

Form No.J(1)

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

Present:

The Hon'ble Justice Tirthankar Ghosh

**CRA(SB) 169 of 2022
With
CRAN 1 of 2023**

**Sujit Kumar Dikshit
versus
Niyati Pattanayek & Ors.**

For the Appellant : Mr. Nirmalendu Bera,
Mr. Gora Chand Samanta.
Mr. Tanim Nandy

For the Respondent
Nos. 1 & 2: Mr. Ujjal Roy
Mr. Kaushik Biswas
Ms. Shanta Sarkar
Mr. Debojyoti De

Heard On : 06.02.23, 14.03.23, 11.04.23, 04.05.23, 24.06.24, 27.6.24,
15.07.24

Judgment On : 19.07.2024

Tirthankar Ghosh, J. :

The present appeal has been preferred against the Judgment and Order dt. 21.07.2022 passed by the Id. Additional Chief Judicial Magistrate, Haldia, Purba Medinipur in C.R. Case No. 42/2011.

The subject-matter of the case under the provisions of the N.I. Act relates to dishonor of a cheque of Rs.15,50,000/-. Evidence has been adduced in respect of the prosecution as well as the defence.

The Id. Magistrate on an appreciation of the evidence, adduced by both the parties, rendered the following conclusions, which are set out below:

"Having heard both sides, and after careful consideration the points discussed above, I conclude:

1. That the essence or spirit as required Under section 138 Negotiable Instruments Act, 1881 has already been discussed as after receiving the legal notice without giving any effect the accused remain silent about the liability and did not made payment or gave any reply of the notice;

2. Though the accused person could not establish his defence case by bringing rebuttable evidences to prove his innocence; but the complainant's version is doubtful and did not explain the cause of debt and liability. He failed to prove the facts to say the debt or liability, its extent and legal enforceability.

3. The cheque, return memo has been proved. There was no dispute about the legality and validity of the demand notice and its service upon the accused, mathematically, it can be said that the case of the complainant established, proved and corroborated but few reasonable doubts and questions remained unanswered."

After expressing the aforesaid conclusions, the Id. trial court proceeded to acquit the accused/appellant. The complainant being aggrieved approached this court.

I find that the foundation of acquittal and the principles which were followed by the Id. Magistrate do not satisfy the requirements of presumption as laid down under Section 139 of the N.I. Act, as has been held by the Hon'ble Supreme Court in the case of *Hiten P. Dalal -vs- Bratindranath Banerjee* reported in (2001) 6 SCC 16.

In a complaint under Section 138 of the N.I. Act, it would be the duty of the Court to assess the minimum requirement(s) required under the provisions and, it would be the first duty of the accused to rebut the presumptions and the stress will be on rebuttal. There is no scope in a case under Section 138 of the N.I. Act to prove the case beyond any reasonable doubt at the instance of the complainant.

The aforesaid principles being followed by the Id. Magistrate while arriving at its conclusion of acquittal, I am of the view that the order of acquittal is required to be set aside.

So far as the factual appreciation is concerned, this court will not enter into the merits, at this stage, as it is felt that the mixed appreciation of facts and law already done by the Id. trial court is against the basic tenet of the provisions of the Section 138 of the N.I. Act.

Accordingly, the Judgment and Order dt. 21.07.2022 passed in C.R. Case No. 42 of 2011 by the Id. ACJM, Haldia, Purba Medinipur, is set aside.

Both the parties are directed to appear before the Id. ACJM, Haldia, Purba Medinipur on 19th of August, 2024. The Id. ACJM, Haldia, Purba Medinipur, would, thereafter, fix dates for fresh argument of the case and afford reasonable opportunity both to the complainant as well as the accused. After hearing the arguments, the Id. ACJM, Haldia, Purba Medinipur will deliver a fresh judgment.

With the aforesaid observations, **CRA (SB) 169 of 2022 along with CRAN 1 of 2023 is disposed of.**

Pending application, if any, is also disposed of.

Let the LCR be immediately sent back to the Id. ACJM, Haldia, Purba Medinipur.

All 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.)