
(2016) 12 CAL CK 0045
In the Calcutta High Court
Case No : C.R.R. 579 of 2013

Eastern India Enterprises

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 16-12-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 255, Section 372
Negotiable Instruments Act, 1881 (NI) — Section 138, Section 141

Citation : (2017) 171 AIC 273

Hon'ble Judges : Indrajit Chatterjee, J.

Bench : Single Bench

Advocate : Mr. Rishav Kumar Thakur and Mr. Sunil Singhania, Advocates, for the Appellant; None, for the Respondents

Final Decision : Dismissed

Judgement

Indrajit Chatterjee, J.—In this appeal the judgment of acquittal passed by the learned Metropolitan Magistrate, 5th Court, Calcutta on February 27, 2013 as passed in Complaint Case No. 826 of 2004 has been assailed before this Court.

2. The present appellant, who was the complainant before the said Court came with an application under Section 138 and 141 of the Negotiable Instrument Act, 1881 regarding dishonour of several cheques as mentioned in page No. 4 of the appeal. The total amount of cheques so dishonoured was Rs. 6,93,735/- drawn on State Bank of India, Nimtolla Branch, in favour of the complainant/firm.

3. I have already said that the learned Trial Court on appraisal of evidence disposed of that complaint case by passing an order of acquittal in respect of the three accused persons under Section 255 of the Code of Criminal Procedure in respect of the charge under Section 138, which according to that Court was not proved.

4. Now the question is whether such an appeal is maintainable under Section 378(4) of the Code of Criminal Procedure, which runs thus :-

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

5. Mr. Sunil Singhanian, learned Advocate appearing on behalf of the appellant took me to the order of this Court dated July 11, 2013 as passed in CRMSPL No. 40 of 2013 wherein such special leave was granted. Learned Counsel banking upon that special leave tried to convince this Court that this Court cannot review the said order to say that this appeal is not maintainable before this Court, being barred by the proviso given to Section 372 of the Code of Criminal Procedure, 1973.

6. It is true that such leave was granted but the proceeding before this Court is continuing and as such this Court has every right to dispose of this Criminal Appeal in conformity with law as enshrined by the legislature. One proviso was inserted as per Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009) (w.e.f. 31.12.2009) which runs thus :-

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

7. It is needless to say that the appeal against the order of conviction passed by a Metropolitan Magistrate will lie to the Chief Judge, City Sessions Court, Calcutta and as per this proviso the victim is entitled to prefer such an appeal before that Court both as regards the order of acquittal or for conviction for a lesser offence or imposing inadequate compensation.

8. The next question is whether the holder of a cheque can be said to be a victim under the definition of Section 2 (WA) which runs thus :-

" "Victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir."

9. Here in the present case before the learned Trial Court the cheques were issued in favour of this complainant by the accused persons and the accused persons were tried under Section 138 of the Act, 1881 and they were acquitted.

10. Thus, in view of proviso attached to Section 372 and on interpreting the word "victim" this Court is satisfied that the appeal would have been filed by this appellant not before this Court but before the Court of Chief Judge, City Sessions Court, Calcutta.

11. The appeal as filed before this Court is not maintainable in view of discussions so long made. Thus, this appeal is fit to be dismissed and I do that.

12. The complainant appellant is hereby permitted to file a fresh appeal before

Chief Judge, City Sessions Court, Calcutta, within one month from this day and the plea of limitation cannot be agitated before that Court as this complainant/appellant was duly proceeding with this appeal.

13. The learned Chief Judge, City Sessions Court, Calcutta will try to dispose of this Criminal Appeal which may be filed before that Court preferably within six months and if the said Court prefers to transfer the same to any other Additional Sessions Judge then the said Transferee Court must also try to dispose of the appeal as early as possible preferably within six months.

14. Let the Lower Court Records of this case be transmitted to the learned Trial Court immediately along a copy of this order.

15. Urgent certified copy, if applied for, given to the parties as per Rules.