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Avneesh Gupta Vs. Sanjeev Kumar

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Court : Delhi

Decided On : Sep-10-2003

Reported in : 2003VIIIAD(Delhi)499; 108(2003)DLT196; 2003(71)DRJ537; 2003(3)JCC316

Judge : S.K. Agarwal, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 374; ;Negotiable Instruments Act - Sections 138

Appeal No. : Crl. A. No. 884/2003

Appellant : Avneesh Gupta

Respondent : Sanjeev Kumar

Advocate for Def. : Party-in person

Advocate for Pet/Ap. : Mukesh Birla, Adv

Judgement :

S.K. Agarwal, J.

1. This appeal under Section 374 Cr.P.C. is directed against the judgment dated 7.9.2002 holding the appellant guilty under Section 138 of the Negotiable Instruments Act and the order dated 18.10.2002 sentencing the appellant to

imprisonment for a period of three months and to pay a penalty of Rs. 24,000/-.

2. Respondent No.2 filed the complaint stating that the appellant had taken a loan of Rs.50,000/- on 10.8.1993 and issued 25 post dated cheques of Rs. 3,000/- each; 4 cheques dated 10.9.1993, 10.10.1993, 10.11.1993 and 10.12.1993 when presented to the bank for encashment were dishonoured for 'insufficient funds'. The complainant sent separate notices to the appellant. One notice was served upon the appellant and the appellant avoided the service of other notices. After pre-summoning evidence, the appellant was summoned and he pleaded not guilty. The complainant in support of its case proved the loan agreement, the dishonoured cheques and the notice issued by him. In cross-examination it was put to the complainant that he had received Rs. 2,000 in cash in August, 1993, the appellant in his statement admitted the issuance of cheques and took the stand that the complainant was his teacher when he was a student of 10th class. The complainant assured him getting loan from his known person and told him to open an account. He got the agreement signed. The appellant also raised other technical pleas. Learned trial court vide impugned judgment and order convicted the appellant under Section 138 of NI Act and sentenced him to undergo SI for three months and to pay a penalty of Rs. 24,000/-, that is double the amount of the cheques and in default of payment of fine further SI for three months. During the pendency of appeal, the appellant and the complainant compromised and filed the Compromise Deed, whereby the complainant/respondent agreed to get Rs.15,000/- out of the penalty amount of Rs. 24,000/- deposited by the appellant in the court of learned Additional Sessions Judge, Delhi. Clause 1 of the agreement reads as under:-

'That the complainant/respondent, namely, Sanjeev Kumar shall get Rs. 15,000/- out of penalty amount of Rs. 24,000/- deposited in the court of Shri S.N. Dhingra, A.S.J., New Delhi.'

3. The above compromise deed is duly supported by the affidavit of the parties. The parties are also present in person and submit that compromise is voluntary.

4. Learned counsel for the appellant submits that in view of the compromise, the appellant would not challenge his conviction but would pray for a lenient view in

the sentence and pray that sentence of imprisonment be waived and such other order be passed as this court may deem fit. The respondent does not contest the same.

5. In the peculiar facts and circumstances of this case, out of Rs. 24,000/- deposited by the appellant, the amount of Rs.15,000/- be released to the complainant by way of compensation. The sentence of 3 months SI is altered to fine of Rs. 9,000/-. Thus out of amount of Rs. 24,000/-, Rs. 9,000/- be appropriated towards the fine and Rs. 15,000/- be released by way of compensation to the complainant.

With the above modification in the sentence, the appeal stands disposed of.

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