

Sr. 09  
**30-06-2021**  
Subha.  
Court no. 34

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL Appellate JURISDICTION  
APPELLATE SIDE  
( Via Video Conference )**

**CRA 551 of 2016**

In Re : **Munshi Al Faruk Tahid @ Towhid**  
....Appellant.

In the matter of : An appeal under Section 378(4) of the Code  
of Criminal Procedure.

Mr. Uday Shankar Chattopadhaya  
....for the Appellant.

The impugned order under challenge is the order dated 8<sup>th</sup> July, 2016 passed by the learned Judicial Magistrate, 4<sup>th</sup> court, Burdwan wherein the learned Magistrate was pleased to acquit the accused persons under Section 256 of the Code of Criminal Procedure discharging them from the bail bonds.

The ordersheet also reflects that there was a direction to file a show cause by the complainant but no steps were taken on the dates so fixed and as such, the learned Magistrate had no option except to pass the said order.

Records reflect that the complaint is under Section 138 of the Negotiable Instruments Act for dishonour of cheque

amounting to Rs.2,00,000/-. The said complaint was filed on 5<sup>th</sup> June, 2014 and process was issued on 5<sup>th</sup> January, 2015. The accused appeared on 20<sup>th</sup> August, 2015. The examination under Section 251 of the Code of Criminal Procedure was completed on 29<sup>th</sup> February, 2016 and the complainant was absent on 22<sup>nd</sup> June, 2016 which was the next date.

Having regard to the fact that the complainant was vigilant while conducting the case and only on two days i.e., 22<sup>nd</sup> June, 2016 and 8<sup>th</sup> July, 2016 could not make himself available for reasons beyond his control, I do not think that it would be fit and proper to acquit the accused persons in a case under Section 138 of the Negotiable Instruments Act wherein the complainant has already suffered for dishonour of cheque.

Accordingly, the order dated 8<sup>th</sup> July, 2016 passed by the learned Judicial Magistrate, 4<sup>th</sup> Court, Burdwan in Compliant case being CR no. 364 of 2014 is, hereby, set aside.

With the aforesaid observation, the criminal appeal being CRA 551 of 2016 is allowed.

The learned trial court is directed to proceed with the matter after issuing the notice to both the sides. The complainant is directed to be present before the learned Judicial Magistrate, 4<sup>th</sup> Court, Burdwan on 2<sup>nd</sup> August, 2021 and bring the order of this court to the notice of the learned

trial court who would proceed from the stage of evidence as was fixed in the order dated 22<sup>nd</sup> June, 2016.

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

Lower court records be sent down to the trial court being the learned Judicial Magistrate, 4 court, Burdwan within a period seven days from date.

Department is directed to communicate this order to the learned Judicial Magistrate, 4th court, Burdwan for taking appropriate steps and proceed with the complaint case.

All parties are to act on the server copy of this order duly downloaded from the official website of this court.

**( Tirthankar Ghosh, J. )**