

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 31 of 2021
Sri Mridul Chanda

-vs.-

The State of West Bengal & Ors.

For the Appellant	:	Mr. Subrata Bhattacharya.
For the State	:	Mr. Narayan Prasad Agarwala, Mr. Pratick Bose.
For the Respondent nos. 2 & 3	:	Mr. Satadru Lahiri.
Heard on	:	08.07.2022, 26.09.2022, 4.11.2022 & 11.11.2022.
Judgment on	:	18.11.2022

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order of acquittal dated 30.09.2019 passed by the Learned Additional Chief Judicial Magistrate, Durgapur, Burdwan in connection with C.R. Case No. 448 of 2014 wherein the learned trial Court was pleased to acquit the accused/respondents from the charges under Section 138 of the Negotiable Instruments Act.

The genesis of the case relate to C.R. Case No. 448 of 2014 which was filed before the Learned ACJM, Durgapur alleging that the complainant was an

employee of National Projects Construction Corporation Limited (N.P.C.C) and was lastly posted at Siliguri. He intended to get a quarter at D.S.P. Township for his residential accommodation and thus approached the accused no.1/respondent with whom he had a cordial relationship. The accused no.1/respondent was an employee of Durgapur Steel Plant (hereinafter referred to as 'D.S.P') who was all along staying at quarter no. 16/16, Trunk Road, A-Zone, Durgapur-713204 and the complainant was never an employee of D.S.P. The complainant requested the accused no.1/respondent to arrange a quarter under the scheme of "Own your own house" wherein there was a clause that after initial leasing of five years to D.S.P. employee, with a prior permission of SAIL, a quarter can be transferred to any non-D.S.P. employee. The accused no.1 got allotment of quarter no.14/19, Trunk Road, A-Zone, P.O and P.S.-Durgapur and the money required for such allotment along with incidental expenses was incurred by the complainant. However, the accused No.1 did not execute any document in favour of the complainant, although the complainant was enjoying possession of the said quarter from 2002. The accused no.1 further represented that he was interested to have another quarter of D.S.P. and if the complainant paid the money for the quarter to D.S.P. Authority the accused no.1 would help him. Relying upon such representation the complainant paid a sum of Rs.1,21,763/- in cash to the accused no.1 for helping him for an allotment of a quarter at D.S.P. In the month of November, 2011 the accused no.2, the son of the accused no.1 approached the complainant that he had some problem with his father and requested the

complainant to allow him to reside in a room of the said quarter only for 11 months by executing a tenancy agreement. After expiry of the said term of agreement of 11 months the accused no.2 abused the complainant and threatened not to vacate the room of the complainant. The complainant informed the matter to the local police station and M.P. Case no. 195/12 and M.P. Case no. 212/12 was initiated before the Special Executive Magistrate, Durgapur against the accused no.2, subsequent to which the son of the accused vacated the room in the quarter after taking all his belongings. The accused no.1 thereafter initiated a Civil Suit before the Civil Judge (Junior Division), First Court at Durgapur being Title Suit No. 60/2013 against the complainant and others wherein he admitted that he was in a possession and occupying quarters 14/19, Trunk Road, A-Zone, P.O. & P.S. Durgapur. Moreover the accused no.1 also filed an application under Section 144 of the Code of Criminal Procedure before the Learned Sub-Divisional Executive Magistrate, Durgapur wherein police submitted report confirming the fact that the complainant was in possession of the said quarter. On 12.06.2014 the complainant went out of station for a few days by keeping the quarter under lock and key and handed over the keys to another neighbour namely, Banshi Adhikary and it was informed by said Banshi Adhikary on 15.06.2014 that in the night of 16.06.2014 the accused, his son and relations broke the lock and criminally trespassed into the complainant's residence. The complainant after returning on 16.06.2014 found that the accused along with his family members and associates forcibly occupied his premises when the complainant

