

08.12.2022

Court No.35
Item No. 9

D.Hira

CRA 711 of 2010

**Sakti Pada Ray
Vs.
Rakhee Dhar**

Mr. Mit Guha Roy.

... for the appellant

Mr. Pravas Bhattacharya,
Ms. Debjani Sahu.

... for the State

This appeal is directed against the judgment and order dated 31st August, 2010 delivered by the Trial Court to find, *inter alia*, that the case of the prosecution was not proved to the standard of beyond all reasonable doubt and the accused person that is the respondent in this appeal was acquitted therein.

The appellant/defacto complainant/ alleged lender of money has come up in this appeal against the said judgment and order dated 31st August, 2010, on the grounds, *inter alia*, that the Trial Court has failed to consider the legally enforceable debt of the accused person in taking the concerned money of an amount of Rs.1,50,000/-, that the Trial Court has failed to apply its mind to the depositions recorded before it, that the Trial Court has not exercised jurisdiction vested in by law in acquitting the accused person in the impugned judgment. That the judgment impugned in this case is liable to be set aside being *de hors* the settled principles of law.

The factual background may be narrated in brief, *inter alia*, that the parties, that is, the complainant and the accused person and her husband were acquainted to each other and during subsistence of their good relationship, the complainant/appellant advanced the amount of loan to the tune of Rs.1,50,000/- to the accused person/respondent.

The complaint further reveals that in spite of assurance given to repay the said amount within the particular period of time i.e., within 15th January, 2009, the respondent/accused person failed to pay back the said amount of money.

It is alleged that a cheque was issued to the appellant dated 2nd February, 2009 of same amount bearing no.213673 dated 31st March, 2009 drawn on UCO Bank, Kharagpur Branch and the same when deposited in bank for realization was dishonoured due to insufficiency of fund in the respondent's accounts.

This has given rise to filing of complaint by the present appellant in the Trial Court on 20th July., 2009 being registered as C.R. No. 12 of 2009,

Trial was conducted. During trial, three (3) witnesses were examined.

The complainant deposed about the respondent/accused person promising him to repay the money by a particular date i.e., 15th January, 2009. The complainant further deposed that the cheque was issued on 2nd February, 2009 and that the same was bounced.

Husband of the complainant was also examined to corroborate the complainant's deposition as discussed above.

PW 3 was an independent person. He deposed about having knowledge of the transaction that took place between the appellant and respondent, handing over cheque for discharge of that loan by the respondent to the appellant and also dishonour of the said cheque when submitted for realization.

After thorough scrutiny of the evidence as discussed above, it appears that neither of the witnesses have ever narrated about a legally enforceable transaction between the appellant and the respondent to enforce any debt. The complainant was examined under Section 313 of

the Code of Criminal Procedure. However, on this particular point which is the moot point to be decided by the Trial Court in a case under Section 138 of the Negotiable Instruments Act no incriminating material revealed from her such examination.

Upon this evidence on record, the Trial Court decided the case that the complainant/appellant could not bring on record any sufficient material to show that he advanced an amount of Rs.1,50,000/- to the respondent which would be termed as a legally enforceable debt advanced to the respondent/accused person by the complainant/appellant.

It is a trait law that the penal provisions of the Negotiable Instruments Act would attract in the event when the accused person has failed to satisfy a legally enforceable debt, by way of dishonored of cheque.

In this case in absence of any sufficient material as to the same, there could have been no other finding of the learned Trial Court than to decide the innocence of the accused person and her acquittal. In the impugned judgment, the Trial Court has considered the evidence on record and came to a finding as above, which appears to be proper and in accordance with law.

Hence, there remains no scope by this appeal Court to interfere into the said judgment of the Trial Court dated 31st August, 2010 and the same is legible to be upheld by this Court.

The appeal is dismissed. The judgment and order dated 31st August, 2010 passed by the Trial Court in C.R. Case No. 12 of 2009 under Section 138 of the Negotiable Instruments Act is upheld.

The Court is thankful for the hard work put in by the learned Counsel and assistance rendered by Mr. Mit Guha Roy in this case.

All parties shall act on the server copies of this order duly

downloaded from the official website of this Court.

(Rai Chattopadhyay, J.)