

06.02.2024
Serial no.3
Piya
Ct. No. 30

CRR 1168 of 2019
With
IA No. CRAN 2/2021
With
IA No. CRAN 3/2023
With
IA No. CRAN 4/2023
With
IA No. CRAN 5 of 2023

Somnath Mitra
Vs.
Mala Chatterjee (since deceased)
represented by Swapan Kumar Chatterjee.

Mr. Chandra Sekhar Banerjee
Mr. Abhijit Ganguly
Mr. Shamit Dutta
..... for the Petitioner

Mr. Amal Krishna Samanta
Mr. Arun Kr. Das
..... for the Opposite Party/Applicant

The present revisional application has been preferred against the Judgment and Order dated 01.04.2019 passed by Sri. Gurudas Biswas the Learned Additional District and Sessions Judge, Fast Track Court -I, Bichar Bhawan, Kolkata, in Criminal Appeal No. 106 of 2018 thereby dismissing Criminal Appeal No. 106 of 2018 and affirming the Judgment and Order 24.08.2018 passed by the Learned Chief Metropolitan Magistrate, 14th Court Calcutta, in Case No. C/565/2012 thereby finding the petitioner guilty for the commission of offence punishable under Section 138 of the Negotiable Instrument Act and directing the petitioner to suffer imprisonment for three (3)

months and also to pay compensation amount of Rs. 75,000/- (seventy five thousand) in default to suffer simple imprisonment for 15 (fifteen) days.

Admittedly the opposite party has submitted that he may be permitted to withdraw the sum of Rs. 40,000/- paid towards the sentence imposed upon the petitioner by the Trial Court and deposited before the Trial Court as directed by this Court. The balance sum of Rs. 35,000/- by way of a demand draft has been handed over to the opposite party today in Court in full and final satisfaction in respect of the sentence of compensation imposed by the Trial Court. The opposite party submits that their claim has been totally settled and the judgment of the Trial Court which was affirmed by the Appellate Court has also been complied with by the petitioner as to the order of compensation. As such they have no further grievance against the petitioner.

Section 138 N.I. Act lays down as follows:-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to [two] years, **or** with fine which may extend to twice the amount of the cheque, or with both.”

Thus, considering the submission made by the opposite party/complainant, **the sentence to suffer imprisonment for three months is set aside.**

The Judgment and Order dated 01.04.2019 passed by Sri. Gurudas Biswas the Learned Additional District and Sessions Judge, Fast Track Court -I, Bichar Bhawan, Kolkata, in Criminal Appeal No. 106 of 2018 thereby dismissing Criminal Appeal No. 106 of 2018 and affirming the Judgment and Order 24.08.2018 passed by the Learned Chief Metropolitan Magistrate, 14th Court Calcutta, in Case No. C/565/2012 thereby finding the petitioner guilty for the commission of offence punishable under Section 138 of the Negotiable Instrument Act and directing the petitioner to suffer imprisonment for three (3) months and also to pay compensation amount of Rs. 75,000/- (seventy five thousand) in default to suffer simple imprisonment for 15 (fifteen) days, **are modified accordingly.**

Considering the said facts and materials on record the criminal revision is accordingly disposed of.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Copy of this order be sent to the learned Trial Court and the Appellate Court for necessary compliance.

Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)