

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 175 of 2020

Shib Sankar Sarkar

Vs

Nabo Kumar Singha.

For the Petitioner : Ms. Sreyashee Biswas,
Ms. Puja Goswami.

For the Opposite Party : None.

Heard on : 14.03.2023

Judgment on : 25.04.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against the Judgment and Order dated December 19, 2019 passed by the Learned Additional Sessions Judge, Ranaghat, Nadia in Criminal Appeal No. 1 of 2019 affirming thereby the order of Conviction and **partially modifying the Sentence** passed by the learned Judicial Magistrate, 2nd Court, Ranaghat in C Case No. 61 of 2012 with a direction upon the appellant/accused to undergo simple imprisonment for 6 (six) months only in default of payment of the double of the cheque amount of Rs. 1,20,000/- within 1 (one) month from the date of the order and set aside the substantive sentence.
2. The petitioner's case is that the petitioner is a businessman by occupation. On June 19, 2012 the Opposite Party lodged a complaint against the petitioner under Section 138 of the Negotiable Instruments Act. It was alleged in the complaint that the petitioner received a sum of Rupees 1,65,000/- from the complainant for constructing a 2 storied building at Gagan Babur Bazar, within the jurisdiction of Taherpur Police Station. The petitioner agreed to deliver the possession of a shop room from the said construction to the opposite party. Subsequently the petitioner gave 2 cheques, one bearing number 784165 dated January 31, 2012 to the tune of Rupees 30,000/- and another cheque bearing number 784168 dated February 29, 2012 to the tune of Rupees 30,000/- both drawn on State Bank of India, Garden Reach Branch.

3. On February 29, 2012 the cheques were deposited by the complainant through his banker UCO bank, Badkulla Branch. The said cheque was returned unpaid by the banker of the Opposite Party/complainant on March 07, 2012.
4. The next cheque being Cheque Number 784168 dated February 29, 2012 was presented for encashment on March 20, 2012. But the said cheque was also returned unpaid on April 04, 2012. Both the cheques were dishonoured for the reason "insufficient funds". The information was received by the Opposite Party through his banker on April 24, 2012 and within the statutory period on May 10, 2012 the Opposite Party sent a legal notice to the petitioner through registered speed post with Acknowledgement Due Card.
5. The notice sent by the learned lawyer of the Opposite Party to the petitioner was returned on May 28, 2012 with the remarks "Not Claimed".
6. The cause of action arose on and from May 29, 2012 and the instant case was started.
7. The petitioner was convicted by the Court of the Learned Judicial Magistrate, 2nd Court, Ranaghat under Section 138 of the Negotiable Instruments Act and was sentenced to suffer simple imprisonment for a period of 3 months. The petitioner was also directed to pay compensation of Rupees 1,20,000/- to the Opposite Party within 1 month from the date

of the order i.e. by December 18, 2018 in default to undergo further simple imprisonment for 2 (two) months. Sentences to run concurrently.

8. Being aggrieved by and dissatisfied with the order of conviction and sentence dated December 18, 2018 passed by the Court of the Learned Judicial Magistrate, 2nd Court, Ranaghat, the petitioner preferred an appeal before the Court of the Learned Additional Sessions Judge, Ranaghat, Nadia vide Criminal Appeal No. 1 of 2019.
9. The Learned Additional Sessions Judge, Ranaghat, Nadia after hearing the appeal, disposed of the Appeal on December 19, 2019, partially affirming, the order of conviction and sentence passed by the Learned Judicial Magistrate, 2nd Court, Ranaghat, Nadia.
10. **Ms. Sreyashee Biswas, learned counsel for the petitioner** has submitted that both the Learned Courts (Trial and Appellate) failed to appreciate the evidence on record in its proper perspective and convicted the petitioner without applying its Judicial mind and as such the impugned order of conviction and sentence is bad in law and is liable to be set aside.
11. The petitioner had no legally enforceable debts towards the Opposite Party and the order of conviction and sentence deserves the interference of this Hon'ble Court.
12. The complaint was filed beyond the statutory period i.e. on June 19, 2012. As such the impugned proceeding against the petitioner was bad in law.

13. That both the Learned Courts failed to appreciate that the proviso under sub-clause (b) of clause (1) of Section 142 added by Act No. 55/2 with effect from 06.02.2013 enabling the complainant to file the complaint after the prescribed period of limitation is only if he satisfies the court that he had sufficient cause in not making the complaint within the time prescribed.
14. The impugned order of conviction and sentence is otherwise bad in law and is liable to be set aside.
15. **Affidavit of service in respect of the opposite party/complainant filed by the petitioner shows that the envelope has been returned with the endorsement 'DECEASED'.**
16. **There is no representation by any legal heirs of the Opposite Party/complainant.**
17. The Trial Court vide **order dated 18.12.2018** passed the following order of conviction:-

*"He is convicted and sentenced to undergo S.I. for 3 (three) months u/s 255(2) of Cr.P.C. and is also directed to pay compensation of Rs. 1,20,000/- (Rupees One Lakh Twenty Thousand Only) to the complainant Nabo Kumar Singha u/s 357(3) of Cr.P.C. within one month from this date of order i.d., to undergo further S/I for period of 2(two) months. **All the periods of imprisonment shall run concurrently.***

The period of detention already undergone by the convict, if any, be set off as per Section 428 Cr.P.C."

