

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. – 2277 of 2017****IN THE MATTER OF****Romi Hirawat****Vs.****The State of West Bengal & Anr.**

For the Petitioners : **Mr. Anirban Dutta Adv.,**
Mr. Sayantan Sinha Adv.,
Ms. Anshumala Bansl Adv.,
Ms. Prarthana S. Roy Adv.

For the OP : **Mr. Pinak Kr. Mitra, Adv.,**
Mr. K.Shah, Adv.,
Mr. Aniket Chaudhury, Adv.

For the State : **Mr. Narayan Prasad Agarwala Adv.,**
Mr. Pratick Bose Adv.

Judgment on : **12.12.2023**

Subhendu Samanta, J.

This is an application u/s 482 read with section 401 of the Code of Criminal Procedure against judgment and order dated 1st July 2017 passed by Learned Additional District and Sessions Judge Bench (II) City Sessions Court BicharBhaban Calcutta in connection with Criminal revision No. 188 of 2016

thereby dismissed the criminal revisions and consequently confirming the Judgment and Order of conviction and sentence dated 30st August 2016 passed by the Learned Metropolitan magistrate 10th Court Calcutta in connection with case No. C/16686 of 2010, TR No. 3786 of 2010 being a proceeding u/s 138 of the Negotiable Instrument Act 1881 whereby and where under the petitioner was found guilty u/s 255 (2) of Cr.P.C. in acquisition u/s 138 of NI Act and liable to be convicted and sentence to the petitioner till rising of the court and directed to pay an amount of Rs. 7,50,000/- as compensation to the complainant within 90 days i.d. to undergo simple imprisonment for a period of one month.

The brief fact of the case is that the present opposite party No. 2 had initiated a complaint before the Learned Metropolitan Magistrate u/s 138 of NI Act against the present petitioner with the allegation that the present petitioner had entered into a verbal agreement with the complainant company for booking a flat and as per such verbal agreement the complainant company had give him token amount of Rs. 6,00000/-in turn a cheque was handed over to the complainant company of the same amount. Consequently the agreement between the parties was not materialised. The complainant demanded the money but it was not returned by

the present petitioner and consequently he placed the cheque with his banker; the cheque was dishonoured consequently a demand notice was served to the petitioner. Instead of receiving such demand notice, petitioner though replied but not paid the amount of Rs. 6,00000/-. Accordingly the instant complaint was initiated.

The petitioner had a specific case that the said dealing was not materialised and as such he gave the complainant company blank dated cheque which was duly filled up and signed by him for security purpose. Thereafter he made the part payment of Rs. 2,00000/- to the complainant company against said cheque which was received by Sukanta Chakrabarty on behalf of the complainant company by issuing a valid money receipt. It was the further contention that subsequently when he get ready to make payment of the rest amount of Rs. 4,00000/-, the said Sukanta Chakrabarty did not accept the said amount of Rs. 4,00000/- but demanded Rs. 6,00000/- and filed the instant case. It was the specific case of the petitioner that he had no legally enforceable debt and liabilities for which he had to issue a cheque in favour of the complainant. During trial the complainant has exhibited relevant documents including cheques bank returns notes etc. During the course of examination of the present petitioner u/s

313 Cr.P.C. he positively stated that the part payment has already been made. The present petitioner has adduced to witnesses namely DW 1 and DW 2 through which he exhibited one money receipt allegedly signed by Sukanta Chakrabarty and a letter of complaint to the Bidhannagar Police Station. During the argument the factum of part payment was argued including the receipts and earlier police complaint was also placed before the Learned Metropolitan Magistrate but the Metropolitan Magistrate did not take cognizance of exhibit A. and exhibit B. and passed order of conviction against the present petitioner. One criminal revision has been preferred against the said judgment before the Learned Sessions Judge. After hearing the Learned Sessions Judge also support the observation of the Learned Metropolitan Magistrate and affirmed the order of conviction passed by the Learned Metropolitan Magistrate.

Hence this revision.

Learned Advocate for the petitioner submits that the petitioner has successfully proved the part payment of Rs. 2,00,000/- was made prior to deposit the cheque to the Bank.

The Exhibit A is the money receipt which specifically stated about the payment of Rs. 2,00,000/- and balance about 4,00,000/-

He also argued the Learned Additional Sessions Judge has failed to appreciate the facts and come to an erroneous finding the complainant actually never denied the fact of receipt of the part payment of Rs. 2,00,000/- by Sukanta Chakrabarty. Admittedly Sukanta Chakrabarty is the person who lodged the complaint on behalf of the complainant company. PW 1, one of the employer of the company during cross-examination specifically stated that she did not know whether Sukanta Chakrabarty received the Rs. 2,00,000/- or not. He further argued that the complainant company is not holder of the cheque in due course. The prosecution u/s 118(g) of NI Act makes it clear. Its burden of the complainant to prove that the cheque was issued otherwise than for the purpose of security. He further argued that the Learned Metropolitan Magistrate as well as Learned Additional Sessions Judge has failed to appreciate the facts and the law regarding the presumption u/s 139 of NI Act. The presumption u/s 139 of NI Act has always rebuttable and to rebut such presumption accused is to prove the defence must only made standard of preponderance of probabilities but not under the principle beyond reasonable doubt. In this particular case the standard of prove of the defence has sufficiently placed before the Learned magistrate but he proceeded to find out the plea of

defence on the basis of principle of beyond of reasonable doubt.

