

(2001) 07 CAL CK 0021
In the Calcutta High Court
Case No : C.R.R. No. 2778 of 1999

Arpan Chatterjee

APPELLANT

Vs

Nabendu Chandra and Another

RESPONDENT

Date of Decision : 05-07-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : 105 CWN 887

Hon'ble Judges : Arunava Barua, J

Bench : Single Bench

Advocate : Dipak Sengupta and Ms. Bandana Basu, for the Appellant; Apurba Krishna Das, for the Respondent

Judgement

Arunava Barua, J.—The learned Advocate for the petitioner, Sri Dipak Sengupta and the learned Advocate for the opposite party, Sri Apurba Krishna Das, are present. Heard both sides. This revisional application u/s 401 read with Section 482 Cr. P.C. is directed against an order of conviction u/s 138 of the Negotiable Instruments Act and sentence to suffer simple imprisonment for one month and to pay a fine of Rs. 35,000/-, in default, to suffer further imprisonment for another one month passed by the learned Chief Judicial Magistrate, Burdwan in C. R. Case No. 409 of 1997 on 30th June, 1999 and which was affirmed in appeal being Criminal Appeal No. 22 of 1999 passed by the learned Judge, Special Court-cum-Additional Sessions Judge, Burdwan on 30.9.1999.

2. The instant case was started on the complaint filed by the complainant/opposite party No. 1 Sri Nabendu Chandra on 19.6.1997 in the Court of the learned Chief Judicial Magistrate, Burdwan against the accused/petitioner u/s 138 of the Negotiable Instruments Act.

3. When this instant revisional application was taken up for hearing some peculiar facts and circumstances had come to pass. It is peculiar in the sense that when the petitioner-accused Arpan Chatterjee was convicted and sentenced

as aforesaid by the learned Chief Judicial Magistrate and which was affirmed by the learned Additional Sessions Judge, Burdwan and when some years in the meantime had rolled by. the parties, i.e., the complainant and the convict-opposite party must have put their heads together to drown their dispute out of court.

4. The gist of the compromise or settlement, as it now appears on record and as addressed to by the learned counsels of both the parties, is that the convict-petitioner has already paid a sum of Rs. 45,000/- to the complainant-opposite party which is actually Rs. 10,000/- more than the fine amount of Rs. 35,000/- that was due to the complainant from the convict And the complainant opposite party has now no objection if the order of sentence of imprisonment (S.I. Tor one month) against the petitioner is set aside.

5. The learned Advocates of both the parties have submitted before me that pursuant to the amicable settlement a Bank Draft of Rs. 45.000/- in the name of the opposite party-complainant is ready to be handed over to the opposite party (Nabendu Chandra) by the petitioner-convict (Arpan Chatterjee). both of whom are present inside the court room today.

6. An affidavit has been sworn in and filed by the complainant, the relevant portions of which reads thus:

"2. That in the aforesaid complaint case, the accused-petitioner was convicted u/s 138 of the Negotiable Instruments Act and was sentenced to suffer simple imprisonment for one month and to pay the fine for a sum of Rupees 35,000/- (Rupees Thirty Five Thousand only), in default to suffer further simple imprisonment for another one month.

5. That I have already received a sum of Rupees 45,000/- (Rupees Forty Five Thousand only) from Sri Arpan Chatterjee as full and final settlement of the dues in respect of Cheque No. 0868688 dated 28.4.1977 on UCO Bank, Burdwan (Main) Branch for a sum of Rupees 35,000/- (Rupees Thirty Five Thousand only) for which the C.R Case No. 409 of 1997 was filed.

7. That the difference and dispute regarding the Cheque No. 0868688 dated 28.4.1997 amounting to Rs. 35,000/- (Rupees Thirty Five Thousand only) wholly and completely has been compromised with Sri Arpan Chatterjee and I have no objection if the order of sentence of imprisonment against Sri Arpan Chatterjee is set aside as he has already paid me, the sum of Rupees 45,000/- (Rupees Forty Five Thousand only)."

