

06.08.2021

Item No.4
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 33 of 2019
(Via Video Conference)

Kabra Brothers & Ors.
versus
Ranisati Pharmaceuticals

In Re: An Application under Section 482 of the Code of Criminal Procedure, 1973.

Mr. Ayan Bhattacharjee ... For the Petitioners.

Mr. Dipanjan Dutt,
Mr. Karan Dudhwewala ... For the Opposite Party.

This revisional application has been preferred against the judgment and order dated 28.11.2018 passed by learned Additional District and Sessions Judge, 1st Fast Track Court, Bichar Bhavan, Kolkata in connection with Criminal Revision No. 02 of 2017 wherein the learned sessions court was pleased to affirm the judgment and order of conviction and sentence passed by the learned Metropolitan Magistrate, 19th Court, Calcutta in connection with Case No. C/30478/2013 under Section 138 of the Negotiable Instruments Act.

The grievance of the petitioners relates to both the findings arrived at by the learned Magistrate and the learned sessions court as also the sentence imposed. The sentence so passed by the learned Metropolitan Magistrate and affirmed by the learned sessions court is as follows :

*The petitioners are directed to pay a sum of
Rs.26,00,000/- (Rupees Twenty Six Lacs) as
compensation to the complainant as per section 357(3) of*

the Code of Criminal Procedure within five months from the date of delivery of the said judgment, in default to suffer simple imprisonment for six months.

I have considered the subject matter of the case which relates to a loan amount of Rs.25,00,000/- out of which Rs.50,000/- was paid by the petitioners to the opposite party and thereafter, the petitioners issued a cheque being No. 813748 dated 01.06.2013 drawn on Canara Bank, Brabourne Road Branch of Rs.24,50,000/- for discharge of the rest of their liability in favour of the opposite party. The said cheque was signed by one of the petitioners and the same, after being presented, was dishonoured with the bank's endorsement 'funds insufficient' and the same was intimated to the opposite party vide return memo dated 08.08.2013 which was received by it on 10.08.2013. The complainant thereafter through his lawyer issued a demand notice dated 17.08.2013, which was sent by registered post with A/D at the correct address available to the complainant. It is alleged that in spite of receipt of the notice, the present petitioners, being the accused, failed to make any amount.

I have perused the judgment so delivered by the learned Metropolitan Magistrate which was based on evidence adduced by the prosecution and also considered the defence version. None of the documents relied upon by the complainant is subjected to serious challenge so far as their evidentiary value is concerned. The learned court, in fact,

imposed sentence after taking into account the overall circumstances and the same is clear from the quantum so imposed as compensation of Rs.26,00,000/-, although the cheque, which was dishonoured, was for Rs.24,50,000/-. The learned sessions court, while exercising its revisional jurisdiction, took into account the relevant documentary evidences which were marked as Exhibits as also the oral evidence and the provisions of law applicable in such circumstances. The learned revisional court after thorough assessment of the magisterial order, was pleased to dismiss the revisional application.

I do not find any illegality in the orders passed by the learned Magistrate or the learned sessions court which involve a question of law for interference by this Court. Records of this revisional application reflect that a co-ordinate Bench of this Court on 17.09.2019 was pleased to direct the petitioners to pay a sum of Rs.20,00,000/- to the opposite party out of the sum of Rs.26,00,000/- so imposed as compensation by the learned Magistrate.

The learned advocate for the opposite party submits that pursuant to the said order of this Court, the opposite party has already received the said sum of Rs.20,00,000/- from the petitioners.

By an order dated 26.07.2021, this Court directed the learned Metropolitan Magistrate, 19th Court, Calcutta to execute the sentence to the extent of recovery of

Rs.6,00,000/- by invoking the appropriate provisions of Code of Criminal Procedure.

Be that as it may, in view of the discussions made above, so far as the merits of the revisional application are concerned, I am of the view that as a second revisional court until and unless some question of law is involved or there is a manifest error in appreciation of the facts of the case, it would not be fit and proper for interference. Accordingly, CRR 33 of 2019 is dismissed.

Interim order, if any, is hereby vacated.

All pending applications, if any, are consequently disposed of.

The learned Magistrate is directed to proceed with the execution case as directed above.

Department is directed to send back the lower court records to the jurisdictional Magistrate forthwith.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

(Tirthankar Ghosh, J.)