

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. 241 of 2019

***Ajoy Kumar Bandyopadhyay
versus
The State of West Bengal & Anr.***

For the Appellant : Ms. Shabana Hasin,
Ms. Samima Akter Banu,
Ms. Neha Roy.

For the Respondent No.2. : Mr. Navanil De,
Ms. Monami Mukherjee.

Heard On : 24.07.2024, 31.07.2024 & 12.08.2024.

Judgement On : 12-08-2024.

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgement and order of acquittal dated 18.12.2018 passed by learned Judicial Magistrate, 2nd Court, Berhampore, Murshidabad in connection with C.R. Case No. 166/2014 (corresponding to T.R. Case No. 274/2014) wherein the learned trial court was pleased to acquit the respondent

no.2 viz. Suman Saha of the charge under Section 138 of the Negotiable Instruments Act.

On the basis of a complaint filed by one Ajoy Kumar Bandyopadhyay before the learned Chief Judicial Magistrate, Murshidabad, C.R. Case No. 166/2014 was registered. The said complaint case was for dishonour of a cheque of Rs.4,00,000/- which was issued in favour of the complainant/appellant, drawn on Axis Bank Limited bearing No. 009351 dated 31.12.2013. It is claimed in the complaint that within the validity period, the said cheque was presented for encashment with the complainant's banker being Bangia Gramin Vikash Bank, Berhampore Branch on 07.01.2014 and the same was dishonoured with remark "Funds insufficient". A legal notice dated 11.01.2014 was sent to the accused person demanding the amount covered by the dishonoured cheque. However, the accused neglected and failed to make the payment and as such, the complaint case was filed on 24.02.2014.

The learned Magistrate was pleased to take cognizance of the offence and subsequently the complainant was examined under Section 200 of the Code of Criminal Procedure. An affidavit under Section 145 of the Negotiable Instruments Act was filed also with necessary enclosures and pursuant to the same, summons were issued upon the

accused/respondent no.2. After appearance of the accused, the learned Magistrate was pleased to examine the accused under Section 251 of the Code of Criminal Procedure to which the accused pleaded not guilty and claimed to be tried.

The complainant in order to prove its case examined himself as PW-1 and relied upon the documents, being dishonoured cheque (Exhibit-2), bank return memo (Exhibit-3) and the postal receipt (Exhibit-4).

The learned Magistrate on appreciation of the oral and documentary evidence was pleased to acquit the accused/respondent no.2 on the ground that the demand notice was not brought in evidence by the complainant which is required as foundational fact in compliance with the statutory provisions of the Negotiable Instruments Act. According to the learned Magistrate, in the postal receipt also, which has been marked as Exhibit-4, the address was incomplete and as such, there was no scope for presuming that statutory compliances having been made prior to the court exercising its jurisdiction to invoke Section 139 of the Negotiable Instruments Act. Although the learned Magistrate held that the cheque was dishonoured due to funds being insufficient and there was compliance regarding the statutory period within which the cheque was placed, but there are no materials before the court to

presume that any notice was served upon the respondent no.2 demanding the amount covered by the dishonoured cheque after the cheque was dishonoured.

Having considered the reasons so assigned by the learned Judicial Magistrate, 2nd Court, Berhampore, Murshidabad that demand by way of a notice in writing in cases of dishonour of cheque is an integral part of statutory compliance, I am of the view that the reason so assigned is justified, as such no interference is called for in respect of the judgement delivered by the learned trial court.

Accordingly, the appeal being CRA 241 of 2019 is dismissed.

Pending connected application, if any, is consequently disposed of.

Department is directed to send back the lower court records along with a copy of this judgment immediately to the learned trial court.

All concerned parties shall act on the server copy of this judgement duly downloaded from the official *website* of this Court.

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

(Tirthankar Ghosh, J.)