

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.R. 2025 of 2021

***Rajib Banerjee
versus
Debabrata Banerjee & Anr.***

For the Petitioner : Md. Sabir Ahmed,
Md. Abdur Rakib,
Mr. Biswajit Sarkar,
Mr. Shraman Sarkar,
Mr. Dhiman Banerjee.

For the Opposite Party No.1. : Mr. Kishore Mukherjee.

Heard On : 13-03-2023, 22.03.2023 & 30-03-2023.

Judgement On : 30-03-2023.

Tirthankar Ghosh, J. :

The present revisional application has been preferred by the petitioner against the judgement and order dated 25.02.2020 passed by the learned Additional Sessions Judge, Fast Track Court, Durgapur, Paschim Bardhaman in Criminal Appeal No. 02 of 2018 wherein the learned appellate court was pleased to affirm the judgement and order of conviction and sentence dated 04.01.2018 passed by learned Judicial Magistrate, 4th Court, Durgapur in C. Case No. 679 of 2015 corresponding to T.R. No. 167 of 2015.

The sentence so imposed by the learned Judicial Magistrate, 4th Court, Durgapur by its judgement and order dated 04.01.2018 were to the effect that the accused/petitioner shall suffer simple imprisonment for two years and also pay fine of Rs.8,00,000/- for commission of offence punishable under Section 138 of the Negotiable Instruments Act, out of which Rs.10,000/- would be disbursed as fine and Rs.7,90,000/- should be paid as compensation to the complainant.

The complainant in his complaint alleged that the accused in course of business, took construction materials worth Rs.11,00,000/- out of which he paid only Rs.4,00,000/-. After several demands, the accused did not pay the money, but by way of affidavit dated 07.01.2015 undertook to refund the same by 31.01.2015. The accused failed to keep his promise and on repeated persuasion, issued an account payee cheque bearing No. 348898 amounting to Rs.7,00,000/- drawn on Punjab National Bank, Bhiringee Branch, Durgapur-13 in favour of the complainant. The complainant presented the said cheque with his banker Central Bank of India for encashment which was dishonoured with the bank for 'insufficient fund'. The bank return memo dated 24.09.2015 was received by the complainant and thereafter he sent a demand notice dated 19.10.2015 which was received by the accused and in spite of receipt of the notice, the accused failed and neglected to make

payment in respect of the amount covered by the dishonoured cheque and as such, the complainant filed the complaint on 27.11.2015.

The complainant in order to prove his case relied upon his evidence as PW-1 as also the following documents :

Exhibit P-1 – Cheque bearing no. 348898 dated 15.09.2015;

Exhibit P-2 – Returned Memos dated 24.09.2015;

Exhibit P-3 – Demand notice dated 19.10.2015 along with Postal receipt & Postal track report;

Exhibit P-4 – Notarised declaration made by the accused.

On the other hand, no oral or documentary evidence was relied upon. However, the defence insisted on the answers divulged by the complainant in course of cross-examination and the documentary evidence so relied upon in course of examination-in-chief.

Mr. Ahmed, learned advocate appearing for the accused/petitioner made his oral submissions as also filed written notes of argument before this Court. The contentions of the learned advocate for the accused/petitioner are set out as follows :

“That from the reading of the deposition of the opposite party no.1/complainant dated 29.06.2017 it would be evident that in his memorandum of evidence he only mentioned about his signature in the examination in chief and thereafter he went on to tender the exhibits. He did not specifically state the contents and/or averments made in his examination in chief

at the time of his deposition admitted the due as of any 6 lakhs.

That in his cross-examination PW-1 has failed to show any document as a proof of due of Rs. 11 lakhs by the complainant. He further admitted that he received a cheque on 03.10.2015 amounting Rs.3,00,000/- issued by petitioner, PW-1 also admitted to have received a sum of Rs.4,00,000/-.

That the complainant accepted in his affidavit in chief that he has received Rs.4,00,000/- (para 3 of Affidavit in Chief). "That the accused returned me Rs.4,00,000/- after long persuasion and assured that he would return the due amount within some time".

Therefore, conjoint reading of the deposition of the opposite party and the complaint lodged by him it is admitted that he has received a sum of Rs.7,00,000/- from the petitioner herein. Although, the complainant in his complaint also relied upon the Declaration in his complaint where it is admitted that an amount of Rs.6,00,000/- was due. Therefore, it can be deduced that there is contradiction with regard to claim/debt.

Moreover, the opposite party has received the due amount vide a cheque dated 03.10.2015 which has been admitted by him in his cross-examination. After receiving entire due amount there is no pending due/debt by the petitioner against the opposite party and on such ground only the impugned orders should be set aside.

