

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 45 of 2008

Prasanta Bhatta

-Vs-

Abdul Sk

For the Amicus Curiae : Mr. Arnab Chatterjee

For the State : Mr. N. P. Agarwala

Heard on : 14.12.2022

Judgment on : 03.02.2023

Ananya Bandyopadhyay, J. :-

1. This appeal is directed against the judgment and order of acquittal dated 30.05.1997 passed by the 12th Court of Metropolitan Magistrate in Case No. C-12303/06 under Section 138 N.I. Act.

Brief Facts of the case :

2. The respondent issued six account payee cheques bearing cheque No. 004923 dated 10.03.2006 for Rs. 1,231/-, cheque No. 004924 dated 10.04.2006 Rs. 1,231/- cheque No. 004925 dated 10.05.2006 for Rs. 1,231/- cheque No. 004926 dated 10.06.2006 for Rs. 1,231/- cheque No. 004927 dated 10.07.2006 for Rs. 1,231/- and cheque No. 004928 dated 10.08.2006 for Rs. 1,231/- respectively all drawn on Centurion

Bank Limited, P/34, India Exchange Place, Kolkata – 700 001 totalling to Rs. 7,386/- (Rupees Seven Thousand Three Hundred Eighty Six) Only. All drawn on the complainant/appellant i.e. Centurion Bank limited. On deposition of the abovementioned cheques at its own branch for encashment, the same were returned dishonored with the remark 'Insufficient Funds' vide a cheque returned memo dated 28th August, 2006. Demand notice issued by the complainant/appellant. Bank as aforesaid on 15th September, 2006 which was received by the respondent on 23rd September, 2006 and the said notice was not complied in terms of payment, within 15 days of receipt of the same.

3. Consequently Case no C-12303/06 under Section 138 of the Negotiable Instrument Act was filed by the aforesaid bank through its authorized representative.
4. Cognizance was taken by the Chief Metropolitan Magistrate Kolkata on 26.07.2006 and the case was transferred to the file of the Learned Metropolitan Magistrate, 12th Court, Kolkata for disposal, which issued process against the respondent vide order dated 03.01.2007.
5. Subsequently on 30.05.2007, the learned Trial Court as aforesaid acquitted the respondent under Section 256 Cr.P.C. stating as follows:

“Complainant is absent without taking step and call learned lawyer for the complainant appears before the court submitted that the matter has been settled and complainant will not taken any step in this case. It is therefore, ordered that the accused is acquitted as per Section 256 Cr.P.C.”

6. Learned advocate Mr. Arnab Chatterjee appointed as the Amicus Curiae submitted on 30.05.2007 the learned conducting advocate was abent in court due to his illness and his junior inadvertently submitted of a settlement between the parties and the unwillingness of the complainant bank to take steps in the case before the Court and eventually the learned Trial Court acquitted the respondent under Section 256 Cr. P.C. later on, an application was filed on behalf of the complainant bank to recall the order dated 30.05.2007 which was kept on record. It was further submitted that the learned Trial Court erred in acquitting the respondent under Section 256 Cr. P.C. which otherwise should have been an acquittal under Section 257 Cr. P. C.
7. A mistake on the part of the learned advocate representing any party beyond his/her knowledge should not act as a prejudice against his/her rights and contentions. In the instant case immediately after passing the order of acquittal a petition was

filed for recalling the order of acquittal when the Court had become functus officio.

8. Section 362 of the Cr. P.C. states as follows:

“Court not to alter judgment same as otherwise provided by this Code or by any other law for the time being in force, no court, when it has signed its judgment or final order disposing of a case, alter or review the same except to correct a clerical or arithmetical error.”

9. The learned Trial Court after pronouncement of the order dated 30.05.2007 and signing the same could not recall the same in view of the provision enunciated in Section 362 Cr. P.C.

10. In the opinion of this Court the complainant bank should not be prejudiced due to an act on the part of the advocate and accordingly the impugned order dated 30.05.2007 passed by the learned Metropolitan Magistrate, 12th court, Kolkata in C-12303/06 is set aside and accordingly the appeal is allowed.

11. The learned Trial Court is further directed to dispose of the matter as expeditiously as possible without granting any adjournment to either of the parties except any unforeseen circumstances.

12. I record my appreciation for the able assistance rendered by Mr. Arnab Chatterjee, learned advocate, as *amicus curiae* in disposing of the appeal.

13. Lower court records along with a copy of this judgment be sent down at once to the learned trial court for necessary action.
14. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)