

283.
09.06.2025
Bd.
Ct. 29

CRR 1327 of 2019

Sri Sandip Das
Vs.
Indian Mining Works Pvt. Ltd. & Anr.

Mr. Sumanta Ganguli ...for the petitioner
(Legal Aid Counsel)

Opposite parties are not represented.

This application has been preferred against the judgment dated 30th March, 2019 passed by the learned Additional Sessions Judge, Fast Track Court 2, Calcutta, in connection with Criminal Appeal No. 78 of 2018.

By the impugned judgment, learned court below has affirmed the judgment and order dated 23rd July, 2018 passed by the learned Metropolitan Magistrate, 19th Court, Calcutta, in a proceeding under section 138 of the Negotiable Instruments Act, (In short N.I.Act,) being C Case No. 0398214 of 2014, by which the trial court convicted the appellant under section 138 of the N.I.Act, and sentenced him to imprisonment till rising of the Court and to pay a compensation of Rs. 6,50,000/- to the opposite party no. 1, in default to suffer simple imprisonment for one year.

The brief background of the complainant's case is that the convict/petitioner was one of the employee of the complainant's Company who had been entrusted with an amount of Rs. 6,95,000/- only deposited to him from time to time for the company's use but the said convict utilised the said money for his

personal use and thereafter in discharge of his part liability the accused person issued the impugned cheque bearing No. 199456 dated 16.04.2014 for a sum of Rs. 5,00,000/- in favour of the complainant and the complainant presented the said cheque before his banker within the prescribed period for its encashment but the said cheque was dishonored with the remark "Fund insufficient" vide memo dated 02.06.2014. Thereafter the complainant demanded the value of the said dishonoured cheque from the accused person by sending notice on 4.5.2014 and the report collected from Kolkata GPO, Customer Care Centre dated 06.06.2014 reveals that the said demand notice was duly served upon the addressee on 6th June, 2014. In spite of service of such demand notice the accused failed and neglected to make any payment and for which instant complaint was initiated.

The P.W.1 adduced evidence on behalf of the company. The accused person was also examined under section 313 of the Cr. P.C. and he also deposed as DW1. The trial court while passed the judgment has framed eight points for consideration. The trial court after careful perusal of materials and evidence, while passed the judgment, came to a definite finding that the evidence available before the court does not show that accused has issued the cheque in favour of the complainant for any other reason, i.e., the accused do not have any legal liability to repay the said amount of money to the complainant. The accused has also not given any reply to the demand notice of the complainant mentioning that he does not owe any debt and that he issued the cheque to the complainant for any other reason. Accordingly, Court below also held that the accused has failed to rebut the

presumption under section 139 of the NI Act, by adducing any cogent evidence. The Court below further held that the exhibited document shows that the demand notice was duly served upon the accused but in spite of service he neither gave any reply nor has paid the cheque amount to the complainant. Accordingly, trial court convicted the accused and sentenced him as above.

Being aggrieved by the judgment of the trial court, the convict as appellant preferred the Criminal Appeal No. 78 of 2018 and the Appellate Court also affirmed the judgment of the trial court observing that the respondent/complainant has complied with all the necessary ingredients in proving the allegations for the offence punishable under section 138 of the N.I.Act, and Court below further held that the accused issued the cheque in discharge in whole or in part of his debt towards the complainant and said debt is legally enforceable debt and the complainant has proved the case beyond reasonable doubt. He further observed that the judgment of the trial court is well reasoned and based on the materials on record as well as with the legal explanations and in such circumstances he refused to interfere with the observation made by the trial court and thereby he affirmed the judgment of the trial court.

Being aggrieved by the aforesaid judgment, Mr. Ganguly, learned counsel, appearing on behalf of the appellant/petitioner submits that the impugned judgment was passed by the court below without considering the materials on record and it tantamounts to failure of justice. The court below failed to consider that opposite party no. 1/complainant has totally failed to establish that the cheque in question was issued by the

petitioner, in discharge of any legally enforceable debt or liability and that the opposite party herein/complainant has failed to substantiate the guilt of the petitioner beyond shadow of reasonable doubt. In fact, the court below affirmed the judgment of the trial court on irrelevant considerations. The judgment impugned suffers from inadequate reasoning. He further submits that examination of the petitioner under section 313 of the Cr. P.C. has not been conducted by the trial court in accordance with law and thereby it vitiates the entire proceeding. The impugned judgment suffers from total non-application of judicial mind and as such Mr. Ganguly, has prayed for setting aside the judgment impugned.

I have considered the submissions made on behalf of the complainant. On perusal of the evidence adduced by the PW1 on behalf of the complainant, it appears that the complainant has proved the impugned cheque being no. 199456 dated 16.04.2014 for Rs. 5,00,000/- which has been duly signed by the accused and issued in favour of the complainant. Said cheque is marked as Exhibit-2 and the complainant also proved the cheque return memo with the endorsement "Fund Insufficient" dated 02.06.2014 which has been marked as Ext. 3. the demand notice and the documents supporting its service upon the accused person is marked as Ext. 4 and Ext. 5. The complainant has also proved the ledger account showing closing balance which is marked as Ext. 6 collectively. During cross-examination the PW 1 has stated that the accused handed over the cheque to the company as the accused was indebted towards company. No suggestion was given to the PW 1 denying the said answer. PW1 also made

unchallenged testimony that company used to give money to the accused for project work.

While the accused faced the dock as DW1 he also admitted that he used to perform work on behalf of the company as project manager and the total project was under his control. He also admitted that the payment was made to him by the company. He further admitted that he came to know about the cheque only after receiving the demand notice and thereby the service of demand notice upon the accused is not in dispute in the present case. Same accused in his cross-examination admitted that he used to take advance from the company for his work and he has not disputed his signature in the impugned cheque during cross-examination.

In the aforesaid facts and circumstances of the case and the documents which is marked as exhibited and also the evidence as adduced on behalf of the complainant/opposite party herein and also on behalf of the convict, I have no other option but to conclude that it has been clearly established during trial that the cheque has been issued by the accused in favour of the complainant in discharge of his legally enforceable debt. The demand notice was served upon the accused persons within the statutory period and considering all these there is nothing to interfere with the observation made by the trial court as well as made by the court below because the judgments impugned have not resulted in any gross or manifest failure of justice, nor has there been any illegality or perversity committed by the courts below while passing the impugned judgments.

Therefore, the judgment passed by the trial court dated 23.07.2018 and judgment passed by the court below dated 30.03.2019 are hereby affirmed.

The convict is hereby directed to appear before the court below within a period of thirty days from the date of communication of the order to serve out the sentence of TRC and sentence of payment of compensation, in default, the court below will be at liberty to take every endeavour including issuance of warrant of arrest to secure attendance of the convict/appellant before the said court to serve out the sentence as ordered by the trial court dated 23.07.2018.

Accordingly, CRR 1327 of 2019 is dismissed without any order as to costs.

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

(Dr. Ajoy Kumar Mukherjee, J.)