

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Leave To Appeal No. 177/2022

Mali Ram Jangid Son Of Shri Prabhati Lal Jangid

----Appellant

Versus

Kailash Chand Sharma Son Of Shri Ram Sahai

----Respondent

For Appellant(s) : Mr. Ajay Gupta

For Respondent(s) :

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

17/07/2023

Present leave to appeal is preferred aggrieved from order dated 17.06.2022 in criminal case No. 2556/2019 passed by learned ACJM, No.8, Jaipur Metro-II Headquarter Amer, whereby on an application under Section 139 NI Act, learned trial court abruptly closed the proceedings and acquitted the respondent accused.

Considered the grounds of leave to appeal and perused the record.

A perusal of record indicated that for dishonour of cheque of Rs.5 lacs, a criminal complaint was filed on 31.10.2019 and cognizance was taken on 07.11.2019. thereafter on 20.11.2020 on surrender of respondent accused, he was released on bail and plea was recorded wherein he chose to face trial. Thereafter on 17.05.2022, when documents were exhibited in chief by PW-1, then on filing of an application by accused, learned trial court observed that it's 12.00 P.M., therefore, cross-examination is reserved and deferred the same till disposal of application.

On the basis of this application, impugned order was passed on the ground that complainant had failed to establish presumption under Section 139 NI Act.

Having considered the order, it appears that learned trial court without following procedure as prescribed under Chapter XX and XXI of Code of Criminal Procedure resorted to invoke the powers under Section 482 Cr.P.C. though same was not also exercised in cases of offence relating to 138 NI Act by the High Court itself. The Hon'ble Supreme Court in multiple cases, time and again, stressed that in cases of 138 Ni Act, a proper procedure would be to allow defence of accused and thereafter on merits the matter be considered on the basis of evidence led by both the parties.

Having considered aforesaid procedure, this court is shocked to notice such an abrupt closure of proceedings by learned trial court dealing specifically cases relating to NI Act, hence this leave is granted.

Issue notice to the respondent, returnable within four weeks. One set be sent through registered speed post and another be sent through ordinary process.

List the matter after six weeks.

A copy of this order be placed before the Hon'ble Chief Justice through Registrar General.

(ASHOK KUMAR JAIN),J