IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 446 of 2006

Insight Share Brokers Ltd.
-Vs-
Sanjay Mukherjee

For the Petitioner (Amicus Curiae)	: Mr. Arnab Chatterjee
For the Opposite Party	: Mr. P.C. Das
Heard on	: 27.02.2023, 03.08.2023.
Judgment on	: 09.08.2023.

Ananya Bandyopadhyay, J.:-

1. This instant criminal appeal is preferred by the petitioner company being against a judgment and order acquittal dated 13.03.2006 passed by Learned Metropolitan Magistrate, 12th Court, Calcutta in Case No. C/4057/2000 (T.R. No. 313 of 2000) acquitting the respondent from the accusation of having committed offence punishable under Section 138 of the Negotiable Instruments Act.
2. The Petitioner Company is engaged in the business of share Broking transactions and a Registered Member of the National Stock Exchange. The Respondent was a "Trading Member" of the Petitioner since 1999. In discharge of his legally enforceable debt and/or liability arising out of such transaction, the respondent issued one A/c. Payee Cheque under his

signature in favour of the Petitioner Company particulars whereof are set out herein below:

Cheque No.	Date	Drawn on	Amount (Rs.)
963038	12.07.2000	Bank of Maharashtra, N. S. Road, Calcutta – 700001.	2,25,000.00/-

3. The aforesaid Cheque was duly presented for encashment to the banker of the Petitioner Company but the said Cheque was returned unpaid with the remark “Insufficient Fund” vide Cheque Return Memo dated 15.07.2000 which came to the knowledge of the petitioner company on 17.07.2000.
4. Thereafter the Petitioner Company tried to contact the Respondent but failed to contact him as the respondent deliberately avoided the petitioner. The Petitioner Company thereafter issued a Legal Notice through its Advocate on 24.07.2000 which was sent by Registered Post with A/D. demanding the aforesaid sum of Rs. 2,25,000/- within 15 days from the date of receipt of the same. Inspite of receipt of such notice, which was acknowledged by the Respondent through his Advocate’s letter dated 02.08.2000, the Respondent failed and/or neglected to pay the said amount of money. The respondent thereby committed offence punishable under Section 138 of the Negotiable Instruments Act’s 1881.
5. Under such circumstances, the Petitioner Company through its authorised Representative filed a petition of complaint before the Learned Chief Metropolitan Magistrate, Calcutta being Case No. C-4057 of 2000. The Learned Chief Metropolitan Magistrate, Calcutta transferred the same to the court of the Learned Metropolitan Magistrate, 12th Court, Calcutta for trial

and disposal and the case was renumbered as T. R. No. 313/2000. The respondent entered appearance in the aforesaid case and claimed to be tried.

6. By an order dated 03.07.2001 the substance of accusation was read over to the respondent under Section 251 of the Code of Criminal Procedure, 1973.
7. In the course of trial in the instant case the petitioner company examined 1 witness being P.W. 1 namely Abhimanyu Maity and exhibited a number of documents. The defence of the respondent was one of innocence and false implication. It was the specific defence of the respondent that the Cheque in question was not issued in respect of any legally enforceable debt and/or liability. The defence did not examine any witness of his own.
8. By the impugned Judgment and order dated 13.03.2006 the Learned Magistrate was pleased to acquit the Respondent of the accusations levelled against him.
9. The Ld. Amicus Curiae submitted that -
    i. The Learned Magistrate failed to apply the provisions of Section 139 of the Negotiable Instruments Act, 1881 in the facts and circumstances of the instant case; and failed to appreciate that it was incumbent on the respondent to prove that the cheque had not been issued against any legally enforceable debt and/or liability. Contrarily the Learned Magistrate illegally came to a finding as follows:

        > "I find that Complainant Company has failed to prove that the accused person had any liability for issuance of Ext-4 cheque which was marked after objection".

ii. It was further submitted that merely exhibiting reply to the demand notice (Exhibit A) does not prove the contents of the same.