That the Learned Judges of both the Court below did not apply their judicial mind by not considering that the petitioner took total construction materials of Rs.7,00,000/- from the opposite party no.1 on credit and at first paid Rs.4,00,000/-

in cash and then by a cheque of Rs.3,00,000/- dated 03.10.2015, which was duly encashed by the opposite party no.1, and the total amount of construction material was paid but the opposite party no.1 instead of returning the security cheque of Rs.7,00,000/- has presented the same to the bank which was dishonoured and filed the instant complaint case and not only that the opposite party has also suppressed the fact in his complaint from the Court that the said cheque of Rs.3,00,000/- was issued by the petitioner and duly encashed by him which proves the ulterior motive of the opposite party no.1 behind filing this complaint and the Learned Magistrate and the Learned Judge of the Court below though observed the same but did not consider those and passed the impugned judgement and orders against the petitioner and as such the said judgments and orders are arbitrary, mala fide and need be quashed at the earliest.

That the cheque of Rs.3,00,000/- is on 03.10.2015 and the cheque in question is dated 15.09.2015; why would a person issue a cheque of Rs.7,00,000/- and Rs.3,00,000/- both when admittedly from the document dated 07.01.2015 specifically indicates that the due is Rs.6,00,000/-. As such the legally enforceable debt has not been proved beyond reasonable doubt and the petitioner has been able to rebut the presumption against him.”

Mr. Mukherjee, learned advocate appearing for the complainant/opposite party no.1 submitted that plea taken by the petitioner is a belated plea. He further submitted that both the trial court and the appellate court disbelieved such reasons so assigned and

contended that mere verbal denial coupled with misleading the court without adducing any evidence do not satisfy the requirements in a case under Section 138 of the Negotiable Instruments Act.

I have considered the submissions advanced by the learned advocates appearing for the petitioner as well as the opposite party no.1, the emphasis is laid by the petitioner in the affidavit relied by the complainant being Exhibit 'P-4' coupled with certain answers in cross-examination referring to separate transactions. The petitioner has also taken up the plea that the cheque was issued by way of security and as the dues so claimed is cleared, the alleged dishonoured cheque was not backed by any legally enforceable debts or liability. The main thrust of contention of the petitioner relates to amount of a sum of Rs.4,00,000/- which was contended by the complainant and an answer in cross-examination that a sum of Rs.3,00,000/- was already disbursed by way of a cheque which was encashed subsequently when the present cheque was in the possession of the complainant. The cumulative appreciation of such oral evidence may raise a *prima facie* view, but to overcome the rigours of Section 139 of the Negotiable Instruments Act such a general logic or prudence is insufficient. It was incumbent upon the accused to dislodge the evidence which was deposed. Mere general logic without any supporting documentary evidence does not qualify as a rebuttal in a case under Section 138 of the Negotiable Instruments Act, furthermore,

when the prosecution placed its evidence that a sum of Rs.11,00,000/- was due and the nature of contention or the defence taken in this particular case at least gives an impression that there was a business relationship between the parties. The learned trial court as well as the learned appellate court has considered the said issue so far as the plea of a sum of Rs.4,00,000/- and cheque of Rs.3,00,000/- being encashed. Whether the said cheque of Rs.3,00,000/- was for the same transaction or separate transaction is not appearing in the records of the case. The plea of security cheque as such could have been of importance if the accounts were placed. Further the trial court and the appellate court both have appreciated the facts of the case. The same points were canvassed before both the courts below. I do not find that the appreciation of facts by the trial court and the appellate court were against the records or there was any manifest error appearing in the records which call for interference by this Court in respect of the findings arrived at by the trial court and affirmed by the appellate court. Consequently, I have no reasons to interfere with the judgement delivered by the learned trial court and the same being affirmed by the learned appellate court.

However, the sentence so passed is modified to the extent that the petitioner will suffer sentence of one year and the compensation amount would remain unaltered as directed by the learned Judicial Magistrate,

4th Court, Durgapur in its judgement and order dated 04.01.2018. The said sentence would be effected after 11.08.2023. If the petitioner, by 11.08.2023, in four equal instalments pay the compensation amount of Rs.6,40,000/- (as a sum of Rs.1,60,000/- has already been deposited and withdrawn by the complainant), then in that case, the learned trial court would be at liberty to declare the petitioner as acquitted of the charges and will not enforce the sentence as imposed above. The first of such instalment of Rs.1,60,000/- should be paid by 07.04.2023 before the learned Judicial Magistrate, 4th Court, Durgapur.

With the aforesaid observations, the revisional application being CRR 2025 of 2021 is disposed of.

Pending connected application is consequently disposed of.

Department is directed to send back the lower court records along with a copy of this judgement immediately to the respective courts.

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.)