

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

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 693 of 2019

with

CRAN 1 of 2019

(Old No. CRAN 868 of 2019)

M/S. Calyx Project India (P) Ltd. & Anr.

Vs.

Sri Ashis Kumar Chatterjee

For the Petitioners : Mr. Santanu Talukdar.

For the Opposite Party : None.

Hearing concluded on : 05.09.2023

Judgment on : 03.10.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against a judgment and order dated 03.10.2018 passed by the Learned Additional District & Sessions Judge, Durgapur, Burdwan, in Criminal Appeal No. 22 of 2016 thereby dismissing the appeal and affirming the judgment of conviction dated

30.11.2016 and order of sentence dated 30.11.2016 passed by the Learned Judicial Magistrate, 4th Court, Durgapur, Burdwan, in connection with Complaint Case No. C-359/2015 corresponding to T.R. No. 22/2015 whereby and whereunder the petitioners were convicted under Section 138 of the Negotiable Instruments Act, 1881 and petitioner no. 2 was sentenced to suffer simple imprisonment for 2 (two) years and also directed to pay a fine of Rs.8,40,000/- (Rupees Eight Lakh Forty Thousand only) out of which Rs.10,000/- (Rupees Ten Thousand only) will be paid and disbursed as fine to the complainant and Rs.8,30,000/- (Rupees Eight Lakh Thirty Thousand only) shall be paid and disbursed as compensation to the complainant in default to suffer simple imprisonment for another 6 (six) months.

2. The petitioners' case is that the petitioner no. 1 is a company and the petitioner no. 2 is the Director of the petitioner no. 1 company.
3. The opposite party instituted Complaint Case No. C-359/2015 under Section 138/141 of the Negotiable Instruments Act before the Court of the Learned Additional Chief Judicial Magistrate, Durgapur, Burdwan on 13.07.2015 inter alia alleging that:-

"The accused no. 2 is one of the Director as well as the authorized representative of the accused no. 1 (herein after referred as M/S Calyx Project India (P) Ltd.) and in lieu of providing residential flat developed by the company received a sum of Rs.1,00,000/- from the complainant in the year of 2013 as earnest money out of total cost of the flat amounting to Rs.18,19,660/- (Rupees Eighteen Lakhs Nineteen Thousand Six Hundred and Sixty only) and thereafter entered into an agreement for sale with the present complaint dated 17.07.2013. On the basis of this agreement for sale this

complainant took housing loan from United Bank of India, ASP Branch, vide loan account no.0205306515841, which was sanctioned on 10.08.2013 by the above stated Bank. The partial cost of the residential flat being no. 3B/OPAL Block –A at ACL, Sankarpur, amounting of Rs.3,63,932/- (Rupees Three Lakhs Sixty Three Thousand Nine Hundred and Thirty Two only) was issued by the United Bank of India, ASP Branch in favour of M/S Calyx Project India (P) Ltd. (hereinafter referred to as accused no. 1) from the loan amount of this complainant. The EMI of this housing loan was calculated at the rate of Rs.12371/- per month. Later on 24.02.2014 this complainant served a notice for cancellation of booking of flat made by him under construction project of the accused company and the same was accepted by the accused no. 2 being Director of the said company and thereafter in discharge of the legal liability the accused person no. 2 issued two cheque bearing no. 000123 dated 30.04.2015 amounting to Rs.1,50,000/- and cheque bearing no. 000155 dated 31.05.2015 amounting to Rs.2,70,898, drawn on HDFC Bank, City Center Branch, Durgapur as authorized signatories and the said cheques were presented with the United Bank of India, Durgapur Branch by the complainant on 03.06.2015 and 10.06.2015 respectively for encashment. The complainant got to know about the dishonour of these two cheques on 04.06.2015 and 11.06.2015 respectively by the concerned Bank with endorsement “PAYMENT STOPPED BY DRAWER”. Thereafter notice under Section 138 of N.I. Act was given by the complainant on 12.06.2015, which was received by the accused persons on 13.06.2015 and that as even after the statutory period of 15 days was over, and the accused person did not remit the amount in favour of the complainant, the complainant filed this case on 13.07.2015”.

4. On conclusion of trial, the Learned Judicial Magistrate, 4th Court, Durgapur, Burdwan passed the judgment of conviction dated 30.11.2016 and order of sentence dated 30.11.2016 in connection with Complaint Case No. C-359/2015 corresponding to T.R. No. 22/2015.