In support of his contention he cited some decision of Hon'ble

Supreme Court ---

Basalingappa Vs. Mudibasappa (2019) 5 SCC 418.

25. We having noticed the ratio laid down by this Court in the above cases on Sections 118 (a) and 139, we now summarise the principles enumerated by this Court in following manner:

25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

25.5. it is not necessary for the accused to come in the witness box to support his defence.

M/s Narayana Menon Vs. State of Kerala and Anr.

30. Applying the said definitions of "proved" or "disproved" to the principle behind Section 118 (a) of the Act, the court shall presume a negotiable instrument to be for consideration unless and until after considering the matter

before it, it either believes that the consideration does not exist or considers the non-existence of the consideration so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that the consideration does not exist, for rebutting such presumption, what is needed is to raise a probable defence. Even for the said purpose, the evidence adduced on behalf of the complainant could be relied upon.

Reverend Mother Marikutti Vs. Peni Kotharam (2013)

Supreme Court Cases 327

Dishonoured of cheque—dispute has to amount due under works contract—amount in question in proof to be due to complaint by rebuttable of presumption of consideration under section 118(a) by accused—reversal of acquittal of accused without consider defence evidence led to rebut the said presumption—impropriety of—acquittal of accused, restore

Dr. B. Shanmugan Vs. Sri Chandra Shekhar Gupta

(2015) SCC Online Cal. 1945

19. The use of the phrase “until the contrary is proved” in Section 139 of the Act read with definitions of “may presume and “shall presume” as given in Section 4 of the Evidence Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over.

20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or

that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act.

Learned Advocate for the petitioner further submitted that the law of the land regarding the part payment of NI Act has been specifically dealt with by the Hon'ble Supreme Court in **Dasharath Bhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel & Anr. (2013) 1 Supreme Court Cases 578.**

33. Under Section 56 read with Section 15 of the Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance amount. If the endorsed cheque when presented for encashment of the balance amount is dishonoured, then the drawee can take recourse to the provisions of Section 138. Thus, when a part-payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque under Section 56 of the Act. The cheque cannot be presented for encashment without recording the part-payment. If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment.

Learned Advocate appearing on behalf of the private opposite party No. 2 submits that the matter has been specifically decided by the Magistrate on the basis of evidence on record and in the revision the Learned Sessions Judge has also decided the same issue on the basis of the facts in question. Thus second Revision on the basis of selfsame issue

which has already been decided by the two lower courts concurrently is not at all maintainable.

He argued that this court cannot go into the details of evidences adduced before the Learned Magistrate. The 2nd revision filed by the present petitioner before this High Court is not an appeal. The revisional court cannot exercise its power under appeal during the course of hearing of the revisional application.

In support of his contention he cited a decision of Hon'ble Supreme Court in **Dipti Vs. Akhil Rai (1995) 5 Supreme Court cases 751.**

Section 482 and 397 (3)—Second revision after dismissal of the first one by the Sessions Court not maintainable—inherent power cannot be utilised for exercising power expressly barred by the Code.

Kailash Verma Vs. Punjab State Civil Supplies (2005)

2 Supreme Court Cases 571.

7. In the present case, the appellant was discharged by the Chief Judicial Magistrate and the revisional court confirmed that order after elaborately in Bal Kishan Das v. P.C. Nayar under similar facts and circumstances, this Court held that no offences were made out under Section 406 IPC as it was a matter of civil nature. The respondent Corporation had also initiated steps for arbitration proceedings on the basis of the arbitration clause in the agreement. In our view, the High Court was not justified in exercising its inherent power under Section 482 of the Criminal Procedure Code in this case. It cannot be said either that there

was miscarriage of justice warranting interference by the High Court. Hence, we allow these appeals and set aside the judgment of the High Court. The order of discharge passed by the learned Magistrate in favour of the appellant is affirmed.

Learned Advocate for the private opposite party has also stated that there is a little scope of interference of the High Court against the concurrent findings. Where the matter has been specifically decided on the basis of the evidence on record the High Court must not interfere upon the findings of two subordinate courts. In support of his contention he cited some decisions in the same ratio Hon'ble Supreme Court in the **State of Kerala Vs. Puthumana Illath (1999) 2 SCC 452**

Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as

well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High court from the aforesaid standpoint. We have no hesitation to come to the conclusion that the High court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. The high court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned judgment of the High Court is wholly unsustainable in law and we, accordingly, set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence.