Sd/-
Judicial Magistrate
2nd Court, Ranaghat, Nadia

18. Regarding the concurrent running of substantive sentence and sentence in default of fine, the Supreme Court in **V.K. Bansal vs State of Haryana & Ors., Criminal Appeal Nos. 836-851 of 2013, on 5 July, 2013**, held:-

“8. Section 427 of the Code of Criminal Procedure deals with situations where an offender who is already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life. It provides that such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence. Section 427 may at this stage be extracted:

“427. Sentence on offender already sentenced for another offence-

(1) when an person already undergoing sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence. Provided that where a person who has been sentenced to imprisonment by an order under Section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.”

9. *That upon a subsequent conviction the imprisonment or imprisonment for life shall commence at the expiration of the imprisonment which has been previously awarded is manifest from a plain reading of the above. The only contingency in which this position will not hold good is where the Court directs otherwise. Proviso to sub-section (1) to Section 427 is not for the present relevant as the same deals with cases where the person concerned is sentenced to imprisonment by an order under Section 122 in default of furnishing security which is not the position in the case at hand. Similarly sub-section (2) to Section 427 deals with situations where a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life. Sub-section (2) provides that the subsequent sentence shall in such a case run concurrently with such previous sentence.*

17. *Applying the principle of single transaction referred to above to the above fact situations we are of the view that each one of the loan transactions/financial arrangements was a separate and distinct transaction between the complainant on the one hand and the borrowing company/appellant on the other. If different cheques which are subsequently dishonoured on presentation, are issued by the borrowing company acting through the appellant, the same could be said to be arising out of a single loan transaction so as to justify a direction for concurrent running of the sentences awarded in relation to dishonour of cheques relevant to each such transaction. That being so, the substantive sentence awarded to the appellant in each case relevant to the transactions with each company referred to above ought to run concurrently. We, however, see no reason to extend that concession to transactions in which the borrowing company is different no matter the appellant before us is the promoter/Director of the said other companies also. Similarly we see no reason to direct running of the sentence concurrently in the case filed by the State Bank of Patiala against M/s Sabhyata Plastics and M/s Rahul Plastics which transaction is also independent of any loan or financial assistance between the State Financial Corporation and the borrowing companies. We make it clear that the direction regarding concurrent running of sentence shall be limited to the*

substantive sentence only. The sentence which the appellant has been directed to undergo in default of payment of fine/compensation shall not be affected by this direction. We do so because the provisions of Section 427 of the Cr.P.C. do not, in our opinion, permit a direction for the concurrent running of the substantive sentences with sentences awarded in default of payment of fine/compensation.”

19. In the present case the Appellate Court **partially modified** the order of conviction in appeal as follow:-

“.....In the instant case the Ld. Magistrate convicted the accused to undergo imprisonment for 3 (three) months and also to pay compensation of Rs. 1,20,000/- to the complainant to undergo further simple imprisonment for 2 months. As the primacy concern of the complainant is to recover the money then sending the drawer behind bar, the conviction and sentence of 3 (three) months simple imprisonment is modified with a direction upon the appellant/accused to undergo simple imprisonment for 6 (six) months only in default of payment of the double of the cheque amount of Rs. 1,20,000/- within 1 (one) month from the date of this order. The other part of the conviction and sentence as passed by the Ld. Trial Magistrate shall remain unaltered. Thus, the appeal fails.....”

Sd/-
Additional Sessions Judge
Ranaghat, Nadia

20. **Section 138 of the Negotiable Instruments Act, lays down:-**

“138 Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such

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:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”

21. From the order of this court dated 21.01.2020 it is evident that the petitioner paid a sum of Rs. 24,000/- before the Appellate Court.
22. Learned counsel for the petitioner has filed a copy of a receipt, duly endorsed showing further payment of Rs. 36,000/- on 10.02.2020 before the Trial Court.
23. The findings of the Trial Court and the Appellate Court being in accordance with law requires no interference.
24. From the copy of the death Certificate it is seen that the complainant expired on 04.09.2020 at the age of 46 years.

25. **Even though the complainant has expired, his family/legal heirs are entitled to justice and the sentence as to compensation of Rs. 1,20,000 i.d. S.I. for 2 months as directed by the trial court is affirmed. The substantive sentence to suffer S.I. for 3 months as set aside by the Appellate Court is also affirmed. Both the order/judgment of the Appellate Court being Criminal Appeal No. 1 of 2019, dated December 19, 2019 passed by the learned Additional Sessions Judge, Ranaghat, Nadia and the Trial Court being C Case No. 61 of 2012, dated December 18, 2018, passed by the learned Judicial Magistrate, 2nd Court, Ranaghat, Nadia are modified and affirmed accordingly.**
26. **The petitioner is directed to pay the total (balance) compensation amount within two months from the date of this order in default to service out the sentence of S.I. for two months in default of payment of fine.**
27. **The Learned Magistrate will ensure that the amount of compensation is duly received by the legal heirs of the complainant.**
28. **CRR No. 175 of 2020 is accordingly disposed of.**
29. There will be no order as to costs.
30. All connected Applications stand disposed of.
31. Interim order if any stands vacated.

32. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.
33. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)