

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Before:

The Hon'ble Mr. Justice Ananda Kumar Mukherjee

C.R.R. 2044 of 2012

Sri Panchanan Sasmal

Vs.

1. State of West Bengal

2. Sri Sachindra Nath Biswas

For the Petitioner:

Mr. Samrat Pal (Amicus Curiae)

For the State:

Mr. Bidyut Kumar Roy
Mr. Pratick Bose

Heard on:

05.01.2022

Judgement delivered on:

06.01.2022

Ananda Kumar Mukherjee, J. :-

1. This criminal revision has been filed by the petitioner being aggrieved and dissatisfied with the impugned judgment and order dated 28.3.2012 passed by learned Additional District and Sessions Judge, Fast Track, 2nd Court, Haldia in Criminal Appeal No. 734 of 2011, thereby dismissing the appeal and affirming the judgment and order dated 13.6.2011 passed by learned Additional Chief Judicial Magistrate, Haldia, in C.R. Case No. 146 of 2006 under Section 138 of The Negotiable Instruments Act, where the

petitioner was convicted for the offence under section 138 of The Negotiable Instrument Act and was sentenced to simple imprisonment for one day till rising of the Court and to pay compensation of Rs.6,00,000/- to the complainant.

2. The fact of the case leading to this criminal revision is that the Opposite Party no. 2 lodged a complaint against the petitioner alleging *inter alia*, that the petitioner as a partner of Prasenjit Hardware had taken a loan of Rs.6,15,676/- from him and the petitioner in discharge of such liability issued cheque bearing number 0018310 dated 19.2.2005 for Rs. 4,00,000/- in favour of the complainant which was dishonoured on being presented to the payee's bank. The petitioner thereafter on 31.1.2006 issued a cheque bearing number 0018310 for Rs.4,00,000/- and another cheque bearing number 0018309 dated 1.2.2006 for Rs.2,15,676/- in favour of the complainant. Both the cheques on being presented were dishonoured due to insufficient fund. A demand notice was issued and delivered to the petitioner on 4.3.2006. As the petitioner failed to make any payment against the demand made by the complainant, a complaint was filed before the Court of learned Additional Chief Judicial Magistrate, Haldia on 29.3.2006 which was registered as C.R. Case No. 146 of 2006.

3. The substance of accusation was stated to the petitioner and on his pleading not guilty, trial commenced. Opposite party no.2/the complainant examined himself as P.W. 1 and the petitioner examined himself as D.W. 1. Documents in the case were marked as Exbt 1 to Exbt 8/2. The cheques have been marked as Exbt. 3,5 and 6. The Return memos have been marked as 'Exbt. 4 and 7 and the Demand Notice as 'Exbt 8, the postal receipt as Exbt.

8/1 and A/D Card as Exbt. 8/2. Documents produced by accused have been marked as Exbt. A to Exbt. G. DW-1 in his evidence has deposed that he has a Cash Credit Account with the Central Bank of India in the name of Prasenjit Hardware being account no. CC-867. In the year 2004 during August to September there was an overdrafts of Rs. 6,00,000/- from his account and as he applied for loan, the Bank Manager requested him to deposit Rs. 4,00,000/-. He has admitted that at the relevant time complainant was present in the room and he offered to accept a loan of Rs. 4,00,000/- in order to deposit the same in the bank account of the accused petitioner. DW-1 also deposed that the complainant issued cheque bearing No. 259 of Rs. 4,00,000/- in his favour. During his examination under section 313 of the Cr. P.C the petitioner admitted having issued a cheque of Rs. 4,00,000/- in favour of the petitioner and that he received the Demand notice issued by the complainant/ opposite party No. 2.

4. Fulfilling all formalities and after considering the evidence on record, learned Additional Chief Judicial Magistrate, Haldia found the accused petitioner guilty of the offence punishable under Section 138 of the N.I. Act and sentenced him to S.I. for one day, till rising of the Court and to pay a compensation of Rs.6,00,000/- within one month from the date of the order.

