

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE**

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 726 of 2020

with

CRAN 1 of 2020

with

CRAN 2 of 2022

Abhijit Konar

Vs.

Abhijit Sarkar & Anr.

For the Petitioner : Mr. Bhaskar Seth,
Mr. Pranab Kumar Das.

For the State : None.

For the Opposite Party No. 1 : Mr. Abdur Rakib.

Heard on : 12.07.2023

Judgment on : 28.07.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against the judgment and order dated 29th November, 2019 passed by the Learned Sessions Judge, Birbhum, passed in Criminal Appeal No. 28 of 2019 arising out of the

judgment and order dated 19.02.2019 passed by the Judicial Magistrate, 3rd Court, Suri, Birbhum, in Complaint Case No. 537 of 2015 in the proceeding under Section 138 of the Negotiable Instrument Act, 1981.

- 2.** The petitioner's case is that on 26.02.2016 the opposite party no. 1 filed an application in the Court of the Judicial Magistrate, 3rd Court, Suri, under Section 138 of the Negotiable Instrument Act, 1981 against the petitioner alleging the facts that he is a trader and general order supplier carrying on business in the name and style as "Sunny Traders" situated at Sontsal. He further alleged that he supplied stone chips valued at Rs.6,74,999/- which the petitioner has received on 08.04.2014 vide invoice Bill No. 440/2014-15 against the said stone chips the petitioner issued an Account Payee Cheque on 23.09.2015. He deposited the said cheque in the SB A/c of Sunny Traders on 11.11.2015 when it was reported that the Bank Account has been closed. Thereafter a notice was issued to the petitioner through the learned Advocate on 18.11.2015. The said notice was delivered on 26.11.2015. On the basis of the said complaint, a case has been registered being No. C-537/15.
- 3.** The specific case of the petitioner herein is that the petitioner is an authorized supplier of Essr. Project at Kota, Panagarh. The opposite party no. 1, who is a supplier of stone chips in various categories agreed to supply stone chips (i) on deposit of a Blank Cheque, (ii) after delivery of stone chips payment would be effected. The said transaction continued till 2012. After 2012, there was no business with the said "Sunny Traders". That upto 2012 the amount due was paid to "Sunny Traders".

4. That the proceeding under Section 138, being Complaint Case No. 537/2015 has been disposed of with the following order :-

“That the case be and the same succeeds”.The accused person is found guilty of the charge under Section 138 of NI Act and is convicted under Section 255(2) Cr.P.C. The bail bond is hereby cancelled and he is taken into custody. The accused is hereby sentenced to pay compensation of Rs.6,75,000/- within 6 months from this day in default to suffer simple imprisonment for six months. The compensation, if and when paid would be disbursed to the complainant Abhijit Sarkar, on proper verification and identification. Let a copy of this judgment be given to the convict free of cost”.

5. Challenging the legality and validity of the said judgment and order dated 19.02.2019 an appeal was filed in the Court of the Learned Sessions Judge, Birbhum, being Criminal Appeal No. 28 of 2019.
6. After hearing, the Learned Sessions Judge was pleased to dismiss the appeal and affirm the judgment and order of the trial court.
7. **Mr. Bhaskar Seth, learned counsel for the petitioner** has submitted that the order impugned passed in Complaint Case No. 537 of 2015 is illegal, bad and not sustainable in the eye of law.
8. Written notes of argument has been filed on behalf of the petitioner submitting that the complainant/opposite party no. 1 did not file the complaint in its proper form and there is reflection to that effect before the Trial Court as well as the Appellate Court.
9. It is further stated that from the petition of complaint, it appears that the impugned cheque was issued in favour of “Sunny Traders” meant the ‘payee’ and the said cheque was deposited in the ‘S/B’ ‘a/c’ (savings

bank account) of “Sunny Traders” for encashment. The complainant in his deposition also stated that the account is a ‘savings account’.

10. It is also stated that from the ‘Indian Income Tax Return Acknowledgment’ for the Assessment Year 2014-15, it appears that the form of the business of “Sunny Traders” is a ‘Firm’ having PAN-ABEFS2474B and such return was digitally signed by Avijit Sarkar having PAN-AKAPS6945A in the capacity of ‘Partner’. A ‘Firm’, having PAN, cannot have any ‘savings account’ in its name. Ref: Para 6 (m) (i) of the Master Circular being RBI/2015-16/39 DBR No. Dir. BC.7/13.03.00/2015-16.
11. It has also been represented to the petitioner by the complainant that he is the “Sunny Traders”. But petitioner has never admitted “Sunny Traders” to be a ‘Firm’.
12. That no relationship between the complainant/opposite party no. 1 and “Sunny Traders”, could be said to have been established by the alleged documents relied upon.
13. The following judgment has been relied upon on behalf of the petitioner:-
 - (a) ***Milind Shripad Chandurkar vs. Kalim M. Khan & Anr.*** reported in ***(2011) 2 C Cr LR (SC) 244*** wherein the Court decided that in a sole proprietary concern the complainant has to prove that he is the sole proprietor of the said concern.
14. **Mr. Abdur Rakib, learned counsel for the opposite party no. 1** has also filed his written notes of argument on behalf of the opposite party no. 1 stating therein that:-

(i) The opposite party no. 1 is the complainant and is a trader and general order supplier carrying on business in the name and style of as “Sunny Traders” situated at Sontsal and as the cheque in the present case, issued in favour of “Sunny Traders” was dishonoured, the complainant initiated proceedings under Section 138 of the N.I. Act.