iii. The evidence of P.W. 1 was ignored and the exhibits filed by him proved beyond reasonable doubt that the respondent had share transaction with the petitioner company and the cheque had been issued in connection with legally enforceable debt and/or liability;

iv. The evidence of P.W. 1 clearly disproved the contention that the evidence of D. W. 1 is uncontroverted;

v. The Learned Magistrate failed to discuss the evidence laid down by the prosecution in support of its case and apply the statutory presumption in respect thereof;

vi. The Learned Magistrate relied on irrelevant consideration namely that the cheque was written in different ink and illegally came to a finding that the prosecution failed to prove that the cheque had been issued against any legally enforceable debt and/or liability;

vii. The impugned judgment and order is otherwise bad in law and is liable to be set aside;

10. The “Member-Broker Client Agreement” executed between the parties inter alia stated as follows:-

“Whereas the MEMBER is registered as TRADING MEMBER of National Stock Exchange of India Ltd. with SEBI registration No. : INB 23094703.

Whereas the CLIENT is desirous of investing/trading in those securities admitted for dealing on the Exchange as defined in the Bye-Laws of the Exchange.

Whereas the CLIENT is/has satisfied itself of the capability of the MEMBER to deal in securities and wishes to excute his orders through him *and the Client shall continue to satisfy itself of such capability of the MEMBER before executing orders through him.*

Whereas the MEMBER has satisfied and shall continuously satisfy himself about the genuineness and financial soundness of the CLIENT and investment objectives relevant to the services to be provided.

Whereas the MEMBER has taken steps and shall take steps to make the CLIENT aware of the precise nature of the MEMBER's liability for business to be conducted including any limitations on that liability and the capacity in which it acts."

11. The deposition of P.W. – 1 during his evidence stated the appellant company dealt in share trading and the opposite party was a customer and produced the agreement executed on 25.01.99 marked as exhibit – 3. It was further stated that the opposite party in discharge of his liability issued the cheque in question.

12. The appellant as D.W. – 1 deposed that –

"Previously I have to work as a Share Sub-broker under Insight Share Brokers Pvt. Ltd. 33, Raja Basanta Roy Road, Cal – 29. I paid Rs. 10,000/- in cash as security money to the said Company with condition that Company will accept consideration amongst for share in advance in. Hereafter they will purchase the share for said amount. I started my job in Novermber/December, 1998 and worked upto June/July, 1999. I used to place order in writing in order sheet prior to purchase of share, after purchase of share a contract note was to be signed. I used to pay the Company by way of cash or cheque. Company used to pay me by cheque. Whenever I used to pay by cheque or cash it was registered in Company's register. Incase of any payment was made to me, it was also ... into the Company's register. Company never paid me any amount. So far I

remember I approached the Company for accommodation of Loan as I was in need of money for treatment of my ailing mother, who died in the year 2000. The company took the deed of my mother's house, which stood in the name of my mother, for searching. The company asked to to come with cheque book for settlement of loan. Accordingly I came to the company with cheque book. I signed on two typed paper without going through the contents and handed over two blank cheques signed by me to the company, no amount, rate were mentioned is those two cheques. After one and half month, the company did not accommodate me with loan. Thereafter we sold the other home which stood in the name of my father and by that amount treated my mother."

13. The contention of the D.W. 1 was not challenged or controverted during his cross-examination by the opposite party before the Learned Trial Court. The appellant company failed to establish that the cheque in question was deposited against discharge of a liability or debt.
14. The Learned Trial Court through a reasoned ordered has acquitted the opposite party. The jurisdiction of this Court to decide an issue arising out of an order of acquitted is limited unless there is gross illegality or irregularity.
15. This Court is not inclined to interfere the Order under challenge and as such the instant criminal appeal is dismissed.
16. In view of the above discussions, the appeal is dismissed.
17. I record my appreciation for the able assistance rendered by Mr. Arnab Chatterjee, Learned Advocate, as *Amicus Curiae* in disposing of the appeal.

18. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

19. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)