5. Being aggrieved by the judgment of conviction, the petitioners preferred an appeal before the Court of the Learned Additional District & Sessions Judge, Durgapur and the same was numbered as Criminal Appeal No. 22 of 2016.
6. As a result of non-representation or proper representation of the petitioner no. 2 before the Court of the Learned Additional District & Sessions Judge, Durgapur, Burdwan, the Learned Additional District & Sessions Judge, Durgapur, Burdwan proceeded to dismiss the appeal without assigning any reason and by virtue of the impugned judgment upheld the judgment of conviction and order of sentence of the Learned Magistrate.
7. **Mr. Santanu Talukdar, learned legal aid counsel appointed to represent the petitioners** has submitted that the Learned Additional District & Sessions Judge, Durgapur, Burdwan, was under an obligation to at least appoint an Advocate as *amicus curiae* or any Learned Advocate from the panel of the District Legal Services Authority to represent the petitioners and should have proceeded to hear out the appeal on merit and then proceed to affirm the judgment of the learned Magistrate or else the Learned Additional District & Sessions Judge, Durgapur, Burdwan, should have simply dismissed the matter on default but unfortunately such a satisfaction has not been recorded in the impugned order.
8. It is thus submitted that the judgment under revision is thus patently illegal and warrants interference by this Hon'ble Court to secure the ends of justice.

9. **There is no representation on behalf of the opposite party. Service through Administrative Notice has returned with endorsement “left H.R. to sender”.**

10. **The judgment and order under revision is as follows:-**

“Order dated 03.10.2018

Respondent files hazira through Ld. Adv.

Today is fixed passing orders.

Order passed in open Court to that effect.

Hence it is Ordered.

That the appeal be and the same is hereby dismissed. The judgment & order of conviction and sentence passed by Ld. J.M., 4th Court, Dgp on 30.11.16 in C/R 359/15 is hereby affirmed.

The convict is hereby directed to surrender before the Ld. Trial Court within one month from the date of this order to serve out the sentence.

The Ld. Court below is directed to take resort to take up all coercive measures if the convict does not surrender to serve out the sentence.

Send back the LCR to the Ld. Court below along with a copy of this order.

**Sd/-
Additional Sessions Judge
Durgapur”**

11. **Section 384 of Cr.P.C. lays down:-**

“384. Summary dismissal of appeal.-

(1) If upon examining the petition of appeal and copy of the judgment received under section 382 or section 383, the Appellate Court considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily: Provided that-

(a) no appeal presented under section 382 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same;

(b) no appeal presented under section 383 shall be dismissed except after giving the appellant a reasonable opportunity of being heard in support of the same, unless the Appellate Court considers that the appeal is frivolous or that the production of the accused in custody before the Court would involve such inconvenience as would be disproportionate in the circumstances of the case;

(c) no appeal presented under section 383 shall be dismissed summarily until the period allowed for preferring such appeal has expired.

(2) Before dismissing an appeal under this section, the Court may call for the record of the case.

(3) Where the Appellate Court dismissing an appeal under this section is a Court of Session or of the Chief Judicial Magistrate, it shall record its reasons for doing so.

(4) Where an appeal presented under section 383 has been dismissed summarily under this section and the Appellate Court finds that another petition of appeal duly presented under section 382 on behalf of the same appellant has not been considered by it, that Court may, notwithstanding anything contained in section 393, if satisfied that it is necessary in the interests of justice so to do, hear and dispose of such appeal in accordance with law."

12. *In many cases the Supreme Court disapproved summary dismissal of appeals - see (1981) 2 SCC 575; (1974) 4 SCC 213: AIR 1983 SC 66: 1982 Cr LJ 1972 : (1982) 2 SCC 396. Even if the appellant's lawyer refuses to argue, the court must, instead of summarily dismissing the appeal, appoint an advocate amicus curiae and then proceed to dispose of the appeal on merits – 1981 Supp. SCC 75.*

13. The contention of Mr. Talukdar, the learned legal aid counsel on behalf of the petitioners is thus in accordance with law.

- 14. The learned Sessions Court in the present case dismissed the appeal against conviction in limine and without considering the appeal on merit upheld the order of conviction passed by the learned Trial Court, which clearly is against the principle of natural justice. Thus, in the interest of justice, the judgment and order under revision is liable to be set aside as there has been serious miscarriage of justice.**
- 15. The revisional application being CRR 693 of 2019 is accordingly allowed.**
- 16. The impugned judgment and order dated 03.10.2018 passed by the Learned Additional District & Sessions Judge, Durgapur, Burdwan, in Criminal Appeal No. 22 of 2016 thereby dismissing the appeal and affirming the judgment of conviction dated 30.11.2016 and order of sentence dated 30.11.2016 passed by the Learned Judicial Magistrate, 4th Court, Durgapur, Burdwan, in connection with Complaint Case No. C-359/2015 corresponding to T.R. No. 22 of 2015 is set aside.**
- 17. It is directed that the appeal being no. 22 of 2016 is to be heard and decided afresh on merit by the learned Additional District & Sessions Judge, Durgapur, Burdwan, within a period of 6 months from the date of this order.**
- 18. The Learned Additional District & Sessions Judge, Durgapur, Burdwan, shall take necessary steps to ensure the representation of the appellant, by due process, in accordance with law, through the appellants own lawyer. In case of non-representation even on being served, the Court**

shall appoint a legal aid counsel from the panel of the District Legal Service Authority and **dispose of the appeal on merit** and in accordance with law.

- 19.** All connected applications, if any, stands disposed of.
- 20.** Interim order, if any, stands vacated.
- 21.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 22.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)