

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 1995 of 2022

Ajay Kumar Bayen @ Ajay Bayen

Vs.

State of West Bengal & Anr.

For the Applicant/opposite party : Mr. Kajal Roy
Mr. Suman Nandi

Heard on : 12.02.2025

Judgment on : 08.04.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. This application has been directed against the impugned judgment and order dated 29th April, 2022 passed by Additional Sessions Judge, 2nd Fast Track Court Bichar Bhavan in connection with Criminal Revisionsal Application no.89 of 2018. By the impugned judgment learned Court below affirmed the judgment of conviction and order of sentence passed by the Trial Court in Case No. C/420317/2014, being a proceeding initiated by the opposite party herein under section 138 of the Negotiable Instrument Act (in short N.I. Act). The allegation levelled in the complaint is that the Appellant herein/convict in the year 2011 introduced himself

as head of the genetics department of SSKM Hospital and by showing a nursing home at Maniktala area, Appellant told the Respondent herein that he will take over that nursing home and he has already paid major amount to the said nursing home authority but Rs. 15,00,000/- more is required to complete the process of taking over the nursing home. Accordingly the Appellant requested the Respondent to give him Rs. 15,00,000/- against some shares of the nursing home and the Respondent agreed with such proposal of the appellant and in good faith he had given Rs. 15,00,000/- to the appellant against the bank loan under lien against his fixed deposit. The Appellant acknowledged receipt of Rs. 15,00,000/- and issued money receipt to the Respondent. Thereafter, Respondent came to know that the accused has cheated him and for which he wanted to initiate a criminal proceeding against the Appellant, but in order to get rid of such criminal proceeding, the Appellant undertook that he will return the entire principal amount with 14% interest per annum to the respondent but the Appellant failed to do so. Thereafter the Appellant by several correspondences undertook to pay the principal amount along with interest but as he did not keep his words, the respondent lodged a complaint to the Chetla P.S. on 07.08.2013 and also to the Joint Commissioner of Police. Thereafter on several request the Appellant issued the impugned cheque which on presentation, got dishonoured on the ground of 'fund insufficient'. Thereafter, the complainant issued a demand notice which was duly served upon the convict/appellant and even after receipt of such demand notice, the Appellant failed to make any payment nor had given any reply to such

notice. Respondent herein accordingly initiated proceeding under section 138 of the N.I. Act as above against the convict/appellant.

2. After trial the appellant herein was convicted and sentenced to suffer imprisonment till rising of the court and further sentenced to pay Rs. 5,00,000/- to the complainant towards financial loss and harassment and in default to suffer simple imprisonment for six months.

3. Being aggrieved by that order convict/Appellant herein filed Revisional Application being aforesaid Criminal Revision no. 89 of 2018 before learned Chief Judge, City Sessions Court, Calcutta which was transferred to the Court below for disposal. Learned Court below affirmed the judgment of conviction and order of sentence passed by learned Metropolitan Magistrate Court, Calcutta.

4. The appellant herein did not represent himself during hearing, while learned Counsel appearing on behalf of the Respondent submitted that both the judgments are well reasoned and case of respondent has been proved beyond reasonable doubt and as such judgement of affirmation does not call for interference by this Court. He further submitted that the legally enforceable debt has been well established during trial and in the present context, there is no denial that the cheque was not signed by the appellant. The cheque was also duly presented before the bank within the statutory period and the demand notice was also sent in compliance with the provision laid down in section 138 of the N.I. Act.

5. Upon consideration of the submissions made on behalf of the Respondent, and on perusal of grounds of appeal, it appears that the ground taken by the Appellant herein *interalia* is that respondent herein

fraudulently misused the signed cheques, which both the courts below did accept in absence of cogent document or evidence by the appellant herein, who alleged the same.

6. On perusal of the judgment of conviction passed by the Trial Court it appears that Trial Court considered the evidence adduced by the accused as DW1 and the statement made by him under section 313 of Cr.P.C. that the complainant worked at their company for five months and transaction of company was dealt with by the complainant and taking advantage of the same, he has taken away blank signed cheque from the custody of the accused. The trial court did not believe such contention specially in view of the fact that there exists no cogent document or evidence in support of such contention. Moreover, the accused did not give any reply to the demand notice and only during his examination under section 313 Cr.P.C. he had come forward with such case which is not believable. The Trial court therefore clearly observed that the accused failed to adduce any evidence to show that all the documents including blank signed cheque books and signed stamp papers were kept by them in good faith in the custody of the complainant and as such said plea is not at all believable as also the accused/ appellant did not take any action against the complainant, when he allegedly misused the cheques. Accordingly he came to a finding that the complainant has proved the case beyond all reasonable doubts and accused is liable to be convicted having committed the offence punishable under section 138 of the N.I. Act.

7. The Appellate court below while dealt with the same issue relied upon exhibit 6 and 7 and observed that those two documents are the

proof that the accused person took loan from the complainant and these two documents were admitted in evidence without any objection and the appellant never challenged the signature appearing on those documents. He further held that accused did not produce Mr. Chittaranjan Ghosh, the General Manager of UCO Bank to support his contention that he recommended the accused to appoint the complainant as accountant in his company and the accused also did not give any reason as to why such best witness was withheld. The court below at the end of discussion held that the appellant herein has palpably failed to rebut the presumption under section 139 of N.I. Act by producing cogent evidence and on the contrary complainant has proved his case beyond reasonable doubt.

8. Needless to say that this is not a third appeal made by the convict and as such within the limited domain of High Court, it can interfere in the present Application, if impugned judgment suffers from perversity. It is not within the domain of this court to investigate the grounds based on factual aspects, on which the findings were arrived at by both the courts below but it can interfere only when the conviction order is passed upon a gross misappreciation of evidence, which has caused injustice to accused and High Court's interference is required to redress such injustice. In short the second Revisional Application after dismissal of first one by the Sessions court cannot be entertained by High Court even by invoking power under section 482 Cr.P.C. However, the revisional order of Sessions Judge can be challenged before High Court under section 482 Cr.P.C., but in that case High Court must not act as second Revisional court and must

be confined to the parameters of invoking power under section 482 of Cr.P.C. i.e.

- (i) to give effect to an order under the Code
- (ii) to prevent abuse of the process of the court
- (iii) to otherwise secure the ends of justice

9. On careful perusal of materials available in record I do not find any perversity or illegality in the judgments of the court below, which can call for interference by this court invoking its jurisdiction.

10. In such view of the matter **CRR 1995** of **2022** stands dismissed on merit. The appellant herein is directed to comply the order of sentence passed by the court below within a period of 30 days from the date of this order, failing which the Trial court will make every endeavour including issuance of warrant of arrest, so that the sentence awarded by both the courts below are being served out by the appellant herein.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)