

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.A No. 90 of 2010

M/s. M.N. Enterprise

Vs.

State of West Bengal & Ors.

Judgment on: 18/05/2023

Rai Chattopadhyay, J.

- (1) In this appeal the appellant/complainant has challenged the judgment and order of the Judicial Magistrate, 3th Court at Sealdah dated 16.11.2009. The judgment was delivered in C-854 of 2008.
- (2) The private respondents were tried for an offence under Section 138 and 141 of the Negotiable Instrument Act. In absence of any sufficient evidence to have been proved against them, the trial Court has acquitted the said accused persons. This appeal has been filed to assail the said impugned judgment of the trial Court.
- (3) This appeal has been filed in the year 2010 and pending since then.
- (4) This appeal has been listed before this Court on 22.03.2023. Since the date of listing of this appeal before this Court, the same

has been called on for twice, on each date of Court's functioning. However, no one has appeared either for the appellant or the State. Thus, in this appeal, it is found that the appellant has had a reasonable and sufficient opportunity of being heard, which he did not avail in spite of the appeal being pending and called on for a considerable period of time.

- (5)** It is also noted that during the time the present appeal has been pending before this Court and called on, no pleader for the appellant has also represented him, in spite of there being sufficient scope for him to appear to represent the appellant. Accordingly it is found that pleader on behalf of the appellant, if there is any, has also not availed the opportunity to represent the appellant in spite of there being sufficient scope and reasonable opportunity for that.
- (6)** Under such circumstance this appeal may be taken up for final determination, which shall not be in contravention and hostility with the provision under Section 384 (1) proviso (a) of the Cr.P.C.
- (7)** On perusal of the record it is also found not necessary to call for the record from the trial Court in connection with C-854 of 2008.
- (8)** The appellant has challenged the order of the trial court dated 16.11.2009, by dint of which trial court has dismissed the complaint case for non-prosecution. Appellant's case was under section 138 of the N.I. Act against the respondent due to dishonor

of cheque given by the respondent in discharge of legally enforceable liability.

(9) On the perusal of the certified copy of the impugned judgment it appears that the trial Court, in the same, has elaborately and categorically discussed on the evidence available before it, both ocular as well as others. The trial Court has analyzed the same and after through scrutiny, has come to a finding and decision which is a just, reasonable and plausible view, on the basis of the available evidence.

(10) This Court finds no cogent or sufficient reasons to interfere with such plausible decision, arrived at by the trial Court on the basis of the evidence on record. Hence, it is found that there is no sufficient ground for this Court to interfere with the finding of the trial Court and its decision in the impugned judgment and order. Hence, the appeal merits no success.

(11) Therefore, upon examining the petition of appeal and the copy of the impugned judgment and upon finding that there is no sufficient ground for interfering, CRA 90 of 2010 is dismissed in terms of the provision under Section 138 and 141 of the Negotiable Instrument Act.

(12) Urgent certified copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Rai Chattopadhyay, J.)