15. After consideration of evidence adduced by the opposite party no. 1/complainant as well as the petitioner/accused, the Learned Judicial Magistrate, 3rd Court, Suri, Birbhum has convicted the petitioner on 19th February, 2019 under Section 138 of the N.I. Act and sentenced him to pay compensation of Rs.6,75,000/- within 6 months from the date of the order, in default, to suffer simple imprisonment for 6 months.

16. Being aggrieved and dissatisfied with the judgment and order dated 19.02.2019 passed by the Learned Judicial Magistrate, 3rd Court, Suri, Birbhum in Complaint Case No. 537/2015, the petitioner/accused person has filed an appeal under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the ‘Cr.P.C.’) before the Court of Learned Sessions Judge, Suri, Birbhum and the same was registered as Criminal Appeal No. 28 of 2019 which was dismissed and the trial Court’s order was affirmed.

17. The same judgment in ***Milind Shripad Chandurkar vs. Kalim M. Khan & Anr. (Supra)*** has also been relied upon by the opposite party no. 1.

18. On considering the materials on record including the judgment of the Trial and Appellate Courts, it is evident that:-

- (a) As per the order placed by the petitioner/accused person, the opposite party no. 1 supplied to him, stone chips of various sizes 5/8" and 1/2" valued at Rs.6,74,999/- which the petitioner/accused received on 08.04.2014 and after receiving such stone chips, the petitioner/accused issued an Account Payee Cheque bearing no. 000476 in favour of "Sunny Traders" dated 23.09.2015 of Rs.6,75,000/- drawn on Axis Bank Limited, Panagarh Branch, District- Burdwan, West Bengal.
- (b) The complainant/opposite party no. 1 deposited the said account payee cheque in the S/B A/C of "Sunny Traders" on 09.11.2015 at Axis Bank, Suri Branch but the same was returned unpaid on 11.11.2015, the reason being that the said account was closed.
- (c) The complainant/opposite party no. 1 thereafter issued a legal notice, thereby asking the petitioner/accused to make the payment of cheque amount with additional cost of Rs.850/-, upon the petitioner/accused on 18.11.2015 and the legal notice was duly received by the petitioner/accused on 26.11.2015 but in spite of receipt of such Demand Notice, the petitioner/accused did not make any payment to the complainant/opposite party no. 1 within the stipulated period.
- (d) The complainant/opposite party no. 1 finding no other alternative, filed an application under Section 138 of the N.I. Act, before the Court of Learned Judicial Magistrate, 3rd Court, Suri, Birbhum against the

petitioner/accused and the same was registered as Complaint Case No. 537/15.

- 19.** There is no denial of issuing the cheque by the accused in discharge of his debt and liability and also it being dishonoured, and so also the valid notice. The only contention of the petitioner is regarding the status of “Sunny Traders” which is not clear.
- 20.** The transaction between the parties is on the basis of a verbal agreement.
- 21.** The business transaction between the parties is also admitted.
- 22.** It is on record by way of evidence before the trial Court that the complainant Avijit Sarkar carries on his business in the name of “Sunny Traders”.
- 23.** The petitioner/accused has not adduced any evidence to prove that the complainant is not the sole proprietor of his business. The complainant has clearly proved that he is the sole proprietor of his business “Sunny Traders”.
- 24.** Thus, the findings of the Appellate Court vide judgment and order dated 29th November, 2019 passed by the Learned Sessions Judge, Birbhum, passed in Criminal Appeal No. 28 of 2019 arising out of the judgment and order dated 19.02.2019 passed by the Judicial Magistrate, 3rd Court, Suri, Birbhum, in Complaint Case No. 537 of 2015 in the proceeding under Section 138 of the Negotiable Instrument Act, 1981 being in accordance with law, requires no interference by this court and is affirmed.

25. The revisional application being CRR 726 of 2020 is dismissed.

26. The petitioner is directed to comply with the judgment and order dated 29th November, 2019 passed by the Learned Sessions Judge, Birbhum, passed in Criminal Appeal No. 28 of 2019 arising out of the judgment and order dated 19.02.2019 passed by the Judicial Magistrate, 3rd Court, Suri, Birbhum, in Complaint Case No. 537 of 2015 in the proceeding under Section 138 of the Negotiable Instrument Act, 1981, within one month from the date of this order in default to suffer the sentence in default of fine.

27. All connected applications, if any, stands disposed of.

28. Interim order, if any, stands vacated.

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

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

(Shampa Dutt (Paul), J.)