

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2890 of 2019

Uttam Ghosh

Vs

The State of West Bengal & Anr.

For the Petitioner

: Mr. Somnath Banerjee,
Mr. P. Roy.

For the O. P.

: Mr. Kaushik Chatterjee,
Mr. T. Dey.

Heard on

: 29.11.2022

Judgment on

: 20.12.2022

Shampa Dutt (Paul), J.:

The revision is against the judgment and order dated 29.08.2019 in Criminal Appeal No. 05 of 2016 passed by the learned Additional Sessions Judge, Fast Track Court, Katwa, Purba Bardhaman in Criminal Appeal No. 05/2016 thereby affirming the order dated 07.04.2016 passed by the learned Judicial Magistrate, 1st Class, 3rd Court, Katwa in complaint Case No. 193/2011, sentencing the appellant to suffer S.I. for 2 months or to pay a fine of Rs. 4,50,000/- (Rupees Four Lakhs Fifty thousand) only I.D. to suffer simple imprisonment for one month, fine if realized Rs. 4,50,000/- be given to the complainant as compensation for the loss.

The petitioner's case is that he is a cultivator by profession. The complainant/opposite party no. 2's case is to the effect that the petitioner took an Agricultural Term Loan of Rs. 3,71,000/- and inspite of several requests, the petitioner did not take any step for repayment and lastly by letter dated 04.02.2010, the O.P. No. 2 requested the petitioner to make payment. The petitioner issued O.P. No. 2 a post dated cheque being no. 02 0082 dated 10.05.2011 amounting to Rs. 3,77,034/- from his SB A/c. No. 320010100023214 maintained with the O.P. No. 2, complainant bank. The cheque was dishonoured with the reasons "Insufficient Funds". The O.P. No. 2 sent a legal notice with A/D on 01.06.2011 requesting the petitioner to make payment of the

loan amount within 15 days of receipt of the notice but the petitioner did not repay the loan amount and as such the aforesaid case was filed. Cognizance of the present complaint was taken by the learned A.C.J.M., Katwa on 25.07.2011 on completion of trial, the petitioner was convicted by the learned Magistrate as above and the judgment and order of conviction on appeal was affirmed by the Sessions Court. Hence the present revision.

Mr. Somnath Banrejee, learned Counsel for the petitioner has submitted that the impugned judgment and order of conviction and sentence is bad in law and liable to be set aside. That the learned Court failed to appreciate the law and the facts in its proper perspective and the judgment and order of conviction and the sentence is unsustainable in law **since the loan amount has been paid**. The impugned judgment is otherwise bad in law and the same is liable to be set aside. The impugned judgment and order if allowed to sustain shall ensure failure of justice.

Mr. Kaushik Chatterjee, learned Counsel for the opposite party no. 2 has submitted that the sentence was to pay a fine of Rs. 4,50,000/- or a sentence of imprisonment for 2 months.

The petitioner has prayed for setting aside of the sentence of imprisonment and reduction of the fine amount and installments to pay the balance amount.

Punishment under Section 138 of the N.I. Act, lays down:-

“Section 138such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which **may** be extended to two years], **or** with fine which **may** extend to twice the amount of the cheque, **or with both**.....”

The loan was sanctioned on 30.03.2007.

Prosecution witness no. 1 in his cross examination has stated that the agricultural loan was sanctioned in the name of the father of the petitioner/accused/convict. The petitioner issued the cheque to pay his father's debt.

Exhibit 7, shows that the loan was sanctioned in the joint names of Ram Gopal, Uttam Kumar Ghosh (petitioner) and Tapan Ghosh. The cheque was admittedly issued by Uttam Kumar Ghosh, when was dishonoured. Written notes of argument has been filed on behalf of the petitioner.

The punishment under Section 138 of N.I. Act provides for imprisonment for (a term which **may** be extended to two years) **or** with fine which **may** extend to twice the amount of the cheque, **or** with **both**.

It is on record that the petitioner deposited a sum of Rs. 3,71,000/- the principal loan amount as per direction of this Court

dated 19.12.2019. The legality of the process required under Section 138 N.I. Act has been duly considered by both the trial court and appellate court and it is found to be in accordance with law and as such does not require any interference by this court.

Admittedly it is found from Exhibit 7 that the loan was sanctioned in the name of the father of the petitioner, the petitioner and Tapan Ghosh but the cheque was in the name of the petitioner and issued by him. Thus the liability finally rests upon him alone for a loan admittedly taken jointly by three persons.

Considering the said circumstances and taking into the fact that the principal loan amount has already been deposited by the petitioner alone, interest of justice requires intervention by this court regarding the quantum of sentence, to prevent miscarriage of justice in these unusual circumstances.

Accordingly the judgment under revision of the Additional Sessions Judge, Fast Track Court, Katwa, Purba Bardhaman dated 29.08.2019 in Criminal Appeal No. 05 of 2016 and the learned Judicial Magistrate, 1st Class, 3rd Court, Katwa dated 07.04.2016 in Complaint Case No. 193 of 2011 are hereby modified to the following extent: **the sentence of simple imprisonment of two months is hereby set aside.**

The convict/appellant is directed to pay the fine of Rs. 4,50,000 as imposed by the learned Magistrate and affirmed by the learned Sessions Judge (balance amount being Rs. 4,50,000/-Rs. 3,71,000/-=Rs. 79,000/-) within two months from the date of this order failing which the petitioner shall undergo the sentence imposed by the learned Magistrate in default of payment of fine.

The judgment dated 29.08.2019 of the learned Additional Sessions Judge, Fast Track Court, Katwa, Purba Bardhaman in Criminal Appeal No. 05/2016 and the learned Judicial Magistrate, 1st Class, 3rd Court, Katwa dated 07.04.2016 in Complaint Case No. 193 of 2011 are hereby **modified** to the following extent.

The Criminal Revision no. 2890 of 2019 stands allowed in part to the extent of modification and is disposed of.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Let a copy of this judgment be sent to the learned Additional Sessions Judge, Fast Track Court, Katwa, Purba Bardhaman and learned Judicial Magistrate, 1st Class, 3rd Court, Katwa along with the lower court records (urgent).

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)