

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

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.A No. 92 of 2012

Sandwip Rahut

Vs.

M/s. Cold Craft & Ors.

Judgment on: 15/05/2023

Rai Chattopadhyay,J.

(1) In this appeal the appellant/complainant has challenged the judgment and order of the Judicial Magistrate, 4th Court at Alipore dated 21.11.2011. The judgment was delivered in C-1213 of 2003.

(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 2012 and pending since then.

(4) This appeal has been listed before this Court on 08.05.2023.

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-1213 of 2003.
- (8)** The fact of the case in a nutshell is that the accused person no.1 is a partnership firm and accused nos. 2,3 & 4 are the partners of the accused firm. Complainant is the sole proprietor of "Auto

Electro Control” having business of selling of electrical control panel and sold some electrical goods to the accused firm. The accused persons to discharge their liability partially issued three A/C. payee cheques bearing nos. 753127 dated 23/04/2003 amounting to Rs. 25,000/-, 753128 dt. 28/03/2003 amounting to Rs. 25,588/- and 753129 dt. 23/04/2003 amounting Rs. 30,000/- all drawn on State Bank of India, Lake Gardens branch. All the three cheques were presented to the bank for encashment lastly on 07/05/03 through Indian Overseas Bank but the same were dishonoured with bank endorsement “refer to drawer” on 08/05/03. The fact of dishonor came to the knowledge of complainant on 09/05/03. Thereafter, the complainant sent one demand notice dt. 22/05/03 through his advocate to the accused persons by registered post with A/D on 22/05/03. But those letters returned to the complainant with remark “not claimed”. The accused persons did not pay the cheque amount hence, this case.

(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 92 of 2012 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.)