

CRR 2911 of 2004

In the matter of : Tarakeswar Hatchery & Anr.

Mr. Md. Farhauddin
Mr. S. M. Masud

... for the petitioners.

Mr. Dipanjan Dutt
Mr. Surojit Saha

.... For O.P. No. 1

Mr. Narayan Prasad Agarwala
Mr. Pratick Bose

.... for the State

This criminal revisional application challenges judgment and order dated 23rd September, 2004 passed by learned Additional Sessions Judge, 1st Fast Track Court, Bichar Bhavan, Kolkata affirming the judgment and order of conviction passed by learned Metropolitan Magistrate, 9th Court, Kolkata in complaint case No. C/389/98 under Section 138/141 of the Negotiable Instrument Act holding the accused person guilty for committing offence within the meaning of Section 138/141 of the N. I. Act and sentencing the petitioner no. 1, Tarakeswar Hatchery to suffer S.I. for three months and to pay a fine of Rs.5,000/- and Mr. Prasanta Roy Barman, appellant no. 2, to serve out the sentence to suffer S.I. for three months and to pay compensation of Rs.3,01,468/-.

Heard Mr. Farhauddin, learned counsel for the petitioners and Mr. Dutt, learned counsel for the O.P. No. 1.

It is vigorously submitted by Mr. Farhauddin, learned counsel that the petitioner did not have any liability towards the O.P. No. 1 and had no reason to issue cheque in question in discharge of its liability. The cheque was issued as the co-lateral security together with other cheques aggregating Rs.5,55,000/-. Learned Appellate Court failed to consider the said aspect and passed the judgment and order of conviction without appreciating the evidence on record. The learned Trial Court could not even appreciate the fact that in terms of agreement for lease as on 7th December, 1997 the liability was Rs.1,39,957/- and not the cheque amount in question. Therefore, the notice issued under Section 138 of the N.I. Act was not proper. I perused the impugned judgment of learned appellate Court and I find discussion in detail that the cheque in question was issued only towards discharge of part liability of the accused persons in favour of the complainant company, the total liability being Rs.13,88,000/- and against the sum there was a security deposit of Rs.5,55,000/- and thus learned Appellate Court quite rightly refused to accept the submission of learned counsel for the appellant. Though it is argued that the cheque in question was issued as co-lateral security, there is nothing to substantiate such claim of Mr. Farhauddin, learned counsel for the petitioner. It goes without saying that when the petitioner intends the Court to believe that the cheque was issued as a co-lateral security, under Section 103 of the Evidence Act onus lies upon the person who wishes the Court to believe such fact. I have no hesitation to hold that the petitioner failed to discharge such onus. Under such circumstances, I do not

find any reason to interfere with the concurrent finding of learned Courts below.

Considering the submission of Mr. Farhauddin about the fragile health of the petitioner Prasanta Roy Barman, I am, however, inclined to interfere with the sentencing part. Considering the age of proceeding and the fragile health of the petitioner, I am of the view that, ends of justice would be met, if the petitioner is directed to pay a sum of Rs.2,50,000/- instead of Rs.3,01,468/- within four weeks from date. It is submitted by learned counsel for the parties that the petitioner had deposited a sum of Rs.1,00,000/- which is lying with the learned Trial Court. Opportunity is given to the O.P. No. 1 to withdraw the said amount from the learned Trial Court. The petitioner is to pay the remaining sum of Rs.1,50,000/- within four weeks in default the order passed by the learned Court below will become operative and learned Trial Court will be at liberty to enforce the order of conviction passed by the learned Trial Court.

With this observation this criminal revisional application, is thus, disposed of along with application if any.

Let a copy of the order be sent to learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)