HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. No.90 of 2010

Md. Nausad Mia,
son of Murshid Mia,
Resident of Village-South Ramnagar,
P.S. West Agartala, near PEC brick field,
District – West Tripura

………… Petitioner

– Vs –

1. Ashok Leyland Finance,
(A Division of Indusind Bank Ltd.),
Durgabari Road, Agartala – 799 001, West Tripura,
Formerly known as Ashok Leyland Finance Ltd.,
Represented by Mr. Badal Chandra Saha,
son of late Nripendra Ch. Saha, Branch Supervisor

2. The State of Tripura

…………Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	:	Mr. S. M. Chakraborty, Senior Advocate Mr. S. Bhattacharjee, Advocate
For the respondent No.1	:	None
For the respondent No.2	:	Mr. A. Ghosh, Public Prosecutor
Date of hearing and delivery of judgment & order	:	**09.01.2015**
Whether fit for reporting	:	**NO**

JUDGMENT & ORDER (ORAL)

Heard Mr. S. M. Chakraborty, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the petitioner as well as Mr. A. Ghosh, learned Public Prosecutor appearing for the respondent No.2, the State of Tripura. None appears for the respondent No.1 despite due notice from this Court.

02. By this revisional petition, filed under Section 397 read with Section 401 of the Cr.P.C. the judgment and order dated 24.09.2010 delivered in Criminal Appeal No.19(3) of 2009 passed by the Addl. Sessions Judge, West Tripura, Agartala, Court No.3 has been called in question.

03. By the said judgment and order dated 24.09.2010, the finding of conviction as returned in CR No.2321 of 2006 (NI) by the Judicial Magistrate, 1st Class, Agartala, West Tripura, Court No.5 has been affirmed. However, the sentence as awarded by the trial Judge to the extent of simple imprisonment for one year with fine of Rs.15,000/-, in default of payment of fine further SI for two months for committing the offence punishable under Section 138 of the Negotiable Instrument Act has been modified to SI for six months with fine of Rs.10,000/-, in default to suffer further SI for two months.

04. The essential facts forming the prosecution case may be encapsulated as under:

One Rehana Begam for purchasing one Alto (Maruti) took loan of Rs.2,41,000/- from the respondent No.1, Ashok Leyland Finance, a Division of Indusind Bank Ltd. where the present petitioner stood as the guarantor by depositing two post dated cheques dated 21.04.2006 for Rs.5,190/- and 21.05.2006 for Rs.5,190/- drawn on State Bank of India, Agartala Branch. The complainant had deposited those cheques on 04.05.2006 and 24.05.2006 to the State Bank of India, Tripura Legislative Assembly Branch for collection. The first cheque dated 21.04.2006 was dishonoured for insufficiency of fund and such incidence of dishonour of cheque for insufficiency of fund was informed to the complainant on 12.05.2006. Similarly, the second cheque was also dishonoured for the same reason and the complainant was informed of such incidence on 29.05.2006. The petitioner was, according to the complainant, informed over telephone on 30.05.2009 of such incidence of dishonour of cheque. The complainant has stated in the complaint that in terms of the instruction of the petitioner they further deposited those two cheques for collection but again those were dishonoured for insufficiency of fund. The petitioner was informed of such incidence of dishonour of cheques on 03.08.2006. As consequence, the complainant issued the demand notice on 21.08.2006 requesting the petitioner to make payment within 15 days but the petitioner did not make any payment and thereafter for ensuring the service of notice the complainant approached the Director of Postal Services and came to know that the demand notices were duly delivered on 23.08.2006. However, in the process when the substance of accusation was read over to the petitioner he simply denied those and faced the trial.

05. On appreciation of the evidence so recorded for the complainant the petitioner was found guilty for committing offence punishable under Section 138 of the NI Act for dishonour of cheque for insufficiency of the fund and after receipt of the notice for not making the payment of the cheque amount to the drawee. Thus, the petitioner was convicted and sentenced, as stated.

