

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

CRR 1286 of 2015

Debabrata Das
Vs.
Somnath Dutta & Anr.

Mr. Bapin Baidya
... For the petitioner

Mr. Sandipan Pal
Ms. Tithi Chakraborty
... For the opposite party no.1

1. This revisional application has been filed assailing the judgment and order passed in Appeal No.118 of 2011 after being aggrieved with the judgment and order of acquittal passed by the learned Judicial Magistrate, 1st Court, Alipore whereby the learned Judge acquitted the accused. The learned Additional Sessions Judge, 9th Court, Alipore exercising his appellate jurisdiction allowed the appeal by reversing the order of acquittal and convicted the petitioner under Section 255(2) of the Code of Criminal Procedure (in short, CrPC) for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the "NI Act") and sentenced him to suffer simple imprisonment for six months for the said offence along with an order to pay a fine of Rs.3,36,000/-.

2. Being aggrieved, the instant revisional application has been filed by the petitioner/accused.

3. Learned advocates appearing on behalf of the parties to this revisional have submitted that the entire amount was paid by the accused/petitioner to the complainant/opposite party no.1.

4. However, the learned additional Sessions Judge, 9th Court, Alipore entertained the appeal under Section 372 of the CrPC against the judgment and order dated 4th July, 2011 passed by the learned Judicial Magistrate, 1st Court, Alipore in connected with the Case No. C-47799/2003 (TR – 608 of 2003) for the offence under Section 138 of the NI Act whereby the learned Magistrate acquitted the accused.

5. In case of an order of acquittal in a proceeding under Section 138 of the NI Act, being a complaint case, the appeal cannot be entertained under Section 372 of the CrPC instead of taking special leave to appeal under Section 378(4) of the CrPC. Not only that, granting of leave under Section 378(4) of the CrPC is an exclusive domain of the High Court and, therefore, the learned Additional Sessions Judge ought not to have taken up the appeal under Section 372 of the CrPC having no jurisdiction to entertain the special leave under Section 378(4) of the CrPC.

6. On this score only, the judgment and order passed in Appeal No.118 of 2011 stands set aside.

7. The revisional application, being CRR 1286 of 2015, stands disposed of accordingly.

8. Interim order, if any stands vacated.

9. Criminal Section is directed to supply certified copy of this order, if applied for, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)