
(2013) 03 CAL CK 0018
In the Calcutta High Court

Case No : CRR No. 2816 of 2012 and CRAN No. 3690 of 2012

National Plywood Industries

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 12-03-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 209 : (2013) 4 CHN 110

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Advocate : Kanakendu Chatterjee and Moumita Sarkar, for the Appellant;
Sandipan Ganguly and Ashis Kumar Mukherjee for Opposite Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.—Present petition has been filed u/s 401 read with section 482 of the Code of Criminal Procedure praying that order dated 19th July, 2012 passed by the Court of Additional Sessions Judge, 3rd Fast Track Court, Calcutta whereby the Additional Sessions Judge entertained appeal against acquittal, be set aside. Petitioner herein had issued a cheque, which, on presentation, had bounced. Opposite party filed a complaint to prosecute the petitioners for an offence u/s 138 of the Negotiable Instruments Act. Acquittal of the petitioners was limiting assailed by the opposite party by filing Criminal Appeal No. 10 of 2012. For filing the appeal, opposite party relied upon newly added proviso to section 372 of the Code of Criminal Procedure.

2. An argument was raised by the petitioners before the Court below that acquittal of the petitioners could not be assailed in an appeal as the only remedy available for the opposite party was to seek leave to appeal u/s 378(4) of the Code of Criminal Procedure. It was stated before the Court below that there is a distinction between "victim" and the "complainant".

3. Shri Kanakendu Chatterjee, Counsel, appearing for the petitioners, has

submitted that holder of a cheque, cannot be held victim and as per the newly added proviso to section 372 of the Code of Criminal Procedure, right of appeal only vest in the victim. It will be apposite here to reproduce section 372 of the Code of Criminal Procedure:

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.

4. A perusal of the above-said proviso, which was added by amending the Code of Criminal Procedure with effect from 31st December, 2009, reveals that right to file appeal has only been given to the victim. By the amendment, which introduced proviso to section 372 of the Code of Criminal Procedure, section 2(wa) was added which defines "victim". The definition of "victim" reads as under:

(wa) "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" included his or her guardian or legal heir;

5. The definition specifically states that any person, who has suffered any loss or injury, is to be termed as "victim". The word "injury" has not been defined in the Code of Criminal Procedure, 1973. However, the Code of Criminal Procedure specifically states that any word or expression, which has not been defined in the Code of Criminal Procedure, but has been defined in the Indian Penal Code, shall have the same meaning so far Code of Criminal Procedure is concerned. To fortify the above reasoning, reference can be made to section 2(y) of the Code of Criminal Procedure. The same reads as under:

(y) words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860) have the meanings respectively assigned to them in that Code.

Section 44 of the Indian Penal Code defines "injury". Section 44 of the Indian Penal Code reads as under:

44. "Injury".--The word "injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

The definition of "injury" includes harm to the property. Section 22 of the Indian Penal Code defines movable property and the same reads as under:

22. "Movable property".--The words "movable property" are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.

6. Therefore, if the definition of "victim" given u/s 2(wa) read with section 2(y) of the Code of Criminal Procedure along with definition of "injury" given u/s 44 of the Indian Penal Code and section 22 of the Indian Penal Code, which defines

movable property, are taken into consideration, a liberal interpretation is to be given to hold that non-encashment of the cheque causes injury to the person in whose favour cheque has been issued. Therefore, holder of the cheque is to be determined both complainant and victim. Section 378(4) of the Code of Criminal Procedure, which gives right to a complainant to seek leave to appeal, vest right only to those complainants where complaints are filed in furtherance of common good. To illustrate this, complaint filed by a Food Inspector under the provisions of Food Adulteration Act, will vest a right in the complainant to seek leave to appeal u/s 378(4) of the Code of Criminal Procedure. The illustrations may be many, they cannot be put in watertight jackets. Suffice it to say that holder of the cheque is a victim and he can prefer an appeal by invoking proviso to section 378 of the Code of Criminal Procedure.

7. Hence, the impugned order suffers from no infirmity as the Court below had rightly entertained the appeal. Having expressed the above opinion, this Court uphold the impugned order, hence, the present revision petition is dismissed.

8. Consequently, the application being CRAN 3690 of 2012 is also dismissed. Criminal Section is directed to supply urgent photostat certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.