

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 1409 of 2021

**Sakti Bera
Vs.
The State of West Bengal & Anr.**

**For the opposite
Party no. 2 : Mr. Tauhid Khan, Adv.,
Ms. Marufa Mondal, Adv..**

**Heard &
Judgement on : 22.06.2022.**

Bibek Chaudhuri, J.

The instant revisional application is directed against the order dated 24th May, 2021 passed by the learned Additional Sessions Judge, First Court at Howrah in Criminal Appeal No.26 of 2019 affirming the order passed by the learned Judicial Magistrate, 5th Court at Howrah in Complaint Case No.2348C of 2015. The opposite party No.2 being the complainant filed an application under Section 138 of the Negotiable Instruments Act alleging, inter alia, that the petitioner in discharge of his existing debt and liability issued a

cheque of Rs.3,80,000/- on 12th June, 2015. The opposite party No.2 deposited the said cheque on 13th June, 2015 with his banker for encashment. However, the said cheque was dishonoured on 16th June, 2015 with endorsement "fund insufficient". Subsequently, the opposite party No.2 sent demand notice to the petitioner asking him to pay the said cheque amount within the statutory period of limitation but the petitioner failed to pay the said amount.

This led the opposite party No.2 to file an application under Section 138 of the N.I. Act. The said case was disposed of on 29th January, 2019 by the trial Court. The petitioner was sentenced to simple imprisonment for one month and also directed to pay compensation amounting to Rs.5,00,000/- to the complainant/opposite party No.2 herein under Section 357(3) of the Code of Criminal Procedure. The petitioner challenged the said order in Criminal Appeal No.26 of 2019. The said appeal was heard by the Additional Sessions Judge, First Court at Howrah and by an order dated 24th May, 2021 the learned Judge in the First Court of Appeal dismissed the said appeal affirming the order of sentence and compensation passed by the trial Court.

In the instant revision, the petitioner has challenged the judgment and order passed by the First Court of Appeal in Criminal

Appeal No.26 of 2019. It appears from the order-sheet dated 12th August, 2021 that at the time of admission of appeal, the petitioner deposited a sum of Rs.1,00,000/- before the Learned Magistrate in the Court below in terms of the order of the Learned Sessions Judge. Subsequently, in pursuance to the order dated 12th August, 2021 the petitioner deposited a sum of Rs.1,00,000/- more on 25th August, 2021. The acknowledgement of which appears from the order dated 20th September, 2021. Subsequently, the petitioner was directed to deposit further sum of Rs.3,00,000/- in two installments of Rs.1,50,000/- each. The petitioner has deposited the said amount as per order dated 20th September, 2021. Thus, the petitioner has deposited the entire compensation amount of Rs.5,00,000/- in the Court below.

It is submitted by the learned advocate for the opposite party that if the trial Court is directed to pass order directing payment of the said sum of Rs.5,00,000/- to the opposite party No.2, he shall not have any other grievance. The opposite party No.2 does not press for sentence of imprisonment passed against the petitioner and further sum of Rs.1,00,000/- which was directed to be paid as compensation in favour of the opposite party No.2.

In view of such submission made by the learned advocate for the opposite party No.2, the instant criminal revision is disposed of affirming the order passed by the learned Additional Sessions Judge, First Court at Howrah in Criminal Appeal No. 26 of 2019 affirming the conviction and sentence passed by the learned Judicial Magistrate, 5th Court at Howrah in Complaint Case No.2348C of 2015 dated 29th January, 2019.

The amount of Rs.5,00,000/- which is deposited in Court below be paid to the opposite party No.2 towards compensation under Section 357(3) of the Code of Criminal Procedure for committing offence under Section 138 of the N.I. Act.

The concerned Accounts Department in the trial Court is directed to make payment of Rs.5,00,000/- deposited by the petitioner in the name of the opposite party No.2 within one month from the date of communication of this order.

The opposite party No.2 is at liberty to communicate the server copy of this order to the Court below.

The instant revision is, thus, **disposed of.**

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)