IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
(APPELLATE SIDE)

Present:
The Hon'ble Justice Rai Chattopadhyay

C.R.A No. 428 of 2012

Ultratech Cement Limited
Vs.
Dulal Kumar Ghosh & Anr.

Amicus curiae	: Mr. Aniket Mitra.
For the State	: Mr. Pravash Bhattacharyya, : Mr. Mirza Firoj Ahmed Begg.

Hearing concluded on: **23/02/2023**

Judgment on: 19/07/2023

Rai Chattopadhyay, J.

1. In this appeal the appellant company/complainant has challenged the judgment and order of acquittal dated February 10, 2012 of the trial Court, in Calcutta T.R. No. 363/06, arising out of C. Case No. 8318/06. The proceedings before the trial Court was initiated by the present appellant under Section 138 of the Negotiable Instrument Act, 1881. Upon consideration of evidence on record the trial Court has disposed of the case vide judgment as above, which is assailed in this appeal.

2. Appellant has not been represented, inspite of affording the same sufficient opportunity. Hence, the court appointed ld. Amicus Curiae for assistance in this appeal. The Court appreciates his sincere and able assistance.

3. The authorised representative of the appellant lodged the complaint against the accused person, i.e, respondent no. 1, on the allegation of dishonour of cheque issued by the said accused person.

4. The fact remains that the appellant is a Public Limited Company which entered into business with the accused person for supply of cement. Pursuant to the business transaction allegedly the respondent company/accused person has issued account pay cheque no. 183592 dated 30.05.2006 of an amount of Rs. 2,00,000/-, drawn on Punjab Nation Bank, Hill Cart Road, Siliguri, Darjeeling, in favour of the appellant. Appellant says that the said amount was paid by issuance of cheque, by the respondent, to discharge his existing legally enforceable debts, liabilities and lawful dues, outstanding with the appellant company. The cheque was duly deposited but dishonoured. Return memo was issued by the bank on June 5, 2006. The appellant had issued notice thereafter on June 26, 2006, to the respondent company, which was duly served upon the same but not adhereded too. Thus, the appellant filed the complaint in the Court of Chief Metropolitan Magistrate at Calcutta, for commission of an offence by the present respondent under Section 138 of the Negotiable Instrument Act, 1881.

5. Trial was held and ultimately the Court delivered the judgment, impugned in this appeal and mentioned above. The trial Court has found the present respondent/accused person to be not guilty of an offence punishable under Section 138 of the said Act and acquitted him. Appellant's grievance is against such judgment and order of the trial Court.

6. The trial Court relied on exhibit 7 to come to the finding that the parties had business transaction between themselves, the respondent herein being the dealer of the appellant company. It further noted that according to exhibit 7, i.e, reply of the present respondent dated July 13, 2006, to the notice of demand by the appellant company, some blank cheques were deposited to the appellant, pending finalization of the accounts between the parties. The complainant/appellant, by infringing the terms of business and understanding, had deposited the said cheque, which the respondent said, was not in discharge of any existing liability of the said respondent.

7. However, the disputed cheque in question was proved in Court by the present respondent by identifying his signature over there. There is nothing on record to show that the respondent has, during trial satisfied the requirement of establishing probability of the fact claimed by him in exhibit 7, i.e, any cheque was handed over by him to the appellant company.

8. The other point envisaged by the ld. Amicus Curiae in the case is that, improper representation of the complainant company. He has taken this Court to the power of attorney executed by the Executive President of the appellant to authorized Mr. Vijoy Nath Jha, the attorney, to initiate legal proceeding on behalf of the present appellant. The power of attorney was executed on February 24, 2006 and was notarized on March 21, 2006. The same has been exhibited in the trial being marked exhibit 1. The point raised was that on the date of execution of the power of attorney the donor has no authority to empower anyone else on behalf of the appellant company to initiate a legal proceeding. As a matter fact the donor himself was the power of attorney holder on behalf of the company to act that wise, which was executed at a much later date than the power of attorney executed by the donor in favour of the person who ultimately lodged the complaint.

9. In other words the donor executed the power of attorney on February 24, 2006 (exhibit 1), whereas the donor was empowered to executed exhibit 1, by execution of another power of attorney on September 5, 2007, which is a much later date than execution of exhibit 1.

10. By considering all these facts the trial Court has held that on the date of authorising someone to represent the appellant in filing a case under Section 138 of the Negotiable Instrument Act, 1881, in a Court of law, the donor of the power of attorney did not possess any authority for the same and thus lacked authority to empower any other person to file such a case.

11. The Court has also relied on exhibit 13, i.e, extract of the Board Resolution of the appellant dated July 20, 2007, not to have reflected any empowerment bestowed upon the donor of exhibit 1, to initiate any legal proceeding on behalf of the company, by the Board.

12. On this point ld. Amicus Curiae, has indicated that improper representation in a case under Section 138 of the Negotiable Instrument Act, 1881, is a curable defect and the Court, if so thinks fit and proper, may remand back the case for curing the defect and fresh trial.

13. No doubt on the basis of the evidence on record particularly that appearing from the documentary evidences, improper representation by the appellant company is overwhelmingly evident. Furthermore, the evidence before the Court has not revealed any cogent and reliable material to conclude even prima facie that the concern cheque was issued in discharge of a legally enforceable debt by the accused/respondent. Thus, this Court does not find any sufficient reason too, remand back the matter that to after a long period of eleven years from the date of filing of the appeal.

14. On the contrary it is found that there is no merit in this appeal as the impugned judgment of the trial Court dated February 10, 2012 of the trial Court, in Calcutta T.R. No. 363/06, arising out of C. Case NO. 8318/06, as mentioned above is based on appropriate and proper consideration of the evidence on record and supported by apt legal proposition.

15. On the ground as above this appeal being C.R.A 428 of 2012 fails. The impugned judgment of the trial Court passed in Calcutta T.R. No. 363/06, arising out of C. Case No. 8318/06 dated February 10, 2012, is hereby upheld.

16. The appeal is dispose of along with pending application, if any, without any order as to cost.

17. Before parting, the Court appreciates the able assistance put in by the Ld. Amicus Curie in this case. Let the High Court Legal Services Committee take necessary steps to pay fees to the learned Amicus Curiae in accordance with the scale applicable to “Category-A” lawyer in its panel. The same may be paid within a period of one month from the date. A copy of this order be immediately forwarded to the Secretary, High Court Legal Services Committee, for doing the needful.

18. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.

RAI CHATTOPADHYAY

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(Rai Chattopadhyay,J.)