7. All these are basically questions of fact that have been laid bare on the face of the record. More importantly, in these peculiar facts and circumstances, there must be one important question left and it must be whether such a compromise between the parties after the conviction and sentence of the accused person for the infringement of the penal section of a particular Act, namely. Section 138 of Negotiable Instruments Act, is backed by legal sanction. Thanks to the pains

taken by the teamed Counsel for the petitioner, legal sanction comes remedy and comes true and this is from die Apex Court of the Country.

8. In this connection, the learned Counsel for the petitioner has submitted two very recent judgments of the Honourable Supreme Court 2000 C Cr LR (SC) 155, 2000 (1) OLR 400 (SC) . The head note in 2000 C Cr LR (SC) 155, itself highlights the point for our purpose. It runs thus :Negotiable Instruments Act, 1881 - Section 138 - Conviction- Sentence of fine and imprisonment - Subsequent compromise between the parties - Given effect - Conviction set aside on that basis.The appellant was convicted u/s 138 of the Negotiable Instruments Act by the High Court reversing the judgment of acquittal of the trial court. The parties have subsequently compromised and while the appellant has deposited the fine amount of Rs. 30,000/-, the complainant by an affidavit has stated that she has no objection if the sentence of imprisonment is set aside provided the sum of Rs. 30,000/- is deposited.The point for decision before the Supreme Court was whether ? the term of compromise can be given effect to and the conviction and imprisonment can be set aside on the basis of the same.

Held, Since the parties appear to have compromised the matter and the respondent will get back the amount of Rs. 30,000/- which sufficiently covers the amount for which cheque was issued, we allow the appeal and set aside the judgment passed by the High Court and acquit the appellant.

Appeal allowed.

Similarly, the same in 2000 (1) OLR 400 (SC) , goes thus. "Negotiable Instruments Act. 1881- Section 138 - Compounding of the offence under, during final hearing before Supreme Court -Permissibility - Conviction upheld by all the three forums -Complainant having objection if the conviction was set aside - State opposing the setting aside of the conviction on the ground that the parties could have entered into a compromise only during the pendency of the appeal and not at this stage - Despite some force in the State's contention, in view of the nature of the offence and the existence of a compromise, Supreme Court granting permission, in the peculiar facts and circumstances of the case to compound - Hence, conviction and sentence, held, necessarily stood annulled."

9. So, to all intents and purposes, the above two recent decisions of the Apex Court virtually clinch the issue. The parties are in court with the documents to say that they have amicably settled the matter. The Bank Draft showing payment to be made for a sum of Rs. 45,000/- is ready to be handed over by the accused to the complainant The Bank Draft of the amount of Rs. 45,000/- in the name of Nabendu Chandra in court and the same is accepted by him. Xerox copy of the said Bank Draft is kept with the record. The affidavit of the amicable settlement filed in court be made part of the record. In the affidavit it has been categorically sworn in and stated that the complainant has no objection if the order of sentence of imprisonment against the petitioners-accused Arpan Chatterjee is set aside as he has already paid the sum of Rs. 45,000/-.

10. Thus, toeing the lines of decisions of the Supreme Court in the cases cited above and in view of peculiar facts and circumstances that have emerged, we probably must not have any hesitation to set aside the conviction and sentence passed against the petitioner-accused Arpan Chatterjee and set him at liberty.

11. Accordingly, the conviction and sentence of the accused-petitioner u/s 138 of the Negotiable Instruments Act as passed by the learned Chief Judicial Magistrate, Burdwan by his order dated 30.6.1999 in C. R. No. 409 of 1997 stand annulled. The petitioner-convict, Arpan Chatterjee, be discharged from his bail bond and be set at liberty at once. This revisional application is, accordingly, disposed of. There will be no order as to costs. Let a copy of this order be sent down to the learned Court below at once.