**IN THE HIGH COURT AT CALCUTTA**

**(Criminal Revisional Jurisdiction)**

**Appellate Side**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 290 of 2019**

**M/s. Kalpataru Mobile & Ors.**

**Vs.**
**The State of West Bengal & Anr.**

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|---|---|---|
| **For the Petitioner** | : | Mr. Ranjan Kali,<br>Ms. Mili Saha,<br>Mr. Mitul Chakraborty. |
| **For the opposite party no.2** | : | Mr. Mrityunjoy Chatterjee,<br>Mr. Sattik Rout. |
| **For the State** | : | Mr. Binay Panda,<br>Ms. Puspita Saha. |
| Heard on | : | 14.06.2023 |
| Judgment on | : | 04.07.2023 |

**Shampa Dutt (Paul), J.:**

1. The present revision has been preferred against an order dated 01.10.2018 passed by the Additional District and Session Judge, Fast Track Court at Calcutta, in connection with Criminal Appeal No.01 of 2018 arising out of the Judgment dated 17.11.2017 passed by the learned 14th Metropolitan Magistrate Court at Calcutta in connection with C/64724/09 (M/s. Jalan Info System Private Limited vs. M/s. Kalpataru Mobile & Ors.).

2. The petitioner's case is that, the learned Additional District and Session Judge, Fast Track court at Calcutta has affirmed the sentence passed by the learned 14$^{th}$ Metropolitan Magistrate at Calcutta by passing a sentence of simple imprisonment for 6 (six) months to both the petitioners/accused persons and further sentenced the petitioners/accused persons to pay compensation of an amount of Rs.8,79,748/- in equal proportion payable by both the petitioners/accused persons to the complainant within 1 (one) month from the date of the order in default simple imprisonment for 12 (twelve) months in respect of the petitioners/accused persons no. 2 & 3 and order of attachment in respect of the petitioner no.1, company.

3. The specific case made out in the complaint under Section 138 of the N.I. Act is that the respondent/complainant no.2 was the authorised distributors of the Nokia Brand mobile phone and the petitioner/ accused person no.1 is engaged in the business of buying and selling of the mobile phones of different companies. The petitioner/accused person nos.2 and 3 are the Directors of the petitioner/accused person no.1 and allegedly placed orders with the respondent/complainant no.2 for supply of Nokia mobile phone on credit. Subsequent thereto against the supply of handsets the petitioners/accused persons have issued 2 (two) cheques dated 13.10.2009 amounting to Rs.5,00,000/- and Rs.4,39,874/- aggregating to Rs.9,39,974/- and both the cheques were allegedly drawn on Oriental Bank of Commerce, Kolkata Service branch towards the payment of the outstanding dues to the respondent/complainant no.2 for sale of mobile

handset to the petitioner/accused person no.1 company. The said cheques upon presentation were dishonoured on the ground of insufficient fund which resulted in causing a statutory notice under Section 138 of the N.I. Act by the respondent/complainant no.2 upon the petitioners/accused persons and thereafter by reason of the failure on the part of the petitioners/accused persons to pay the said due amount, the complaint has been filed by the respondent/complainant no.2.

4. It is stated that the Trial Court and the Session Court, while arriving at a common finding failed to appreciate that the said cheques were giving as a security and there was no debt payable by the petitioners/accused persons as the petitioners/accused persons have already paid the entire dues of the respondents/complainants against the supply of the mobile set as would be evident from the statement of accounts maintained by the petitioners/accused persons.

5. The petitioners/accused persons state that the respondent/complainant no.2 has failed to prove that there is a debt that the petitioners/accused persons are liable to pay to the respondent/complainant no.2 in due discharge of any existing debt.

6. That the 2 (two) cheques were presented to the service branch of OBC Bank and not presented to the drawer bank for encashment i.e. OBC Bank, Burdwan Branch, hence whether sufficient funds was available in the drawer bank could not be ascertained as the cheques were presented to the service branch where the petitioners/accused persons have got no account.

7. Thus the respondents/complainants failed to discharge the burden of proving the debt and both the courts erroneously arrived at a conclusion

that under Section 139 of the N.I. Act the petitioners/accused persons have failed to rebut the presumption of existence of a debt due to issuance of the cheques.

8. **Mr. Ranjan Kali, learned counsel for the petitioners** has submitted that both the courts have passed the sentence without appreciating the evidence adduced by the petitioners/accused persons in support of their case in proper perspective.

9. That both the courts erred in appreciating the fact that the respondents/complainants have failed to discharge the burden proving the existence of the debt and accordingly both the courts ought not to have passed the judgment and sentence against the petitioners/accused persons.

10. That both the courts have failed to appreciate that both the cheques had been given as a security against the transactions in respect of which the respondents/complainants have already received payment from the petitioners/accused persons.

11. That both the courts ought to have appreciated the fact that the cheques have been presented before the service branch and not before the drawer bank for encashment in gross violation of the statutory rules.

