

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 775 of 2008

Sri Gautam Pal

-Vs-

Sri Sourish Dirghangi & Anr.

Amicus Curiae : Mr. Amartya Ghosh

For the State : Mr. Avishek Sinha

For the Opposite party no. 1 : Mr. Jayanta Naryan Chatterjee
Ms. Sreeparna Ghosh

Heard on : 06.10.2023

Judgment on : 09.01.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order passed by the Learned Judicial Magistrate, 9th Court at Alipore, 24 Parganas in Case No. C -5076 of 2004, on 23rd November 2007 acquitting the accused under Section 255(1) of the Code of Criminal Procedure 1973.
2. The appellant filed an application for special leave to appeal before the Hon'ble Court on 02.06.2008 vide CRM 5438 of 2008 and subsequently on 12.11.2008 the said application was allowed. Hence this appeal.

3. The petitioner is the accounts Officer of M/s. Karnataka Soaps And Detergent Limited (A Govt. Of Karnataka Under Taking) having its Registered office at 154, Harish Mukherjee Road, P.S.- Kalighat, Kolkata-25 and has been authorized to file this appeal.
4. The opposite party no. 1 was the accused in connection with case no. C-5076/2003 and by the Judgment and Order dated 23.11.2007 passed by the Learned 9th Judicial Magistrate Alipore, 24 Parganas acquitted the opposite party no. 1 under Section 255(1) of the Code of Criminal Procedure 1973 from the offence charged under Section 138 of the Negotiable Instrument Act 1881.
5. The appellant company has been operating the business of sales and marketing of its own product like Soaps, Detergent, Consumer Goods Agar Batis from the branch office at Kolkata.
6. The appellant used to supply its products to the opposite party no.1 who was a distributor under the appellant and for 4 to 5 years prior to the year 2003 the appellant recognized the opposite party no.1 as a distributor.
7. In discharge of the liability of payments of the goods/products received, the opposite party no.1 issued one cheque bearing no. 032852 drawn on Allahabad Bank, B B Chatterjee Street Branch.
8. The appellant company presented the said cheque to his banker Corporation Bank Rash Behari Avenue Branch to realize the amount due from the opposite party no.1 out of the products/goods which was sold to the opposite party no.1 but the said cheque was dishonored on the ground of "Insufficient Funds" and thereafter the appellant sent a demand notice to the

opposite party no.1. After expiring of the time stipulated by the appellant in the said demand notice, the appellant filed a complaint under Section 200 of the Code of Criminal Procedure 1973 before the Learned Sub Judicial Magistrate at Alipore. Thereafter the said case was transferred to the Court of the Learned 9th Judicial Magistrate at Alipore. After completion of trial, the 9th Judicial Magistrate at Alipore was pleased to acquit the opposite party no.1 under Section 255(1) of the Code of Criminal Procedure 1973.

9. The Learned 9th Judicial Magistrate at Alipore was pleased to acquit the respondent on the ground that the case of the appellant was not proved beyond all reasonable doubt.
10. In support of its case, prosecution adduced evidence of two witnesses namely Ujjal Kumar Nandy the complainant and the authorized representative of the complainant company and Swapan Kumar Ganguly a staff of the complainant company and in support of its case, defence adduced one witness namely Sourish Dirghangi the opposite party no.1
11. From the deposition of the witnesses of the prosecution as well as the defence the cheque was issued by the opposite party no.1, was presented by the appellant at the bank within time. The cheque was dishonored, demand notice was sent to the opposite party no.1 by the appellant and the said demand notice was received by the opposite party no. Thereafter due to non payment the complaint was filed within the time specified in the Section 138 of the Negotiable Instrument Act 1881 as amended upto date.
12. The only point was raised during trial of the instant case as to whether there was any liability of the complainant to issue the said cheque or not.

13. As per Section 138 of the Negotiable Instrument Act 1881 as amended upto date apart from all other technical factors liability is the only important factor with regard to each and every case of dishonor of cheques is to be decided and as per Section 139 of the said Act as the presumption of liability is to be deduced in respect of issuance of cheque unless any contrary is proved.
14. The Learned Magistrate in the Court below observed that opposite party no.1 took specific plea in respect of the cheque in question that the said cheque was not issued in discharge of his liability though it was specifically admitted by him through his evidence that the said cheque was issued as a security as per terms and condition of the complainant's company.
15. The defence case in the Trial Court was the cheque in question was given to the complainant company on 28.11.2008 as security hence in the year 2003 presentation of the said cheque was not his legally enforceable liability.
16. The Learned Amicus Curiae appearing for the appellant in all fairness submitted that the impugned order of acquittal should not be interfered with as the cheque was evidently issued for the purpose of security and not as a legally enforceable liability.
17. Heard the submission of the Learned Advocate for the State as well as the opposite party no. 1.
18. From Ext. C, B B-5/2, & D it had been seen that out of a total outstanding of Rs. 2,86,372/- after return of stocks valued Rs. 1,32,592/- by the opposite party no.1 there was still a due of Rs. 1,53,750/- to the appellant.

19. The Learned Magistrate in the Trial Court observed that in totality the complainant's claim became due only on 28.02.03 as such prior to that date there was no question of a due of Rs. 1,53,780/- from the opposite party and it could not be accepted that when the cheque which was on given on 28.11.2001 could be issued for a liability of the accused in the year 2003 and the same was incorrect.
20. The blank cheque issued could not have been held as security deposited against a legally enforceable debt. However the said cheque was given to the appellant company by the opposite party no.1 only as security.
21. Under the facts and circumstances of the case, in absence of any legally enforceable debt or liability, the Learned Trial Court has rightly acquitted the accused/opposite party and accordingly the criminal appeal being CRA 775 of 2008 is dismissed.
22. There is no order as to costs.
23. I record my appreciation for the able assistance rendered by Learned Advocate, Mr. Amartya Ghosh, as *Amicus Curiae* in disposing of the appeal.
24. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
25. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)