
(2015) 02 CAL CK 0071

In the Calcutta High Court

Case No : C.R.R. Nos. 1869 and 1890 of 2014

Anamika Singha Roy

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 243, 245
Negotiable Instruments Act, 1881 (NI) — Section 138, 20

Citation : (2015) 02 CAL CK 0071

Hon'ble Judges : Ashim Kumar Roy, J.

Bench : Single Bench

Advocate : Amajit De, for the Appellant

Judgement

Ashim Kumar Roy, J.—Both these criminal revisions are taken up for hearing as two different criminal proceedings, against the petitioner, relating to the offence punishable under section 138 of the Negotiable Instruments Act, are sought to be quashed on identical issues.

2. Precisely, it is the case of the petitioner that one Uttam Mondal obtained a few cheques, including the two cheques in question from her, which were although signed by her but the amount was blank and subsequently, by filling up the amount, without her knowledge same were presented for encashment and there was no legally enforceable debt or liability. A criminal case has also been started against said Uttam Mondal for theft of those cheque leaves.

3. The learned counsel for the petitioner submitted in the above background the petitioner moved two separate applications before the trial court and prayed both the cheques in question be sent to the handwriting expert for comparing the contents and writings in the said cheques with her admitted signature. However, the learned Magistrate rejected such prayer.

4. This is a case where the petitioner is the signatory of the cheques was never disputed. It is only denied that the portion of the cheques specified for the

cheque amount was filled up by someone other than her. When a cheque is signed by the person authorized to operate the bank account on which such cheque is drawn, cheque becomes a valid one according to the provisions of Negotiable Instruments Act. In the case of Mrs. Kalyani Baskar Vs. Mrs. M.S. Sampornam, , the Apex Court held when the signature in cheque is disputed by the drawer of the cheque, in the interest of justice, a court must send such cheque to the handwriting expert seeking an opinion, by comparing the same with the admitted signature of the accused. In the said case the accused appeared before the Magistrate and filed an application under section 245 Cr.P.C. raising, inter alia, preliminary objection that (a) the accused has not signed the cheque nor issued it to the complainant respondent; (b) the cheque in question, was drawn from the individual account of the accused and therefore, as alleged by the complainant, the accused and her husband could not have jointly signed and issued the cheque; (c) the signature on the cheque may be sent for expert opinion to ascertain bona fides of the same; and (d) neither the appellant nor her husband owe any debt to the respondent.

5. In this regard, the observation of the Hon''ble Apex Court in paragraph 10 of the said decision and the ordering portion in paragraph 13 is quite relevant and are quoted below,

Para 10.

It is not in dispute that the appellant at the initial stage of her appearance before the Magistrate had filed an application under Section 245 Cr.P.C. in which she had categorically denied her signature on the cheque and its delivery to the respondent besides raising other preliminary objections in opposition to the complaint filed by the respondent under Section 138 of the Act. From the record, it appears that the said application was dismissed by the Magistrate on the ground that the genuineness of the signature can be questioned only at the time of trial. The appellant accepted the correctness of the said order of the Magistrate. During the trial, the respondent was examined as PW/1 on 22.9.1999 and PW/3, the officer of the bank was examined on 22.11.2000. It is thereafter that the appellant had filed the application under Section 243 Cr.P.C. praying to send the cheque in question, for ascertaining the bona fide and genuineness of her signature appended thereon. The trial Magistrate as well as the High Court have observed that Section 243 Cr.P.C. deals with summoning of the defence witnesses and cause any document or thing to be produced through him. But in the present case, the accused has filed a petition without naming any person as witness or anything to be summoned which is to be sent for handwriting expert for examination.

Para 13.

For all the foregoing reasons, we allow this appeal and set aside the order of the High Court dated 10.2.2004 passed in Criminal Revision Case No. 335 of 2002 by which the order dated 15.11.2001 of the Judicial Magistrate made in CrI. MP No.

341 of 2001 in CC No. 439 of 1998 dismissing the application of the appellant under Section 243 Cr.P.C. was affirmed. Accordingly, Crl. MP No. 341 of 2001 in CC No. 439 of 1998 on the file of the Judicial Magistrate, Tambaram, Chennai, shall stand allowed. The learned Magistrate shall take appropriate steps for obtaining the report of the handwriting expert on the point whether the signature on the cheque is that of the accused and shall proceed with the trial of the case in accordance with law. Since the case is very old, further proceedings shall be taken with utmost expedition.

6. However, the case of the petitioner is completely different. She never disputed that signature in the cheque is that of her. The section 20 of the Negotiable Instruments Act authorizes a person to complete inchoate instrument delivered to him by filling blank when such instrument is duly signed in accordance with law relating to negotiable instruments.

7. Having regard to above, the order passed by the trial court is fully justified and deserves no interference.

8. Both these criminal revisions have no merit and accordingly stand dismissed.

9. Let a copy of this order be kept with the records of CRR No. 1890 of 2014, which has been disposed of by this common order.

10. Urgent photostat certified copy of this order be given to the parties, if applied for, at an early date.