

CRR 2521 of 2011

**In the matter of : H.N. Prasad @ Hem Narayan Prasad
....Petitioner**

Mr. B.K. Roy
Ms. Sima Biswas

...for the State

None is appearing on behalf of the petitioner.

This criminal revision challenges the order dated 22nd March, 2011 passed by the learned Additional District and Sessions Judge, 2nd court, Paschim Midnapore in criminal appeal no. 8 of 2010 affirming thereby the judgment and order of conviction passed by learned Judicial Magistrate, 1st Class, 3rd court, Paschim Midnapore in connection with CR case no. 42 of 2008.

Briefly stated that the opposite party, Jai Hari Singh filed a petition of complaint before the learned Judicial Magistrate, 1st Class, 3rd court, Paschim Midnapore under Section 138 of the Negotiable Instruments Act stating inter alia that H.N. Prasad @ Hem Narayan Prasad took a sum of Rs. 2 lakhs from him on 28th April, 2007 with a promise to pay the same within June 2007 and on 18th July, 2007, he issued a post dated cheque bearing no. 009815 dated 8th October, 2007 drawn on Bank of India, Balasore Branch which was dishonoured by the bank for want of sufficient fund. The drawer of the cheque was informed by statutory notice which was not adhered to. The drawee took out a petition under Section 138 of the Negotiable Instruments Act.

Learned trial court after considering the evidence on record, was pleased to hold that the accused person was guilty of committing offence under Section 138 of the Negotiable Instruments Act and sentenced him to suffer imprisonment for six months and pay fine of Rs. 2,30,000/-. The stay of conviction was challenged in criminal appeal no. 42 of 2008 and learned appellate court after reappreciating the evidence on record, was pleased to allow the appeal in part by modifying the sentence. Instead of payment of fine, he was directed to pay compensation to the tune of Rs. 2,30,000/- to the complainant and direction was given to surrender to the learned trial court. The said order has been challenged under this proceeding.

I have perused the impugned judgment. I do not find any reason to interfere with the concurrent findings of the courts below, particularly when it appears that the cheque was issued by the drawer of the cheque, the petitioner before this court in discharge of his liability to repay the debt. However, it appears that the petitioner is carrying the baggage of this criminal proceeding and the agony associated with it since 2008.

Considering that aspect of the matter, I am inclined to modify this sentence in part to the effect that the petitioner shall deposit a sum of Rs. 2,30,000/- within four weeks from date, failing which he shall have to undergo imprisonment for six months as directed by the learned court below, apart from making payment of compensation. If the payment is made within four weeks, he will not have to undergo imprisonment.

With this direction, the revisional application is disposed of.

Let a copy of the judgment be sent down to the trial court for information and necessary action.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Siddhartha Roy Chowdhury, J.)