IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 938 of 2011

M/S PHARMA TRADERS & ORS.
VS.
JAGADISH CHANDRA GUPTA & ANR.

For the Petitioners	: Mr. Ayan Bhattacharjee, Adv. Mr. P.K. Khan, Adv. Mr. Subhajit Manna, Adv. Mr. Somdev Ash, Adv. Mr. Shounak Mondal, Adv.
For the O.P.	: Mr. B.K. Roy, Adv.
Hearing concluded on	: 21st April, 2023
Judgement on	: 24th April, 2023

Siddhartha Roy Chowdhury, J.:

1. This criminal revision is a manifestation of displeasure of the petitioners who have been held guilty by the learned Court of 12th Metropolitan Magistrate, Calcutta for committing offence under Section 138/141 of the N.I. Act and the said order of conviction has been affirmed by the learned Additional District and Sessions Judge, 1st Fast Track Court, Bichar Bhavan, Calcutta.

2. Briefly stated, the complainant the Premier Medical Supplies and Stores filed a petition of complaint under Section 138 of the N.I. Act before the learned Chief Metropolitan Magistrate, Calcutta which was subsequently disposed of by learned 12th Court of Chief Metropolitan Magistrate, Calcutta. It was contended by the complainant that a

cheque was issued by M/s. Pharma Traders, a partnership firm in discharge of their obligation in favour of the Premier Medical Supplies and Stores, to the tune of Rs. 6,54,310.55/- drawn on United Bank of India, Santoshpur Branch, Kolkata-700 032 being cheque No. 014124 dated 29th March, 1995 which was presented to the Bank by drawee dishonoured for want of fund. This fact was brought to the notice of the drawer of the cheque by giving a statutory notice calling upon the drawer of the cheque to pay the cheque amount which was not adhered to. Thus complaint case was filed.

3. Learned Trial Court after considering the evidence on record, disposed of the complaint case on 28th September, 2007 and thereby recorded an order of conviction. The said judgment and order of conviction was challenged in appeal being Criminal Appeal No. 100 of 2007 and the learned Appellate Court by judgement dated 10th June, 2008 was pleased to remit the case with the direction upon the learned Trial Court to rewrite the judgement, taking into consideration the payment made by the accused persons and to revisit the quantum of compensation that was awarded by learned Trial Court. In consonance with direction of the Appellate Court, learned Trial Court disposed of the complaint case, taking into consideration the following fact: "..... and it also appears that D.W.1 during his cross-examination admitted that he did not make any payment in respect of the bills marked as Ext. 9 in this case." While passing the impugned judgment learned Appellate Court did not consider it as a point to ponder. According to learned Appellate Court,

the concern of learned Trial Court was the dishonour of cheque and the amount of cheque. It is held:- "It may be that the outstanding liability may vary but that is not to be considered. The demand notice, it is well settled, must correspond to the exact amount written in the cheque." With the aforesaid observation of learned Trial Court was pleased to pass the order impugned. Mr. Ayan Bhattacharjee submits that learned Appellate Court failed to appreciate the statutory mandate as laid down under Section 56 of the N.I. Act. According to Mr. Bhattacharjee, a proceeding under Section 138 of the N.I. Act can be initiated if a cheque drawn by a person in discharge of, in whole or in part, any debt or any other liability, is returned by the bank unpaid for reason laid down in the statute itself.

4. Cheque must be issued in discharge of any debt or other liability either in whole or in part. Here admittedly after issuing the cheque, the drawer of the cheque made a payment of certain amount. From the judgement impugned it appears that a sum of Rs. 6036.83/- was paid by the drawer of the cheque against bill No. 3537 on 3rd April, 1995. After the cheque was drawn on 29th March, 1995 and before it was returned on 24th April, 1995. According to Mr. Bhattacharjee, this fact clearly indicates that the part payment was made before the cheque was presented through the bank. This part payment obviously reduced the quantum of liability from the shoulder of the accused person. Thus there was no reason for the learned Appellate Court to hold that the cheque was issued in discharge of either whole or part of liability, by the drawer.

5. The cheque amount as a matter of fact was not supposed to be paid to the drawee. The mandate of Section 56 of the N.I. Act is that a factum of part payment is required to be endorsed on the instrument so that the same could be negotiated for the balance. Absence of any action in consonance with the statutory mandate as laid down under Section 56 of the N.I. Act strikes at the root of the proceeding in question. Therefore, same may be quashed. In support of his contention Mr. Bhattacharjee relies upon a judgment of Hon'ble Supreme Court pronounced in the case of ***Dashrathbhai Trikambhai Patel -Vs- Hitesh Mahendrabhai Patel & Anr.*** reported in **2022 (14) SCALE 623** wherein Hon'ble Apex Court held that for the commission of offence under Section 138 of the N.I. Act, the cheque that is dishonoured must repay a legally enforceable debt on the date of maturity or presentation.

6. Section 56 of the N.I. Act envisages:-

> *"56. Indorsement for part of the sum due- No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance."*

7. Since part payment has been made after the debt was incurred and before the cheque was encashed, the entire cheque amount cannot be said to be legally enforceable debt. Thus, the accused persons cannot be said to have committed any offence within the

meaning of Section 138 of the N.I. Act when the cheque was dishonoured.

8. Under such circumstances, I am of the view that the learned appellate Court was not justified in affirming the order of conviction passed by learned Trial Court in view of Section 56 of the N.I. Act.

9. The impugned judgment is, therefore, liable to be set aside. However, this judgment does not preclude the complainant /opposite parties before the Court to take out any proceeding according to law against the petitioners to recover the debt.

10. With this observation the criminal revision is disposed of.

11. Let a copy of this judgement be sent down to the learned Trial Court for information and necessary compliance.

12. Urgent certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

SIDDHARTHA ROYCHOWDHURY

Digitally signed by SIDDHARTHA ROYCHOWDHURY
Date: 2023.04.24 18:00:18 +05'30'

(SIDDHARTHA ROY CHOWDHURY, J.)