

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 609 of 2019

Barun Kumar Bose & Anr.

Vs

The State of West Bengal & Anr.

For the Petitioners : Mr. Mrityunjoy Chatterjee,
Mr. Manas Das.

For the State : None.

For the Opposite Party : Ms. Shreyashee Biswas,
Ms. Puja Goswami.

Heard on : 20.03.2023

Judgment on : 01.05.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for setting aside the judgment and order dated 31.01.2019 passed by Learned Court of Additional Sessions Judge, 3rd Court Howrah, in Criminal Appeal No. 09 of 2018, arising out of Complaint Case No. C/117 of 2008 (T.R. 87 of 2008) wherein the Learned Judicial Magistrate, 4th Court, Howrah by an order dated 13.11.2017 was pleased to convict the petitioners under Section 138 of the Negotiable Instruments Act, and passed a sentence to suffer simple imprisonment till rising of this Court and also directed to pay fine of Rs. 5,00,000/- in default to suffer imprisonment for a term of eleven (11) months.
2. The petitioner's case is that on 07.02.2008 the opposite party no. 2/complainant herein initiated a proceedings under Section 138 of the Negotiable Instruments Act, 1881 against the accused /petitioner herein inter alia alleging that the petitioner no.1 introduced himself before the complainant that he was always in charge of the partnership firm under the name of style of Raj Exports. It is further alleged that petitioner no. 1 approached the complainant for supply of certain quantity of lamcoke in favour of petitioner no.2. Accordingly on 25.05.2007 the said articles of Rs. 2,64,735/- excluding 4% vat charge was supplied and after receiving the said goods, the petitioner no. 2 issued two account payee cheques for an amount of Rs. 45,324/- and Rs. 2,30,000/- vide cheque no. 951177 and 950975, dated 25.05.2007 and 24.05.2007, drawn on Syndicate Bank, Baguihati

Branch, Kolkata – 700059 and on presentation of the said cheques for encashment before the complainant's bank being Corporation Bank, Howrah, the cheques were dishonoured vide return memo dated 20.11.2007 with the endorsement "Exceeds Arrangement" and such intimation was intimated to the complainant on 21.11.2007. Thereafter, the complainant issued a notice on 19.12.2007 through his Learned Advocate with a request for making payment of the entire amount covered by the 2(two) dishonoured Cheques within 15 days from the date of receipt of said notice. In spite of receiving the said notice the accused persons deliberately failed and neglected to pay the aforesaid amount and accordingly a complaint case had been filed before the Court of Learned Chief Judicial Magistrate, Howrah being Complaint Case No. 117 of 2008 for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and was transferred to the Court of Judicial Magistrate, 4th Court, Howrah.

3. The Learned Judicial Magistrate, 4th Court, Howrah was pleased to issue process against the petitioner.
4. The Learned Magistrate on completion of trial, passed the judgment and order dated 13.11.2017 convicting the petitioner for commission of offence punishable under Section 138 of the Negotiable Instruments Act, and sentenced the petitioner to suffer imprisonment till rising of the Court and also directed the petitioner to pay a fine of Rs. 5,00,000/-, in default, to suffer simple imprisonment for 11 months.

5. Being aggrieved with the order passed by the Learned Magistrate the petitioners preferred an appeal under Section 374 of Code of Criminal Procedure before the Learned District and Sessions Judge, Howrah and the said appeal was registered as Criminal Appeal No. 09 of 2018 and subsequently the said appeal was transferred to the Court of Additional Sessions Judge, 3rd court for disposal.
6. On 31.09.2019 the Learned First Appellate Court dismissed the said appeal and affirmed the judgment and order dated 13.11.2017 passed by the Learned Judicial Magistrate, 4th Court, Howrah in complaint case no. 117 of 2008.
7. It is submitted that the Learned Magistrate as well as the learned Additional Sessions Judge, 3rd Court, Howrah, failed to consider the fact that the complainant failed to establish any legally enforceable debt, as the cheques in question were never issued by the accused persons.
8. That the Learned Magistrate as well as the Learned Appellate Court failed to consider that no notice was served by the complainant demanding the amount in respect of the dishonoured cheques.
9. **Mr. Mrityunjoy Chatterjee, learned counsel for the petitioners** has submitted that the Learned Judge acted illegally and without jurisdiction in proceeding with the complaint where prima-facie offence of Negotiable Instruments Act is not disclosed.
10. The Learned Trial Court as well as First Appellate Court failed to consider the fact that the complainant failed to establish any legally enforceable debt, as

the cheques in question which was issued by the accuseds were mere security cheques.

11. The said cheques in question were post dated cheques kept with the complainant and with malafide intention the complainant has used to same.
12. **Ms. Shreyashee Biswas, learned counsel for the opposite party** has submitted that 15 years have passed but the petitioner has not paid the cheque amount. As such there has been financial loss caused to the opposite party **since 2007**.
13. It is further submitted that the judgment of the Trial Court and the Appellate Court are in accordance with law and needs no interference by this Court.
14. **The sentence passed by the Learned Magistrate is :-**
“..... sentenced to suffer simple imprisonment till rising of this Court and directed to pay fine of Rs. 5,00,000/- (Five Lakhs) i.d. to suffer s.i for 11 months.”
15. The Appellate Court has affirmed the judgment.
16. Hence the revision.
17. **The prayer of the petitioner is regarding his financial condition and his inability to pay the fine amount.**
18. Considering the fact and circumstances in this case and the fact that the total cheque (2) amount in this case is **Rs. 2,75,324/-** issued in the year 2007, it will meet the interest of Justice if the fine amount is reduced to Rs. 4,00,000/- (Four Lakhs) in default simple imprisonment for three months.
19. **CRR 609 of 2019 is disposed of accordingly.**

20. The order dated 31.01.2019 passed by Learned Court of Additional Sessions Judge, 3rd Court Howrah, in Criminal Appeal No. 09 of 2018, arising out of Complaint Case No. C/117 of 2008 (T.R. 87 of 2008) wherein the Learned Judicial Magistrate, 4th Court, Howrah by an order dated 13.11.2017 was pleased to convict the petitioners under Section 138 of the Negotiable Instruments Act, **is modified to the said extent.**
21. **The petitioner is directed to pay the said fine of Rs, 4,00,000 (Four Lakhs) within three months from the date of this order failing which he will undergo the sentence in default of fine. The substantive sentence, to suffer imprisonment till rising to Court remains unchanged.**
22. There will be no order as to costs.
23. All connected Applications stand 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.)