

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPURM/s. Krishan Lal Pawan Kumar
vs.
State of Rajasthan & Anr.

S.B. CRIMINAL REVISION PETITION
NO.654/2001 against the order
passed by Additional Sessions
Judge, Anupgarh in Criminal
Revision No.9/2001.

DATE OF ORDER :: 26-05-2005

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. M.L. Garg, for the petitioner.

Mr. S.N. Tiwari, P.P.

Mr. R.K. Singhal, for respondent No.2.

BY THE COURT:

By the instant revision petition under Section 397/401 of the Code of Criminal Procedure, 1973 (for short 'the Code' hereinafter), the petitioner has challenged the order dated 3.9.2001 passed by the Additional Sessions Judge, Anupgarh (for short 'the revisional Court' hereinafter) in Criminal Revision No.9/2001 whereby the revisional Court set aside the order dated 29.1.2001 passed by the Judicial Magistrate, Anupgarh (for short 'the trial court' hereinafter) in Cr. Misc. Case No.47/1999 whereby the trial court dismissed the application filed by respondent No.2 for recalling the order taking cognizance dated 20.2.1999.

I have heard learned counsel for the parties and perused the order of the revisional Court dated 3.9.2001 as well as the order of the trial Court dated 29.1.2001.

The facts giving rise to the instant revision petition are that a complaint was filed by petitioner under Section 138 of the Negotiable Instrument Act, 1881 (for short 'the Act' hereinafter). The trial Court took cognizance of offence under Section 138 of the Act on 20.2.1999 and issued the process. However, during pendency of the trial, non-petitioner No.2 Darshan Singh filed an application before the trial Court seeking recalling of the order taking cognizance dated 20.2.1999 and dropping the proceedings against him. That application came to be dismissed by the trial Court vide order dated 29.1.2001. However, the revisional Court set aside the order dated 29.1.2001 and allowed the application dated 2.6.1999 seeking recalling of order taking cognizance filed by the non-petitioner no.2 and quashed the order of cognizance and the criminal proceedings.

The question for consideration in the instant revision is as to whether the order dated 29.1.2001 passed by the trial Court in Cr. Misc. Case No.47/1999 was in accordance with law and justified or erroneous. After having taken the cognizance of offence by order dated 20.2.1999, the trial Court was not empowered

under the Code to review its order.

The controversy involved in the instant revision petition stands concluded by Hon'ble Supreme Court in *Adalat Prasad vs. Rooplal Jindal 7 Ors.*, JT 2004(7) SC 243 wherein Hon'ble Supreme Court held that Criminal Procedure Code does not contemplate a review of an order. This view has been reiterated by Hon'ble Supreme Court in *Subramaniam Sethuraman Vs. State of Maharashtra and Anr.*, 2004 C.R.I.L.J. 4609, wherein the Hon'ble Court held that there being no provision under the Code for review of an order made by the same Court. Thus, the trial court was justified in not reviewing the order made by it on 20.2.1999 by which the trial Court took cognizance of the offence. Therefore, in my opinion, the order passed by the trial court dated 29.1.2001 was perfectly justified and therefore, the order impugned of the revisional Court is not sustainable and is liable to be set aside.

Consequently, the revision petition is allowed. Impugned order dated 3.9.2001 passed by the revisional court, Anupgarh in Cr.Misc. Case No.9/2001 is hereby set aside and that of the order of the trial Court dated 29.1.2001 is restored. Record of the trial Court be returned forthwith.

[H.R. Panwar], J.

Praveen