5. Being aggrieved with the judgment of conviction and sentence, the present petitioner filed Criminal Appeal No. 734 of 2011 which was disposed of by the learned Additional District and Sessions Judge, F.T.C., 2nd Court, Haldia, Purba Medinipur by his judgment and order dated 28.3.2012. The Appellate Court dismissed the appeal on contest without any cost and confirmed the judgment passed by learned Additional Chief Judicial

Magistrate, Haldia. The Appellant was directed to appear before the Trial Court within two months from the date of the order.

6. The petitioner in his second venture to dislodge the allegations levelled against him has preferred this criminal revision under Section 401 of Section 482 of the Cr.P.C. praying for setting aside and/or quashing the impugned order.

7. The contention of the petitioner is that learned Trial Court has based its finding on surmise and conjecture and has not considered the evidence on record. According to the petitioner, the cheques were not issued in discharge of any debt or other liabilities and the same were issued only as security against the loan transaction he had with the complainant/Opposite Party No. 2. It is further contended that the evidence of the petitioner and the documents produced by him were not considered for the purpose of dispelling the presumption against him drawn under Section 139 of the N.I. Act. The petitioner has urged that learned Magistrate as well as the learned Appellate Court have failed to appreciate the evidence as he had issued blank cheques as security against original loan amount and to compensate against the bank interest that the complainant would suffer. It is urged by the petitioner that the judgment and order is bad in law and is liable to be set aside.

8. At the time of hearing of the revisional application private opposite party No. 2 remained unrepresented. Similar is the position with the petitioner who has come before this court to assail the impugned judgment. The ratio of the decision in the case of **Bani Singh and others Vs. State of U.P. (1996 SCC (4) 720)** has laid down that it is not obligatory on the Appellate Court to postpone the hearing of the appeal if the appellant or his

pleader is not present. If the appellant or his counsel or the public prosecutor, or both, are not present the Appellate Court has jurisdiction to proceed with the disposal on merits. The same principle laid down above, would apply to a Criminal Revision as section 401 of the Cr. P.C. provides that the High Court may, in its discretion, exercise any of the powers conferred on a court of Appeal by sections 386 of Cr. P.C. which provides for disposal on merit. To avoid a stalemate situation due absence of the petitioner and his advocate, Mr. Samrat Pal, learned Advocate has been appointed Amicus Curiae to assist the court for presenting the petitioner's case.

9. Mr. Samrat Pal, learned advocate appeared on behalf of the petitioner on being appointed as amicus curiae by this court. It is argued by him that there was a business transaction between the petitioner and the complainant and to make payment against overdraft of Rs.6, 00,000/- from his Bank account the petitioner had taken a loan from the complainant/opposite party no. 2 for which he issued two blank cheques in his favour, only for the purpose of security. Learned advocate argued that the judgment passed by learned Magistrate holding the petitioner guilty of the offence under Section 138 of the N.I. Act is bad in law as the petitioner had no liability to discharge. It is contended that the judgment passed by the Appellate Court is also not tenable as the learned Appellate Court failed to consider the evidence on record and the fact that the present petitioner did not issue the cheques in discharge of any liability.

10. Mr. Roy, learned advocate for the State argued that initially the petitioner had issued a cheque for Rs.4,00,000/- which was dishonoured and

thereafter the petitioner issued two make cheques in favour of the Complainant/Opposite Party No. 2 for Rs.4,00,000/- and Rs.2,15,676/- respectively which have been marked as Exbts. 5 and 6. It is submitted that the cheques were dishonoured and Return memos received by the complainant were marked as Exbts. 4 and 7. The complainant/Opposite Party no. 2 issued Demand Notice through his advocate within the statutory period of thirty days which was served upon the petitioner. The Demand Notice has been admitted in evidence as Exbt. 8 and the postal receipt and A/D Card have been marked as Exbts. 8/1 and 8/2 respectively. Learned advocate for the State pointed out that the receipt of the notice cannot be denied by the petitioner/accused as he had sent a reply to such notice admitting its receipt.