had no other option except to request them to vacate the premises which they refused. The complainant alleged that the accused persons along with their associates also retained the articles, documents, cash, gold ornaments of his deceased mother and wrongfully withheld the same. The complainant thereafter informed Durgapur Police Station pursuant to which Durgapur PS case no.345/14 was registered for investigation and the accused no.1/respondent no.2 was arrested. The accused persons thereafter falsely represented to the complainant that they would refund the money which was invested in purchasing the premises and believing such representation accepted the proposal to accept Rs.5,00,000/- and vacate the quarters. The accused persons issued cheque bearing no. 98419 amounting to Rs.5,00,000/- drawn on Andhra Bank, Durgapur Branch with a written undertaking and upon such assurance the complainant swear an affidavit pursuant to which the accused no.1/respondent no.2 was released on bail. The complainant presented the said cheque on 24.09.2014 with his banker State Bank of India, Benachity Bazar Branch and the said cheque was dishonoured with an endorsement 'funds Insufficient'. The complainant issued demand notice dated 08.10.2014 demanding the amount covered by the dishonoured cheque through his Advocate which was sent by Speed Post with acknowledgement due, both the accused persons received the demand notice and in spite of receipt of the notice they denied and neglected to pay the money, as such the complainant had no other option except to initiate the case under Section 138 of the Negotiable Instruments Act.

The complainant also filed an affidavit in the nature of Section 145 of the N.I. Act before the learned Trial Court reiterating his contention as made in the petition of complaint and prayed for issuance of process against the accused persons.

Learned ACJM, Durgapur, on perusal of the petition of complaint and the affidavit filed under Section 145 of the N.I. Act was pleased to issue process against the accused persons fixing date for appearance before the Court. Pursuant to receipt of the summons the accused persons appeared before the learned Court and prayed for bail. The learned Trial Court by an order dated 09.07.2015 was pleased to examine the accused persons under Section 251 of the Code of Criminal Procedure, the substance of the accusation were read over to the accused persons to which they pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon PW1, Mridul Chanda, complainant and another witness namely, Subash Mondal as PW2, while the defence in order to rebut the prosecution case relied upon Ashoke Dey as DW1.

PW1, Mridul Chanda filed an affidavit-in-chief under Section 145 of the N.I. Act as also was examined on dock. In examination-in-chief the complainant reiterated his contentions as made in the petition of complaint and the earlier affidavit so filed prior to issuance of process. Additionally the complainant/PW1 also filed the following documents:

Ext.1, the cheque bearing no.98419 dated 23.09.2014 of Rs.5,00,000/- drawn on Andhra Bank, Durgapur Branch; Ext.2, the deposit slip of State Bank of India, Benachity Branch by means of which the cheque was presented on 24.09.2014; Ext.3 and Ext.3/1, Bank return memo dated 25.09.2014 along with counter part of the deposit slip; Ext.4 and Ext.4 (series), demand notice dated 08.10.2014 issued by Gopal Krishna Kundu, Advocate which was sent by registered post with AD and received by the accused persons, the notice was marked as Ext.4 and postal receipt and AD card were marked as Ext.4(series); Ext.5, the undertaking dated 15.09.2014 filed by the accused persons in Court acknowledging their liability to pay the same. The witness/complainant/PW1 was thereafter cross-examined. The witness/complainant stated that he never worked at D.S.P. or any of his relatives were employed with D.S.P. He categorically stated that he never paid Rs.5,00,000/- to the accused persons and he filed police case against the accused persons in the year 2014 in the Court of the Learned ACJM, Durgapur. He was not involved in money lending business. He, however, deposed that on 10.10.02 he gave an amount of Rs.1,21,763/- to the accused no.1, although he did not have any receipt of the same. He neither paid any rent to the accused persons for the house being no. 14/19 Trunk Road. He stated that he had no document to show that he purchased the quarter or he was entitled to get any amount of compensation. He further stated that he filed an affidavit and on a specific question from the side of the defence he answered that when he received the cheque of Rs.5,00,000/- the accused no.1 was in custody. He identified the copy of the

affidavit which was filed by him bearing his signature. The said affidavit was marked as Ext.A. The defence thereafter suggested that he was not entitled to the amount mentioned in the cheque to which he denied.