State of Maharashtra Vs. Jagmohan Singh Kuldeep

Singh Anand (2004) 7 Supreme Court Cases 659.

22. The revisional court is empowered to exercise all the powers conferred on the appellate court by virtue of the provisions contained in Section 401 Cr.P.C. Section 401 Cr.P.C. is a provisions enabling the High Court to exercise all powers of an appellate court, if necessary in aid of power of superintendence or supervision as a part of power of revision conferred on the High court or the Sessions Court. Section 397 Cr.P.C. confers power on the High Court or Sessions Court, as the case may be,

“for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court”

It is for the above purpose, if necessary, the High Court or the Sessions Court can exercise all appellate powers. Section 401 Cr.P.C. conferring powers of an appellate court on the revisional court is with the above limited purpose. The provisions contained in Section 395 to Section 401 Cr.P.C. read together, do not indicate that the revisional power of the High Court can be exercised as a second appellate power.

Learned Advocate for the private opposite party further argued the power of this court u/s 482 is unfettered and that can only be exercised when the order impugned is perverse. He defined the term “perverse” by citing a decision of Hon’ble Supreme Court passed in **Kuldeep Singh Vs. Commissioner of Police (1999) 2 SCC 10**

9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of “guilt” is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

Arulvelu Vs. State & Anr (2009) 10 SCC 206

21. The real question which falls for our consideration is whether the view which has been taken by the trial court was a possible or a plausible view.

22. We have carefully perused the judgment of the trial court and the impugned judgment of the High Court. The trial court very minutely examined the entire evidence and all documents and exhibits on record. The trial court's analysis of evidence also seems to be correct. The trial court has not deviated from the normal norms or methods of evaluation of the evidence. By no stretch of imagination can we hold that the judgment of the trial court is based on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it and consequently the judgment of the trial court is perverse.

23. we also fail to arrive at the conclusion that the discussion and appreciation of the evidence of the trial court so outrageously defies logic as to suffer from the vice or irrationality incurring the blame of being perverse and the findings rendered by the trial court are against the weight or evidence. The law is well settled that, in an appeal against acquittal, unless the judgment of the trial court is perverse, the appellate court would not be justified in substituting its own view and reversing the judgment of acquittal.

24. The expression "perverse" has been dealt with in a number of cases. In Gaya Din Vs. Hanuman Prasad this court observed that the expression "perverse" means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.

Heard the Learned Advocates.

Perused the judgment laws referred by the Learned Advocates. It is true that in this case there are two concurrent

judgments passed by the Learned Magistrate as well as Learned Sessions Judge. The issue of part payment and the maintainability of the Exhibit A and Exhibit B has been specially dealt with by the Magistrate. The Sessions Judge has also considered the same and adopted the finding of the Learned Magistrate.

The instant criminal revision has been preferred before this court wherein this court has only jurisdiction to entertain the plea of the petitioner if it appears that the judgment and order of conviction passed by the Learned Magistrate and affirmed by the Learned Sessions Judge is perverted. The trial court i.e the Magistrate has considered the evidences and decided that the present petitioner did not mention about his part payment at the time of reply of the demand notice. It is true that the defence require to prove his defence on the principle of preponderance of probabilities. The petitioner is of argument that the production of Exhibit A and Exhibit B raised sufficient presumption before the Learned Magistrate that the accused/petitioner has discharged his liabilities.

It is true that Exhibit A and Exhibit B is the document to consider the plea of the defence; but the plea must be reasonable and on such nature that a reasonable person would act upon the supposition that the fact exists. The Exhibit A and

Exhibit B appear to be the document prior to the reply and the demand notice. The defence i.e the petitioner has failed argued anything or place any circumstances to show that why such Exhibit A and Exhibit B was not mentioned in the demand notice. The conduct of the petitioner itself proved that there is a reasonable doubt to plea his case. The Learned Magistrate as well as the Learned Additional Sessions Judge has arrived to a conclusion that the documents (Exh. A and B) produced by the present petitioner before the Learned Magistrate cannot be believed. I find no perversity in the finding itself. It is true that the presumption u/s 139 of NI Act is rebuttable presumption, to rebut such presumption accused is required to place a reasonable fact which is required to be believable one. The defence as raised by the present petitioner not appears to be plausible; the observation of the Learned Magistrate as well as the Sessions Judge, on the basis of Exh. A and B is not at all illegal or irregular in the eye of law.

Considering the above aspect I am of a view that the impugned judgment passed by the learned Sessions Judge suffers no illegality.

CRR is dismissed.

Impugned judgment passed by the Learned Sessions judge Bench II City Sessions Court Bichar Bhaban in criminal

revision No. 188 of 2016 dated 01.07.2017 is hereby affirmed the present petitioner is directed to appear before the Learned Magistrate within 5th day of January 2024 to comply the order of the Magistrate.

Any order of stay passed by this court during the pendency of the instant criminal revision is hereby vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)