11. In support of the judgment passed by learned Additional Chief Judicial Magistrate, Haldia and the impugned judgment passed by learned Additional District and Sessions Judge, F.T.C. Haldia, confirming the judgment passed by the Magistrate, it is submitted that learned Trial Court and the Appellate Court have carefully considered the evidence on record and held the accused person guilty of the offence under Section 138 of N.I. Act. Learned advocate for the opposite party/State further argued that there is no merit in the revisional application as the impugned judgment and order passed by the Courts consecutively are consistent and suffer from no illegality or impropriety.

12. I have considered the arguments advanced by the Amicus Curiae Mr. Pal and learned advocate for the State in the light of the evidence on record. Also perused the impugned judgment, the application for revision as well as

the contents of the Trial Court Records consisting of the evidence adduced by P.W-1, D.W-1 and exhibited documents. It appears from the affidavit of the petitioner filed before the Court of learned Magistrate that he had a business transaction with the complainant/opposite party No. 2 and he had issued the impugned cheques in favour of opposite party no. 2. The presumption under section 118 of the Negotiable Instrument Act may be drawn in favour of the drawee of the cheques regarding their genuineness, correctness of the entries and drawing of the cheques for consideration. Section 139 of the N.I. Act gives rise to a yet another vital presumption that such cheques were issued are for discharge, in whole or in part, of any debt or other liability unless the contrary is proved. In the decision in **T. Vasanthakumar Vs. Vijayakumari (2015) 8 SCC 378**, it was held that once the accused has admitted the issuance of cheque, as well as signature on it, the presumption under section 139, would be attracted. The impugned cheques have been produced before this Court and the relevant cheques have been marked as Éxbt. 5 and Éxbt. 6. The total cheque amount of Rs.6,15,676/- and admittedly the petitioner did not repay the cheque amount within 15 days after receiving the Demand Notice. The present complaint has been filed within 30 days thereafter, thereby the complainant/ opposite party No. 2 has complied the statutory requirements under Sections 138 and 142 of the N.I. Act.

13. Having considered the entire evidence and the materials on record, I find that D.W-1 has failed to rebut the presumption raised against him which include the existence of the legally enforceable debt or liability. In the present case the defendant petitioner has produced some money receipt as exhibit B series which indicate that he has paid Rs. 52,000/- to M/S. Fortune Filling

Centre owned by the complainant opposite party no. 2 towards interest against the loan received by him. The documents produced by the petitioner in his evidence before the trial establishes that he has a business transaction with the complainant and he issued the cheque in favour of the complainant in discharge of his liability. Learned Magistrate while awarding compensation against the drawer of the cheques has not assigned any reason as to why he did not compensate the complainant to the extent of the total cheque amount. This issue has not been raised by the complainant as such I find no illegality in the judgment passed by learned Magistrate in respect of the sentence and compensation. The Appellate Court has also noticed this fact and pointed out that it is within the discretion of the trial to award compensation and no illegality have been committed due to the difference between the cheque amount and the compensation. In my considered view the judgment and order passed by the learned Magistrate as well as the impugned judgment passed by the learned Appellate Court suffers from no illegality, irrationality or impropriety. The petitioner cannot escape his liability from making payment of the debt he has conceded by issuing the cheques in favour of Opposite Party no. 2.

14. In view of my above discussions, I hold that there is no illegality or impropriety in the impugned judgement passed by the learned Additional District and Sessions Judge, F.T.C., 2nd Court, Haldia, as such is no reason to interfere with such order nor with the judgment passed by the learned Additional Chief Judicial Magistrate finding the petitioner guilty of the offence under Section 138 of the Cr.P.C. and sentencing him to one day's simple

imprisonment and pay Rs. 6,00000/- as compensation to the opposite party/complainant.

15. The revisional application is therefore dismissed on merit. Interim order if any stands vacated. All pending applications in connection with this Criminal Revision are also disposed of.

16. Department is directed to send down a copy of this Judgment along with LCR to the Court of learned Additional District and Sessions Judge, FTC 2nd Court, Haldia and learned Additional Chief Judicial Magistrate, Haldia for information and necessary action.

17. Urgent photostat certified copy of this judgment and order, if applied for, be given to the parties on fulfilling necessary formalities.

(Ananda Kumar Mukherjee, J.)

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