06. Being aggrieved, when the petitioner filed the appeal against the said judgment and order of conviction and sentence dated 25.07.2009 being Criminal Appeal No19(3) of 2009 the appellate Court, the Addl. Sessions Judge, West Tripura, Agartala dismissed the said appeal by the impugned judgment dated 24.09.2010. However, the sentence was modified, as stated.

07. It has been observed in the appellate order dated 24.09.2010 that *"the accused, what it appears from the evidence on record, did not deny the issuing of cheque in favour of the complainant Bank. The main contention of the accused-appellant that the vehicle No.TR-01-L-0712 was handed over to the complainant Bank which was sold by the Bank and sale proceeds was credited into the account of the purchaser Rehana Begam and thus the loan agreement was terminated and so the complainant Bank is nothing to get from the accused-appellant. In this respect learned lower court in his judgment referred the decision of Hon'ble Apex Court reported in 2001 Cr.L.J. 780 (S.C.). It was observed that so far as the criminal complaint is concerned, once the offence is committed any payment made subsequent thereto will not absolve the accused of the liability of criminal offence. It may have some affect in the matter of awarding of sentence."*

08. In this juncture, Mr. Chakraborty, learned senior counsel urged this Court to re-appreciate the cross examination of PW-1. It appears further from the cross examination of PW-1, namely Badal Ch. Saha, who filed the complaint for the respondent No.1, Ashok Leyland Finance as under:

> ***"Witness volunteers that after filing of the instant case the vehicle TR-01-L-0712 was sold out as per prayer of the accd person and SpA also credited in the a/c of the borrower for which I could not inform the matter to Court."***

However, he has denied that the entire due had been paid to the financier, the complainant.

09. It appears from the testimony of PW-1 further that *"On 15.12.08 we sent a notice regarding termination of agreement of hire purchase/lease/ hypothecation to the Joint Transport Commissioner, Agt."*

10. Mr. Chakraborty, learned senior counsel has taken this Court to the Hire-Purchase Agreement (HPA) which has been admitted in the evidence as Exbt.D where in clause 26.0 it has been stipulated as under:

> ***"This Agreement shall come into effect from the date of this Agreement and shall terminate only upon the Borrower making full repayment to the Lender of the Loan, interest thereon and all other charges and dues payable by the Borrower, to the Lender under this Agreement"***

11. Based on the said clause Mr. Chakraborty, learned senior counsel has contended that since the agreement was terminated, even on the face of the denial by PW-1 that the entire amount was not paid it has to be deduced that the entire due/outstanding has been paid to the financier, the Ashok Leyland Finance else they would not have communicated the incidence of termination to the Joint Transport Commissioner for removing the lien as posted in the registration of the vehicle.

12. This Court finds sufficient force in the submission of Mr. Chakraborty, learned senior counsel. However, the said incidence of making the entire loan amount paid would not allow this Court to interfere with the finding of the conviction. This observation is however made without any reference to the aspect that the cheques deposited for creating the guarantee whether could have been deposited by the drawee without notice to the petitioner. But this Court is definitely of the view that the sentence that has been awarded to the petitioner is disproportionate and wholly unwarranted in the circumstances of the case.

13. Mr. Ghosh, learned PP appearing for the State has expressed his reservation on the sentence.

14. Having held so, this Court is of the opinion that it would serve the ends of justice if the finding of the conviction is affirmed and the petitioner is sentenced to pay a fine of Rs.500/-. The said amount of fine shall be paid by the petitioner within a period of 30 days from today in the trial court. Till then, the obligation of the sureties shall remain in force. In the event of petitioner's non-payment of the said fine within the stipulated period the petitioner shall suffer simple imprisonment for 15 days.

Accordingly, this petition stands partly allowed to the extent as indicated above.

Send down the LCRs forthwith.

JUDGE

MB