PW2, Subashish Mondal, who deposed in Court identified his signature on Ext.5/1 which was executed by Susanta Kumar Das, accused no.2 and was identified by him.

The defence relied upon one Ashok Dey as DW1. According to the witness the accused no.1 happened to be his father-in-law who had a quarter at the premises 14/19 Trunk Road it was let out in favour of the complainant Mridul Chanda and he organised the same as Mridul Chanda was facing problems at his own residence. Initially Rs.2,500/- was fixed as rent and subsequently the same was enhanced which was not known to him. In cross-examination by the prosecution he stated that he was not aware regarding the subject matter of the case and he cannot produce any document before the Court in support of his contention in examination-in-chief.

Another factor which requires consideration in this appeal is an answer of the accused No.1, Prabhas Ch. Das in his examination under Section 313 of the Code of Criminal Procedure in respect of the question no.3 and its answer which is set out as follows:

“3. Qstn. The P.W-1 has told in his evidence that you issued a cheque bearing no.98419 of Andhra Bank, Durgapur Branch amounting to Rs.5,00,000/- in favour of the complainant who on

24.09.2014 deposited the said cheque to his bank account lying with S.B.I, Benchity Branch for encashment and on 25.09.2014 the said cheque issued by you was dishonoured by his banker with an endorsement "Funds Insufficient" Do you want to say anything over the incident?

Ans: I was compelled by my son to issue the cheque in favour of the complainant. I was in custody during that time."

The learned trial Court while delivering its judgment and order of acquittal quoted from the deposition of PW1 as follows:

"I never paid Rs.5 lacs to the accused person.....On 10.10.2002 I gave the amount of Rs.1,21,763/- to the accused no.1 (i.e. principal accused). I have no receipt as he did not give. I did not give the same as advance, neither as loanI have no document to show that I paid the amount to purchase that quarter."

Another observation of the trial Court is relevant which is set out as follows:

"This is the admitted position of the case that during the time of issuance of the above referred cheque dated 23.09.2014 valued of Rs.5 lacs, the principal accused named Prabhas Ch. Das was kept under the judicial custody in connection with Durgapur P.S. Case No.345/2014, lodged by complainant. The case record discloses that the complainant, in order to take the advantage of such a situation, entered into a transaction with the principal accused during the material time to the effect that the complainant would render his best effort for getting the principal accused released on bail and getting him acquitted from the charges levelled against him in connection with Durgapur P.S. Case No. 345/2014 in lieu of the

payment of a sum of Rs.5 lacs, which has been reflected from the clause (4) of the photocopy of the affidavit dated 15.9.2014, marked with Exhibit A, wherein the complainant has categorically sworn that “I have no objection if Ld. Court pleases to release the accused on bail and I also help the accused to acquit him from this case.””

I have considered the evidence of prosecution witness no.1 i.e. the complainant and I find from the analysis of the evidence that the cheque which is subject matter of the case was issued while the drawer of the cheque was in custody in connection with Durgapur P.S. case no. 345/2014.

The aforesaid fact read along with the answer in cross-examination of the complainant that he did not give Rs.5,00,000/- to the accused but on 10.10.2002 gave an amount of Rs. 1,21,763/- revealed that the cheque was issued for unlawful consideration and as such would come within the ambit of the proviso clause to Section 118 of the N.I. Act.

Thus, the accused persons/respondents in this case has been able to rebut the presumption under Section 139 of the N.I. Act, thereby warranting an order of acquittal.

Therefore, the judgment and order of acquittal dated 30.09.2019 passed by the learned ACJM, Durgapur, Paschim Bardhaman in C.R. Case No. 448/04 do not call for any interference.

The order of acquittal is hereby affirmed.

Accordingly, CRA 31 of 2021 is dismissed.

Pending applications, if any, are consequently disposed of.

Department is directed to send back the Lower Court Records to the Trial Court and communicate this judgment, so that effective steps are taken by the learned trial Court.

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

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)