

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

**Present:  
The Hon'ble Justice Ajoy Kumar Mukherjee**

**CRR 3179 of 2018**

**Sri Arun Kumar Chattopadhyay  
Vs.  
Smt. Rupa Karpas & anr.**

For the petitioner: Mr. Pinaki Ranjan Mitra

Heard on: 08<sup>th</sup> June, 2022

Judgment on: 13<sup>th</sup> June, 2022

**Ajoy Kumar Mukherjee, J.**

1. In spite of service of Revisional application and forwarding letter, none appeared for the opposite parties.
2. The present application under Section 482 read with Section 401 of the Code of Criminal Procedure has been directed against the judgment dated 6<sup>th</sup> September, 2018 passed in criminal appeal no. 45 of 2014 heard analogously with criminal appeal no. 60 of 2014 by learned Additional Sessions Judge, Fast Track Court-II, Howrah arising out of the judgment and order dated 21.4.2014 passed by the learned Judicial Magistrate, 1<sup>st</sup> Court, Howrah in complaint case no. 1182 C of 2006.

3. Learned trial court after contested hearing convicted the accused person/Respondent no.2 and sentenced him to suffer simple imprisonment of three months and also directed to pay compensation under Section 357 (3) of the Code of Criminal Procedure amounting to Rs. 3,25,000/- to the complainant, Arun Kumar Chattopadhyay and acquitted respondent no.1 Smt. Rupa Karpas. But said order of sentence was revised by the appellate court by his impugned judgment dated 6<sup>th</sup> September, 2018 to the extent that the Appellant/ accused no. 2 to suffer sentence of simple imprisonment till rising of the court and also to pay a sum of Rs. 5,92, 447/- only as compensation to the complainant as per Section 357 (3) of the Code of Criminal Procedure.

4. Learned counsel for the petitioner Mr. Pinaki Ranjan Mitra strenuously argued that no reason has been assigned by the learned appellate court for remission of sentence though he did not interfere with the finding of the trial court who has convicted the respondent no. 2 and acquitted respondent no.1. Moreover, he contended that in view of the Apex Court judgment passed in ***Mainuddin Abdul Sattar Shaikh vs. Vijay D. Salvi, (Criminal Appeal No. 1472/2009)*** it is incumbent upon the accused convict to pay 9% per annum interest on the compensation amount to the complainant which has also been overlooked by both the courts below.

5. Both the courts below have convicted the respondent no. 2. The point for challenge herein is about remission of sentence as made by the first appellate court. The trial court after declaring the respondent as convict passed a

sentence to suffer simple imprisonment of three months and also directed to pay a compensation of Rs. 3,25,000/- which was converted by the appellate court, to suffer simple imprisonment till rising of the court but he increased the compensation amount from Rs. 3,25,000/- to Rs. 5,92,447/-.

**6.** On perusal of the sentencing part of the judgement, it appears that practically no reason has been assigned by the Appellate Court for aforesaid remission though the appellate court is of the view that the Trial Court judgment is reasoned and well written. The relevant portion of the judgment needs to be quoted in the present context:

*“The impugned judgment is a reasoned and well-written one. Nevertheless, I am of the opinion that the portion relating to sentence needs to be modified. The Learned Magistrate has rightly convicted the accused no. 2 for committing offence under Section 138 of the N.I. Act. The learned Magistrate was also right in acquitting the accused no. 1. However, the term of sentence imposed upon the accused no. 2 appear to me to be excessive. I am of the opinion that in cases involving offence under Section 138 of the N.I. Act justice can be served better if the complaint is provided with more pecuniary relief than sentencing the accused persons to imprisonment.”*

**7.** Appellate Court specifically observed that the learned Magistrate has rightly convicted the accused no. 2 for committing offence under Section 138 of the Negotiable Instruments Act and he has also rightly acquitted accused no. 1 as she is not the drawer of the cheque but he observed that the term of sentence imposed upon the accused appears to be excessive. He has not explained why it appears to be excessive to the appellate court because the maximum sentence of imprisonment that a Magistrate can award under Section 138 of the Negotiable Instruments Act is for two years. Appellate Court

observed that the cases involving in offence under Section 138 of the Negotiable Instruments Act, justice can be served better if the complainant is provided with more pecuniary relief than sentencing the accused persons to imprisonment. This finding of the first appellate court needs to be interfered because though the offence under Section 138 of the Negotiable Instruments Act is a basically documentary offence but still such proceeding can never be considered as money recovery proceeding. Once it is proved that the offence has been committed, court is under obligation to impose appropriate sentence to the accused person.

**8.** I find no substance in the aforesaid observation in the impugned judgment by which Appellate Court modified only sentencing part on a misconception of law. The total amount covered by the cheque is Rs. 2,96,223.76p. There is no case for the convict/opposite party that the said amount has been paid, which if paid might have justified for imposing a flea-bite sentence by Appellate Court. There is a requirement in law that every conviction should be followed by an appropriate sentence within the period stipulated in law. There is a need for the courts to apply it's mind while imposing sentence. In the instant case, the Appellate Court while correcting the convict for an offence punishable under section 138 of N.I. Act which has maximum sentence upto two years, thought it fit to impose the sentence till rise of court , without applying it's mind as to why it should be reduced from three months to "till rise of the court". Such misplaced generosity on the part of

the courts while imposing sentence has been seriously deprecated by Apex Court in ***Suganthi Suresh Kumar Vs. Jagdeeshan***, reported in **AIR 2002 SC 681**.

9. In the said case two cheques drawn by the respondent in favour of the appellant were dishonoured by the drawee bank. The total amount covered by the cheques was Rs 4,50,000. The trial Magistrate convicted the respondent under Section 138 of the Negotiable Instruments Act but sentenced him only to undergo imprisonment till rising of the court and pay a fine of Rs 5000 in both the cases. The appellant preferred revision before the High Court on the premise that the sentence was grossly inadequate and contended that the trial Magistrate should at least have invoked Section 357 (3) Cr.P.C. It was held by the Apex Court.

*“12..The total amount covered by the cheques involved in the present two cases was Rs 4,50,000. There is no case for the respondent that the said amount had been paid either during the pendency of the cases before the trial court or revision before the High Court or this Court. If the amounts had been paid to the complainant there perhaps would have been justification for imposing a flea-bite sentence as had been chosen by the trial court. But in a case where the amount covered by the cheque remained unpaid it should be the lookout of the trial Magistrates that the sentence for the offence under Section 138 should be of such a nature as to give proper effect to the object of the legislation. No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light-heartedly. The very object of enactment of provisions like Section 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount at least during the pendency of the case”.*

**10.** In view of the above the impugned judgment dated 6/9/2018 is set aside only to the extent that the sentence as awarded by the trial court shall remain unaltered. The finding of both the courts below respondent no. 2 as convict and acquitting respondent no.1 on the ground that she is not the drawer of the cheque, remains uninterfered by this court. Opposite no 2/ convict Swapan Kumar Karpas is directed to surrender before the Trial Court within 30days from the communication of this order for the purpose of undergoing sentence and to pay compensation as awarded by the Trial Court. In default Ld. Trial Court will be at liberty to proceed in accordance with law and complainant will be at liberty to take appropriate steps for realization of compensation amount along with interest @ 9% p.a. from the date of judgment passed by Trial Court till recovery.

**11.** CRR 3179 of 2018 is accordingly disposed of.

However, there will be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(AJOY KUMAR MUKHERJEE)**