal

Appeal No. : Criminal Revision Application No.302 of 2009

Appellant : Sunil

Respondent : Raiskhan Another

Judgement :

Oral Judgment:

Heard Mr. Urgunde.

2. Rule. With the consent of learned Counsel, Rule is made returnable and heard finally.

3. In STCC No.1069/2007, the revision applicant was convicted for offense under Section 138 of Negotiable Instruments Act by learned Judicial Magistrate, First Class, Latur, on 2.5.2008, directing to undergo simple imprisonment for a period of six months and to pay compensation of Rs.10,000/-. The matter was carried in appeal No.33/2008, however, on 3.11.2009, the appeal was dismissed by learned Additional Sessions Judge, Latur, and hence revision.

4. The complainant Raiskhan came with a case that he was in acquaintance with the accused (revision applicant). On 7.7.2006, the accused approached him and made a demand of Rs.70,000/- being business requirement. It was complied with since the accused had assured to release the payment within 4/5 days. Accused issued cheque No.010868 for Rs.70,000/- dated 12.7.2006 filled in by the accused, signed by him, in presence of the complainant. The complainant had demanded the amount, however, the accused did not comply. Consequently, on 11th Jan., 2007, when the accused informed that cheque can be presented, the complainant presented the cheque through his Banker Osmanabad Janata Cooperative Bank, Osmanabad, branch Ganjgolai, Latur, and on 12.1.2007, the cheque came to be dishonoured with an endorsement "funds insufficient". The notice was returned unserved with endorsement 'unclaimed', however, notice sent under certificate of Posting was accepted. There was no reply from the accused. Consequently, the complaint under Section 138 of Negotiable Instruments Act was filed.

5. The accused raised defense that the complainant had not disclosed in Income Tax return about payment of Rs.70,000/- to him. The cheque was not issued by the accused in discharge of legally enforceable liability. The statutory notice was not sent; it was a camouflage. He canvassed that his cheque book, under coercion, was snatched and 10 blank signed cheques were used; one after another, either by complainant or his family members. Coercion of Nafiskhan made him to open Bank account and give the cheque.

6. On analysis, learned Judicial Magistrate, First Class, found that the accused could not rebut onus that there was any coercion by Nafiskhan to open Bank account or influence the accused to release ten leaves of the cheque book, duly signed.

7. So far as point of not showing the details in the Income Tax return, the learned Judge has observed that it was violation of the Rules and for that purpose, the complainant may face the consequences but, it will not defuse contentions raised by the complainant about the liability. The accused did not challenge financial worth of the complainant as to his capability to release either Rs.70,000/- or any

other amount.

On analysis of both the judgments, I do not find any error or perversity to interfere on the appreciation of facts and documents.

8. During the course of submissions, Mr. Urgunde, learned Counsel for revisional applicant informed that amount of Rs.10,000/as compensation is already deposited with the learned Judicial Magistrate, First Class, Latur, pursuant to the orders of this Court dated 10th Nov., 2009. He also submits, the revisional applicant is presently in jail owing to identical conviction under Section 138 of Negotiable Instruments Act initiated by servant of the complainant namely Maheboobkhan.

9. Learned Counsel submits, the revision applicant has been exposed to financial difficulties and mentally also due to recurring cases initiated against him by the complainant and his family members. He has no business left and entire reputation is marred. He repeats, the events are systematically choreographed by the complainant to ensure false involvement. At the end, he submits that the revision applicant was in custody in this case for a period of fifteen days, and considering above facts, he be released on undergone period.

10. On giving anxious thoughts and consideration to the submissions of Mr. Urgunde, I find, the revision applicant has suffered a lot; he is already in jail. This is more so due to his financial crunch, unable to maintain compensation or meet out the claims raised by the complainant or his family members. The compensation of Rs.10,000/- is already deposited. Considering the scope in the proceedings under Section 138 of Negotiable Instruments Act regarding cases faced by him, following order:

ORDER

(a) The conviction of the revision applicant in STCC No.1069/2007 dated 2.5.2008 confirmed in Criminal Appeal No.33/2008 is confirmed, however, instead of undergoing sentence of six months, as was directed, the revision applicant is convicted for a period of fifteen days (fifteen days) simple imprisonment.

Compensation is already paid. Rule made absolute in above terms.

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