

03.02.2023

Item No.9
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 725 of 2021

**Hasibul Mallik
versus
UCO Bank formerly known as United
Commercial Bank, Illambazar Branch**

In Re: An Application under Sections 401 and 482 of the Code of Criminal Procedure, 1973.

Mr. Biswajit Hazra

... For the Petitioner.

The present revisional application has been preferred challenging the judgement and order dated 28.05.2019 passed by learned Additional District and Sessions Judge, Bolpur, Birbhum in Criminal Appeal No. 5 of 2018 wherein the learned appellate court was pleased to affirm the judgement and order dated 21.02.2018 passed by learned Judicial Magistrate, 2nd Court, Bolpur, Birbhum in connection with Complaint Case No. 27 of 2015 (TR-33 of 2015) under Section 138 of the Negotiable Instruments Act.

Records reflect that the case under Section 138 of the Negotiable Instruments Act was initiated for dishonour of a cheque bearing No. 240038 dated 13.01.2015 drawn on State Bank of India, Sukhbazar Branch amounting to Rs.9,94,107/-.

The learned Magistrate at the end of the trial and on assessment of the records of the case found that oral and documentary evidence so relied upon by the prosecution was in compliance with the statutory provisions and was further of the opinion that the accused failed to rebut the

presumptions under Section 139 of the Negotiable Instruments Act. The learned trial court as such was pleased to arrive at a finding of guilt so far as the present petitioner is concerned and sentenced the petitioner for a period of one month simple imprisonment and to pay an amount of Rs.12,00,000/- as compensation to the complainant, in default to undergo simple imprisonment for a period of six months.

Challenging such judgement and order of conviction and sentence, the petitioner approached the learned sessions court and the appeal was finally heard out by the learned Additional District and Sessions Judge, Bolpur, Birbhum. Learned appellate court/sessions court, on an appreciation of the materials afresh, was pleased to dismiss the appeal and affirm the judgement and order dated 21.02.2018 passed by the learned Judicial Magistrate, 2nd Court, Bolpur, Birbhum.

I have considered the reasons so assigned by both the courts below and I find that there are concurrent findings of fact so far as the issue relating to legally enforceable debt or liability is concerned. The defence case is one of mere denial and is unable to overcome the statutory presumptions of Sections 118 and 139 of the Negotiable Instruments Act. Having considered the same, I am of the view that there is no scope for interference in the judgement and order passed by the learned appellate court.

Accordingly, the revisional application being CRR 725 of 2021 is dismissed.

All pending connected applications, if any, are also dismissed.

Learned Magistrate is directed to execute the sentence so imposed in connection with the instant case.

Department is directed to communicate this order to the learned Judicial Magistrate, 2nd Court, Bolpur, Birbhum.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)