

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Before:

The Hon'ble Mr. Justice Ananda Kumar Mukherjee

C.R.R. 2752 of 2019

Tapan Kumar Ghosh

Vs.

Gopal Chandra Maity & Anr.

For the Opposite Party No 1 : Mrs. Sudipa Banerjee
Ms. Sneha Dutta

Heard on: 08.12.2021

Judgement delivered on: 15.12.2021

Ananda Kumar Mukherjee, J. :-

1. Instant Criminal Revision has been filed by the petitioner being aggrieved and dissatisfied with the judgement and order passed by the learned Additional District and Sessions Judge, Fast Track Court-II, Contai, District-Purba Medinipur in Criminal Appeal No.3 of 2019, wherein the petitioner's appeal was dismissed on contest and the impugned order dated 7.12.2018 passed by the learned Judicial Magistrate, 1st Court, Contai, Purba Medinipur in C.R case No.198 of 2015 was affirmed. In the impugned judgement. Learned Additional Sessions Judge, FTC-II, Contai directed the complainant/petitioner to

surrender before the learned trial court within 10 days from date of the judgment.

2. In his application for criminal revision the petitioner urged that the judgement and order passed in the Criminal Appeal No.3 of 2019 is bad in law, illegal and the same is not sustainable in the eye of law. It is further contended that while passing the judgement the court ought to have scrutinized the source of Rs.3,50,000/- alleged to have been paid by the complainant/opposite party no.1 to the accused/petitioners as loan accommodation. It is also urged that learned Judicial Magistrate had erred in law in convicting the petitioner and subjecting him to simple imprisonment for three months, with a further direction to pay a compensation of Rs.7,00,000/- to the complainant/opposite party no.1 under Section 357(3) of the Code of Criminal Procedure. The petitioner prayed for setting aside the impugned order and/or quashing of the order.
3. On 8.11.2019 the petitioner/revisionist had prayed for his release on bail. After considering the submission the petitioner was granted interim bail till 22.11.2019 on condition that he deposited Rs.3,50,000/- before the learned trial court within the said period. The opposite party no.1 was given liberty to withdraw the said amount complying all formalities before the trial court. The petitioner appeared on consecutive dates when the matter was fixed for hearing. On conspectus of the facts and circumstances and the situation arising out of non-representation of the petitioner, the criminal revision is taken up for hearing at the behest of the opposite party no.1. It is worthwhile to

note that opposite party no.2/State has not been represented as the case initiated out of a private complaint.

4. Learned advocate for the opposite party no.1 referred to the judgement and order passed by the learned Judicial Magistrate in C.R Case No. 198 of 2015 under Section 138 of the Negotiable Instruments Act giving rise to Criminal Appeal No 3 of 2019 and submitted that by consecutive judgments the petitioner has been found guilty of the offence and was convicted and sentenced thereof. The fact of the case as it appears from the petition of complaint of opposite party no.1 is that a loan accommodation of Rs. 3,50,000/- was given to the petitioner/accused Tapan Kumar Ghosh on account of his daughter's marriage. The petitioner in discharge of his debt issued a cheque dated 30.3.2015 in favour of the opposite party no.1 drawn, on Mugberia Central Co-operative Bank, Kalagachia Branch. The complainant presented the said cheque in his own account at the State Bank of India, Kalagachia Branch but the same was dishonoured due to insufficient fund. The Branch issued an information slip dated 6.4.2015 informing the opposite party no.1/complainant about the reason of dishonour. The petitioner was informed about the dishonor of the cheque and he requested the opposite party no. 1 to present the cheque once again. On such assurance the opposite party no.1 deposited the cheque again on 23.6.2015 in his account but the same was dishonoured for the second time due to insufficient fund. A demand notice was issued to the petitioner under registered post on 2.7.2015 which was received by

the petitioner on 07.07.2015. The petitioner/accused neither replied to the notice nor made any payment within the prescribed period. The cause of action arose on 10.08.2015 and the opposite party no.1 lodged the complaint against the petitioner under Section 138 of the Negotiable Instruments Act, 1881.

