

01.12.2023

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CRA 315 of 2009

In Re : Surojit Kumar Das.

.... appellant.

Ms. Suparna Chatterjee, *ld. Amicus Curiae*
... for the appellant

Ms. Faria Hossain

.... for the opposite party No.1.

The instant appeal has been filed by the appellant being aggrieved by the judgment and order of acquittal dated 20.12.2008 passed by the learned Judicial Magistrate, 1st Class, 6th Court in C.R. Case No. 547/2006 (T. R. Case No. 142/2006) arising out of an application under Section 138 of the N.I Act.

The learned advocate for the appellant/complainant submitted that the opposite party No. 2 obtained a sum of Rs. 1,35,000/- as loan amount from the complainant to repay the same within a month through a cheque in order to discharge his liability. On 17.08.2006 the opposite party No.2 presented the aforesaid account payee cheque Vijaya Bank, KGP Branch bearing No. 06A/200 AB- 7682882 amounting to Rs. 1,35,000/- bearing the signature of the opposite party No.2. The said cheque being presented before the aforesaid bank could not be encashed due to insufficient fund.

The appellant was issued a lawyer's notice to the opposite party No.2 for payment of the cheque amount within 15 days on 30.08.2023. However, the cheque amount was not disbursed and a complaint was filed on 20.09.2016. The learned Magistrate after assessing the evidence adduced and acquitted the opposite party No.2 by an order 20.12.2008.

The learned advocate for the appellant/complainant submitted that the impugned judgment was erroneous for lack of appreciation both oral and documentary evidences as there was sufficient liability on the part of the opposite party to repay the cheque amount.

The learned advocate for the opposite party No.2 stressed upon the absence of any legal liability for the cheque to have been issued. The issue pertains to the issuance of 16 cheques to Pravat Kumar Das to avail LIC house building loan for which the said Pravat Kumar Das issued one receipt. The said receipt was marked as Ext. No. B. the said Pravat Kumar Das was not present before the Court. The relationship of the complainant and the opposite party No.2 with regard to the transaction in favour of the legal liability or any debt could not be assessed.

On perusal of the materials on record and the lack of evidence to prove the guilt of the opposite party No.2 this Court is not inclined to interfere with the impugned judgment and order. Accordingly, the instant appeal is disposed of.

The Lower Court Records be sent down to the learned trial court for advance.

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

(Ananya Bandyopadhyay, J.)