**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLREV No. 337 of 2022**

***Narayan Prasad Mohanty*** …. ***Petitioner***

***Mr. U.C. Dora, Advocate***

***-Versus -***

***State Bank of India, Charampa Branch, Bhadrak & Another*** …. ***Opposite Parties***

***Mr. P. Tripathy,***
***Additional Standing Counsel***
***Mr. M.K. Mohapatra-1,***
***Advocate for Opposite Party No.1***

**CORAM:**
**JUSTICE SASHIKANTA MISHRA**

**ORDER**
**08.12.2022**

**Order No. 06.**

**1.** This matter is taken up through Hybrid mode.

**2.** The petitioner was convicted for the offence under Section-138 of the N.I. Act by judgment dated 14.08.2012 passed by the learned Special Judicial Magistrate, Bhadrak in 1.C.C. Case No. 195 of 2009 and sentenced to undergo S.I. for a period of six months and pay compensation of Rs.50,000/- (Rupees Fifty Thousand) to the complainant within a month failing which interest @ 10% p.a. will be charged till payment is made.

**3.** The facts of the case are that the petitioner is a lonee of the respondent –Bank having availed a personal loan of Rs.98,000/- (Rupees Ninety-eight Thousand ) on 20.02.2007. On 13.02.2009, he issued a cheque for an amount of Rs.41,522/-(Rupees Forty One Thousand Five Hundred Twenty Two ) in favour of the complainant Bank but the same was dishonored due to insufficient funds in his bank account. After issuing legal notice when the petitioner failed to pay, the Bank filed the aforementioned complaint in the Court.

**4.** On consideration of the evidence adduced by the parties, the Trial Court convicted the petitioner and sentenced him as aforesaid. The matter was carried in appeal to the Court of Sessions. Learned Sessions judge, by judgment dated 16.03.2022 after referring to the evidence on record and the settled position of law found no reason to interfere with the judgment of conviction and sentence of the Trial Court and accordingly, dismissed the appeal.

**5.** The said judgment is impugned in the present Revision.

**6.** Heard Mr. U.C. Dora, learned counsel for the petitioner and Mr. M.K. Mohapatra, learned counsel for the Opposite Party-Bank.

**7.** It is submitted by both Mr. Dora as well as Mr. Mohapatra that the matter was settled in Lok Adalat held on 28.07.2016 by way of compromise settlement and accordingly the Bank issued a closure certificate on 24.06.2022. A copy of the said closure certificate has been enclosed to the Revision Petition.

**8.** It is submitted by Mr. Dora that the above fact could not be brought to the notice of the lower Appellate Court as an Amicus Curie was appointed for the appellant since the counsel engaged by the appellant did not take any steps on the date fixed. Naturally, therefore, the fact of settlement of the case in the Lok Adalat, not being within the knowledge of Amicus Curie, could not be brought on record. Since the matter was settled way back in the year-2016 and the bank has already issued a closure certificate, the matter needs to be disposed of in terms of the compromise as otherwise the impugned judgment of conviction would stand confirmed despite settlement of the matter by way of compromise.

**9.** After considering the rival submissions and the facts and circumstances of the case, this Court is of the considered view that the order being passed by the Appellate Court without knowledge of the developments occurring in the matter after passing of the impugned judgment by the Trial Court, should not be allowed to subsist. Therefore, the impugned order needs to be set aside and the matter should be heard afresh by the Appellate Court who shoud pass necessary orders taking into account the development occurring after passing of the impugned judgment by the Trial Court. Learned Appellate Court shall consider the fact of compromise between the parties and pass necessary orders with regard to the judgment of the Trial Court.

**10.** Though the Appellate Court cannot be blamed for passing the impugned judgment yet the same cannot also be allowed to subsist as it would amount to confirming the judgment of conviction passed by the Trial Court.

**11.** In such view of the matter, the impugned judgment is set aside. The learned Appellate Court is directed to pass orders on the appeal filed by the petitioner afresh after taking into account the fact of compromise between the parties.

**12.** Accordingly, the CRLREV is disposed of.

**13.** Urgent certified copy of this order be granted as per rules.

HIGH COURT
सत्यमेव जयते
ORISSA

***(Sashikanta Mishra)***
***Judge***

*Balaram*