

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 606 of 2019

Alamgir Russel Anwar

Vs.

Durgesh Chandra Sarkar & Anr.

For the Petitioner : Mr. Md. Kazi Safiullah.

For the State : None.

For the Opposite Party : None.
No. 2

Hearing concluded on : 04.09.2023

Judgment on : 29.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order and judgment dated 14.12.2018 in Criminal Revision No. 21 of 2018 passed by the learned Additional Sessions Judge, 3rd Court, Malda.
2. The petitioner's case is that in the year 2008, the petitioner being in certain financial trouble took loans from the opposite party no. 1 on two

occasions, one of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand) and next time Rs.30,00,000/- (Rupees Thirty Lakh).

3. To repay the said loans the petitioner issued two cheques in favour of the respondents one being cheque no. PWT 794807 dated 07.01.2008 amounting to Rs.1,50,000/- (Rupees One Lakh Fifty Thousand) only and another cheque being no. PWT 794809 dated 07.01.2008 bearing the face value of Rs.3,00,000/- (Rupees Three Lakh) only in the Punjab National Bank, Kumbhara Branch, Malda.
4. On presentation of the said two cheques to the bank concerned, both were dishonoured and on the said allegations the respondent instituted two complaint cases, one being 273C/2008 and another being 222C/2008. The total claims in respect of both the cases was Rs.4,50,000/- (Rupees Four Lakh Fifty Thousand) only against this petitioner in the Court of the Learned Judicial Magistrate, Malda.
5. On continuation of those cases for a long time in the Court of the learned Magistrate of Malda, the petitioner and the respondent came to an amicable settlement to the effect that the claims of both the cases be amalgamated and the respondent relinquished his claim of Rs.4,50,000/- from the petitioner by way of compromise and agreed to his total consolidated claim of Rs.2,50,000/- in respect of both those cases and had accepted Rs.1,50,000/- out of the said claim leaving behind the residual amount of Rs.1,00,000/- (Rupees One Lakh) out of the said settlement amount of Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand).

- 6. Mr. Md. Kazi Shafiullah, learned counsel for the petitioner** has submitted that the aforesaid amount of Rs.1,00,000/- (Rupees One Lakh) which remained unpaid to the respondent is the part of the compromise settlement between the parties which is not covered under any claim of the respondent under Sections 138/141/142 of the Negotiable Instrument Act, 1881 and the respondent admittedly did not file any complaint before any Court claiming the amount of Rs.1,00,000/- (Rupees One Lakh) in respect of any cheque having the face value of the said amount which had ever been issued by this petitioner in favour of the respondent and the same was never been dishonoured by any bank due to any deficiency on the part of this petitioner.
- 7.** That the rigour of the applicability of N.I. is in respect of those two cheques amounting to Rs.4,50,000/- has been extinguished at the moment the respondent agreed to amalgamate his claims in respect of his those two cheques for Rs.2,50,000/- only and subsequently accept Rs.1,50,000/- as the part payment of the said amount.
- 8.** That the impugned order dated 14.12.2018 of the Additional Sessions Judge, 3rd Court, Malda passed in Criminal Revision No. 21/2018 is not in any way sustainable both in facts and laws and the learned Revisional Court was oblivious of the fact that he was to adjudicate the conflict between the parties which originated from two cases under Sections 138/141/142 of the Negotiable Instrument Act, 1881 and when the same came before him for decision the same had lost its basic character by the

conduct of complainant (respondent herein) of the cases when the complainant relinquished his claims in respect of the so called two cheques, the dishonouring of which gave the Court the jurisdiction to try the alleged offences under the N.I. Act but the compromise and settlement between the parties over the payment of the claim by complainant (respondent herein) brought the arrear due as the civil liability for which no criminal prosecution lies.

9. That the learned trial Court wrongly decided the case without going to the merit of the same as the case concerned is in no way connected with any provision of the Negotiable Instrument Act, 1881.
10. That the respondent concerned on accepting the compromise to settle his all claims against the petitioner for Rs.2,50,000/- and accepting the part payment of the said sum, is deprived from the benefit of the provision of N.I. Act.
11. That claim of Rs.1,00,000/- of the respondent is not covered by any of the two cheques referred by the respondent before the learned Trial Court as none of the cheques given to him has the face value of Rs.1,00,000/-.
12. That the ultimate consolidated claim of Rs.2,50,000/- of the respondent against the petitioner, nowhere corresponds to his earlier claims against this petitioner in respect of the alleged two cheques referred above and as such claim of Rs.1,00,000/- of the respondent against this petitioner and in no way binds this petitioner to pay the same to the respondent and his

said claim is in no way recoverable under any provision of the N.I. Act as stated above.

13. It is thus prayed that the judgment and order under revision is liable to be set aside and the petitioner is to be acquitted of all charges.

14. In spite of best efforts to serve, the opposite party was not represented.

15. The relevant portion of the order of the Trial Court dated 02.02.2018 is as follows:-

“.....On perusal I find that the value of cheque of this case is Rs.3,00,000/-. It is admitted that in the year 2015 there was an agreement for settlement between the parties at an amount that is less than the cheque amount of this case. If both parties agreed to settle the case, this court would have nothing to say. But in this case as the complainant is not willing to accept lesser amount than the cheque amount, this court cannot force him to compromise the case at lesser amount.

Considering the above discussion, I am not inclined to allow the petition of the accused.....”

16. The said order was affirmed by the Sessions Court vide the order under revision dated 14.12.2018.

17. From the materials on record it appears:-

- i) At page 12 of the revisional application is the copy of the receipt dated 22.12.2015, duly signed by the complainant accepting

payment of Rs.1,50,000/- out of the settlement amount of Rs.2,50,000/-.

- ii) The cheque (two) dated 07.01.2008 are for Rs.1,50,000/- and Rs.3,00,000/- respectively.
- iii) **The cheque was presented (date not mentioned) on maturity but dishonoured.**
- iv) **Admittedly, the settlement, if any was not made between the period when the cheque was drawn and the day it was presented on maturity.**
- v) Settlement as stated failed as the settlement amount was not paid.
- vi) **On the date of the cheque being presented,** the total amount in the cheque was due and payable by the petitioner towards an enforceable debt/liability.

18. In *Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel & Anr.* reported in *2022 LiveLaw (SC) 830* wherein the Hon'ble Supreme Court held as follows:-

“30. In view of the discussion above, we summarise our findings below :

- (i) For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation;*
- (ii) **If the drawer of the cheque pays a part or whose of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally***

enforceable debt on the date of maturity would not be sum represented on the cheque;

- (iii) *When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted;*
- (iv) ***The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity.*** *The sum of rupees twenty lakhs represented on the cheque was not the 'legally enforceable debt' on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds; and*
- (v) *The notice demanding the payment of the 'said amount of money' has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the proviso to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138, the validity of the form of the notice need not be decided."*

19. Thus the contention of the petitioner that the claim of the balance amount on settlement not being the amount of cheque, the present proceeding under Section 138 N.I. Act being not maintainable, is not in accordance with law, **as the payment was not made between the date when cheque was drawn and the date when the cheque was presented on maturity, and on the date of presentation, the total cheque amount was payable by the petitioner towards an enforceable debt and liability.**

20. The revisional application being CRR 606 of 2019 is accordingly **dismissed.**

- 21.** The order and judgment dated 14.12.2018 in Criminal Revision No. 21 of 2018 by the learned Additional Sessions Judge, 3rd Court, Malda, is affirmed.
- 22.** Proceed in accordance with law.
- 23.** All connected applications, if any, stands disposed of.
- 24.** Interim order, if any, stands vacated.
- 25.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 26.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)