12. That both the courts ought to have appreciated the fact that it is the specific case of the petitioners/accused persons that they have got no account in the service branch of OBC and they have only got an account in the Burdwan branch of OBC where the cheques were not presented.

13. That there exists no legal debt payable by the petitioners/accused persons to the respondents/complainants.

14. That both the judgment and sentence passed by the learned courts are otherwise bad and not sustainable in the eye of law and thus liable to be set aside.

15. **Mr. Mrityunjoy Chatterjee learned counsel for the opposite party no.2** has submitted that the learned Magistrate and the learned Sessions Court have passed the orders which are in accordance with law and as such the revision is liable to be dismissed.

16. Supplementary affidavit filed by the petitioners is in support of the materials already on record. Notes of argument has been submitted by the petitioners relying upon the following judgments:-

a) ***Shri Ishar Alloy Steels Ltd. vs. Jayaswals Neco Ltd. reported in (2001) 3 SCC 609*** wherein it has been held that :-

> *"**9.** The use of the words "a bank" and "the bank" in the section is an indicator of the intention of the legislature. The former is an indirect (sic indefinite) article and the latter is prefixed by a direct (sic defiite) article. If the legislature intended to have the same meaning for "a bank" and "the bank", there was no cause or occasion for mentioning it distinctly and differently by using two different articles. It is worth noticing that the word "banker" in Section 3 of the Act is prefixed by the indefinite article "a" and the word "bank" where the cheque is intended to be presented under Section 138 is prefixed by the definite article "the". **The same section permits a person to issue a cheque on an account maintained by him with "a bank" and makes him liable for criminal prosecution if it is returned by "the bank" unpaid. The payment of the cheque is contemplated by the "the bank" meaning thereby where the person issuing the cheque has an account..........."***

b) ***M/s. Merck Ltd. & Anr. Vs. Radha Nath Nandi in CRR 3950 of 2016 dated 25.08.2017*** of this court.

17. **In the present case,** the Metropolitan Magistrate, 14th Court, Calcutta convicted the petitioners and sentenced them to suffer simple imprisonment for six months and pay compensation of Rs.8,79,748/- in equal proportion in default to suffer simple imprisonment for 12 months in respect of petitioner nos.2 and 3 and order of attachment in respect of accused no.1.

18. In appeal the Sessions court modified the sentence as follows:-

> ***"The accused persons nos.2 and 3 namely Debabrata Sai and Sourav Sai are hereby sentenced to suffer simple S.I. for one month and to pay compensation amount of Rs.8,79,748/- in equal proportion to the complainant within one month from the date of receipt of the order by the learned Trial Judge I/D S.I for 12 months in respect of accused nos.2 and 3 and order of attachment against the accused no.1."***

19. The contention of the petitioners before this Court is that the cheque in question was given as a security and not in discharge of any debt or liability.

20. It is seen that the Magistrate and Sessions Court's findings in that respect is in accordance with law. The accuseds did not produce any materials or evidence sufficient to rebut the said presumption.

21. **The next contention** is that the cheque was presented to the service branch of OBC Bank and not presented to the drawer bank for encashment i.e. OBC Bank, Burdwan Branch, hence whether sufficient funds were available in the drawer bank could not be ascertained as the cheques were presented before the service branch where the petitioners/accused persons have no account. Hence, the intimation of "insufficient funds" is not in accordance with the banking norms.

22. Exhibit 3 is the Cheque issued in favour of the opposite party no.2, drawn on Oriental Bank of Commerce. The said cheque bears the instructions **PAYABLE AT ALL CBS BRANCHES**.

23. Exhibit 4 is the Memo of dishonour of cheque, issued by the Oriental Bank of Commerce, Kolkata, Service Branch, through the complainant's bank being Axis Bank with the endorsement 'funds insufficient'.

24. **Thus, the contention of the petitioners that the cheque should have been presented before the Burdwan branch, where they have an account has no substance. Admittedly, the cheque was presented to 'the Bank' of the petitioner, that is ORIENTAL BANK OF COMMERCE, service Branch by the Bank (herein Axis Bank) where the complainant deposited the cheque, as he has an account. Oriental Bank of Commerce, service branch did not say that account does not exist. The Memo clearly says 'funds insufficient'. The said branch has access to all accounts with their Bank centrally as the cheque clearly says, payable at all CBS branches.**

25. The judgments relied upon also do not support the petitioners case.

26. Accordingly, considering the materials on record, the judgment and order under revision is **modified** to the extent that the substantive sentence to suffer simple S.I for one month is set aside. **Rest of the sentence is affirmed. The compensation as directed is to be paid within one month from date of this order in default the petitioners no.2 and 3 shall undergo the sentence in default of payment of compensation as directed by the Session Court.**

27. **The revisional application being CRR 290 of 2019 is thus disposed of.**

28. No order as to costs.

29. All connected applications stand disposed of.

30. Interim order, if any, stands vacated.

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

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

**(Shampa Dutt (Paul), J.)**