5. Learned Magistrate having examined Gopal Chandra Maity, the complainant as PW-1 and Subbhash Chandra Manna, Branch Manager of the petitioner's Bank as PW-2 and on admitting several documents in evidence as Exhibit-1 to Exhibit-14 has passed the judgment dated 07.12.2018, whereby the petitioner was found guilty of the offences punishable under Section 138 of the Negotiable Instruments Act and convicted him under Section 255(2) of the Code of Criminal Procedure.
6. In the case the petitioner has been sentenced to simple imprisonment for three months and was directed to pay compensation of Rs. 7,00,000/- to the complainant/opposite party no.1 which was made recoverable as fine. The petitioner preferred an appeal bearing Criminal Appeal No.3 of 2019, which has been disposed of by the learned Additional Sessions Judge, FTC, Contai, Purba Medinipur by his judgment and order dated 3.9.2019, wherein the impugned judgement and order dated 7.12.2018 passed by the learned Judicial Magistrate, 1st Court, Contai, Purba Medinipur in C.R Case No. 198 of 2015 has been affirmed. The convict was directed to surrender before the learned trial court within 10 days from the date of passing of the judgment. After some time the petitioner's Advocate stopped appearing and no further step has been taken on behalf of the petitioner.

7. Learned advocate for the opposite party no.1 submitted that the impugned Judgment and order suffers from no illegality or impropriety and there is no reason for interfering with the consecutive finding of the courts against the accused. It is urged that criminal revision is without merit and is liable to be dismissed.
8. Having perused the impugned judgment and the trial court orders and on considering the submission of Learned Advocate for opposite party no. 1, I find that the petitioner/accused did not adduce any evidence on his behalf. The presumption raised against the petitioner/accused person under Section 139 of the Negotiable Instruments Act, that the cheque was issued by the petitioner and received by opposite party no. 1 for discharge of petitioner's debts to the complainant/opposite party no.1, has not been rebutted in the instant case. The cheque bearing the signature of the petitioner and drawn on Mughberia Central Cooperative Bank Limited being cheque No.1551 dated 30.03.2015 has been produce as exhibit-1.
9. On a perusal of the evidence on record, I find that the learned Magistrate was abreast of the essential evidence that the cheque issued by the petitioners was dishonored and on demand by notice the drawer failed to make payment. Therefore the learned Judicial Magistrate committed no error in finding the accused/ petitioner guilty of the offence punishable under section 138 of the Negotiable Instrument Act.
10. The learned Additional Sessions Judge, FTC-II, Contai in Criminal Appeal has affirmed the judgment of learned Judicial Magistrate as he did not find any illegality.

11. In my considered view the petitioner having issued the cheque in question is liable for non-clearance of the same and non-payment of the dues to opposite party no.1. To ensure due payment to the drawee of a cheque, the court trying the offence is empowered under section 138 of the Negotiable Instrument Act to impose a sentence of imprisonment which may extend to two years or with fine, which may extend to twice the cheque amount or both. Therefore, I find no illegality in the impugned judgment where a substantive sentence of three months of imprisonment as well as a compensation twice the cheque amount has been awarded in favour of the opposite party no.1, against the petitioner.
12. In view of the above discussion I find the impugned judgment in Criminal Appeal No. 3 of 2019 passed by Learned Additional District and Sessions Judge, F.T.C. II, Contai suffers from no illegality, impropriety or any incorrectness. Therefore, I hold that there is no merit in the criminal revision filed by the petitioner and the same is dismissed. The criminal revision is accordingly disposed of on its merit, considering the facts and legal provisions. Interim order if any stands vacated.
13. Let a copy of this judgement be transmitted to the First Court of learned Judicial Magistrate, Contai, Purba Medinipur for information and execution of the sentence. Another copy of this judgment be sent to the court of Learned Additional Sessions Judge, 2nd F.T.C Contai, Purba Medinipur for information.

14. Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Ananda Kumar Mukherjee, J.)

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