

**IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)**

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 187 of 2019

Mitusree Roy alias Mitusree Ray

Vs.

The State of West Bengal & Anr.

For the Petitioner : Mr. Arindam Jana,
Mr. Soumojit Chatterjee.

For the Opposite Party : Mr. Soumya Banerjee,
No. 2 Ms. Sucheta Banerjee.

Heard on : 10.05.2023

Judgment on : 15.05.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against a judgment and order dated 20.12.2018 passed by the learned Additional District and Sessions Judge, Fast Track, 2nd Court, Alipore, South 24 Parganas in Criminal Appeal No. 08 of 2018, affirming the judgment and order of conviction dated 28.11.2018 passed by the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas in AC Case No. 3486 of 2014 convicting the petitioner under Section 138 of the Negotiable Instruments Act and sentencing her to suffer simple imprisonment for two months and pay a fine of Rs.4,08,000/, in default to suffer a further imprisonment of six months.
2. The petitioner's case is that the opposite party no. 2/complainant had filed a complaint before the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas alleging the commission of offence under Section 138 of the Negotiable Instruments Act.
3. The allegations leveled in the petition of complaint is to the effect that on 12.03.2011 the petitioner took a loan amounting to Rs.2,04,000/- from the opposite party no. 2 with an agreement to return the same amount in its entirety on or before 30.06.2014. To meet that debt and liability, the petitioner delivered one Cheque bearing no. 726883 drawn on UBI, Golpark Branch dated 12.09.2014 for an amount of Rs.2,04,000/- in favour of the complainant. The opposite party no. 2 deposited the said cheque at Corporation Bank,

Jadavpur Branch for encashment within validity period of the said cheque, but the said cheque was returned as dishonoured on 20.09.2014 with the note "insufficient funds". The opposite party no. 2 caused service of a demand notice to the petitioner through his learned advocate on 29.09.2014 demanding her to pay the cheque amount within 15 days from the date of receipt of the said notice, but she failed to make such payment.

4. On completion of trial, the learned Additional Chief Judicial Magistrate, Alipore, was pleased to convict the petitioner for offence under Section 138 of the Negotiable Instruments Act vide its judgment and order dated 28.11.2017 and sentenced the petitioner to suffer simple imprisonment of two months and pay a fine of Rs.4,08,000/-, in default, suffer further simple imprisonment of six months.
5. Being aggrieved the petitioner preferred an appeal against the said judgment and order of conviction before the learned Sessions Judge at Alipore, being Criminal Appeal No. 08 of 2018. The matter was transferred and heard by the learned Additional Sessions Judge, Fast Track, 2nd Court, Alipore who by its judgment and order dated 20.12.2018 **was pleased to modify the order dated 28.11.2017** passed by the learned Additional Chief Judicial Magistrate, Alipore in AC Case No. 3486 of 2014 thereby convicting the petitioner for commission of offence under Section 138 of the Negotiable Instruments Act and sentencing her to suffer simple imprisonment of

two months and pay a fine of Rs.3,00,000/- (Rupees three lakhs), in default to suffer further simple imprisonment of six months.

6. The present revision has been preferred against the said judgment and order of the learned Additional Sessions Judge, Fast Track, 2nd Court at Alipore.

7. On perusal of the certified copy of the judgment and order of the learned Additional District and Sessions Judge, 2nd Fast Track, Alipore, in Criminal Appeal No.08 of 2018, it is seen that the appellate court was pleased to pass the judgment and order dated 20.12.2018 as follows:

“that the instant Criminal Appeal be and the same is allowed on contest but in part;

*that the judgment of conviction dated 28.11.2017 passed by the Learned Additional Chief Judicial Magistrate against the appellant/convict is hereby **affirmed**.*

that the appellant/convict is sentenced to suffer simple imprisonment for 02(two) months and also to pay a fine of Rs.3,00,000/- in default to suffer further simple imprisonment for 06(six) months.

that out of the above fine amount, if realized, a sum of Rs.2,90,000/- shall be payable by the appellant/convict to the complainant as compensation.

The judgment impugned is hereby modified in the manner indicated herein above.”

8. As such, the pleadings of the petitioner in paragraph 6 of the revisional application is not correct and has been wrongly stated on affidavit.

9. **From the copy of the supplementary affidavit filed and the submissions of the learned counsel for the opposite party who is present in Court admittedly the total fine amount of Rs.3,00,000/- (Rupees three lakhs) only has been paid by the petitioner and duly received by the opposite party in full.**
10. Thus, considering the said fact, the substantive sentence of two months passed by the learned Magistrate and affirmed by the appellate court against the petitioner Mitusree Roy @ Mitusree Ray is hereby set aside in the interest of justice. Remaining portion of the judgment under revision remains unchanged and is hereby affirmed.
11. Accordingly, the judgment and order dated 20.12.2018 passed by the learned Additional District and Sessions Judge, Fast Track, 2nd Court, Alipore, South 24 Parganas **is modified to the following extent that the substantive sentence to suffer simple imprisonment for a period of two months is hereby set aside** but the petitioner shall pay the fine amount of Rs.3,00,000/- (Rupees three lakhs) only, in default, to suffer simple imprisonment for a further period of six months. The fine, if realized, shall be payable as directed by the appellate court.
12. **The revisional application being CRR 187 of 2019, is, thus, disposed of.**
13. No order as to costs.
14. All connected application, if any, stands disposed of.
15. Interim order, if any, stands vacated.

16. Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

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

(Shampa Dutt (Paul), J.)