

(2019) 12 CAL CK 0138

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 857 Of 2015

Rabindra Nath Dam & Anr

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 24-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 405, 415, 420

Code Of Criminal Procedure, 1973 — Section 156(3), 401, 482

Negotiable Instruments Act, 1881 — Section 138

Citation : (2019) 12 CAL CK 0138

Hon'ble Judges : Madhumati Mitra, J

Bench : Single Bench

Advocate : Somopriya Chowdhury, Bratin Kumar Dey, Pradeep Pandey, Rana Mukherjee, Pratick Bose

Final Decision : Allowed

Judgement

Madhumati Mitra, J

The petitioners being the accused of G.R. Case No. 1389 of 1996 arising out of Barasat Police Station Case No.508 of 1996 under Sections 420/120B of the Indian Penal Code have approached before this Court by filing an application under Section 482 read with Section 401 of the Code of Criminal Procedure for quashing of the said proceedings pending before the Learned Chief Judicial Magistrate, Barasat, North 24 Parganas.

The background aspects of the matter, so far relevant for the present purpose, may be mentioned, in brief, as follows:-

Opposite party No.2 initiated a proceeding under Section 156(3) of the Code of Criminal Procedure before the Court of Learned Chief Judicial Magistrate, Barasat, North 24 Parganas on 12.09.1996 and on the basis of that petition of complaint the Inspector-in-charge, Barasat Police Station was directed to investigate into the allegations contained in that petition of complaint.

Accordingly Barasat Police Station Case No.508 dated 12.09.1996 under Sections 420/120B of the Indian Penal Code read with Section 138 of the Negotiable Instruments Act was started against the petitioners.

After completion of investigation charge-sheet was submitted against the FIR-named accused persons for commission of alleged offences punishable under Sections 420/120B of the Indian Penal Code read with Section 138 of the Negotiable Instruments Act.

Annexure P-7 are the photo copies of the formal First Information Report and the petition of complaint.

From the said petition of complaint it appears that accused No.1 was introduced by the accused No.2 on October 14, 1995 and at that time complainant was induced to pay a sum of Rs.6000/- (Rupees Six Thousand) to accused No.1 for rendering certain lawful services to the complainant. It was alleged that the said amount was paid in presence of accused No.2 to accused no.1. Accused No.1 failed to render the said services. It was further alleged that accused No.1 had neither any capacity nor any inclination to do the job for which the complainant was induced to part with his money. Complainant demanded the amount on several occasions. The accused issued a che ue in favour of the complainant drawn of the State Bank of India, Madhyamgram Branch, being che ue No.160060 dated 10.11.1995 against his Account No. C/8310. The said che ue was dishonoured when presented present for encashment on the ground of 'Insufficient Fund'.

Complainant issued notice under Section 138 of the Negotiable Instruments Act through his Advocate to accused Nos.1 and 2. Complainant again presented the said che ue on the re uest of accused No.1 on 18.04.1996 for encashment and the che ue had bounced due to insufficient fund. It was alleged in the petition of complaint that the accused ignored the notice and did not pay the amount to the complainant. It was the specific case of the complainant that he was cheated by the accused.

Learned Counsel for the petitioners while making his submissions in favour of qquashing of the criminal proceedings pending against the petitioners has forcefully contended that the ingredients of the alleged offence of cheating are not present in the petition of complaint. He has contended that the opposite party started the present proceedings against the petitioners suppressing the actual facts as the petitioners and the complainant/opposite party had a relation of partner of a business.

Learned Counsel for the petitioners has further submitted that the cheque in question was deposited twice i.e. on 14.11.1995 and again on 18.04.1996. Notice was sent to the petitioner on first occasion to make payment of the amount covered by the che ue, but no notice was sent for the dishonour of the che ue on the second occasion. It is the specific contention of the Learned Counsel for the petitioner that the proceedings initiated by the opposite party

No.2 against the present petitioners are not maintainable in its present form and law. In this connection Learned Counsel has laid emphasis on the ground that the alleged offence at best may come within the purview of an offence under Section 138 of the Negotiable Instruments Act and the opposite party No.2 having failed to take recourse to that provision of Law had initiated the present proceedings by filing a petition of complaint under Section 156(3) of the Code of Criminal Procedure.

In support of his contention, the Learned Counsel for the petitioners has placed his reliance on the following decisions:-

1. G. Sagar Suri & Anr. Vs. State of U.P. & Ors. reported in (2000) 2 SCC 636;
2. Vir Prakash Sharma Vs. Anil Kumar Agarwal & Anr. reported in (2007) 7 SCC 373;
3. Tarun Dev Sarma & Ors. Vs. State of Assam & Ors. in Crl. Pet. No. 569 of 2014 and 97 of 2015 in the High Court of Guahati;
4. Sayed Anwar Ahmed Vs. State of Maharashtra reported in 2017 SCC Online Bom 3972;
5. B.A Linga Reddy & Ors. Vs. Karnataka State Transport Authority & Ors. reported in (2015) 4 SCC 515;
6. Priyanka Srivastava & Anr. Vs. State of Uttar Pradesh & Ors. reported in (2015) 6 SCC 287;
7. Murari Mohan Kejriwal & Ors. Vs. The State of West Bengal reported in 2000 SCC Online Cal 202;
8. Gautam Banerjee Vs. State of West Bengal reported in 2004 SCC Online Cal 507.
9. Shankarlal Khambra Vs. State of M.P. & Ors. in M.Cr.C. No.13554 of 2013 in the High Court of Madhya Pradesh.

As per affidavit furnished by the petitioners on 01.09.2019 opposite party had received the notice, but did not turn up.

Learned Counsel for the State has produced the certified copy of the case diary as per direction of the Court.

Learned Counsel for the State has drawn the attention of the court to the relevant portion of the case diary and has frankly submitted that in the present case, the centre of the dispute revolves around the

question as to issuance of the cheque by one of the accused in favour of the complainant which had subsequently bounced due to insufficient fund.

The question to be considered and answered in this Revisional Application is whether the Criminal Proceedings against the petitioners is maintainable in its

present form and law.

Before I proceed to further to examine the facts of the present case, I may notice the ambit and scope of the provisions of Section 420 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act.

Section 415 of the Indian Penal Code relates to an offence of cheating and runs as under:-

415. Cheating. - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

On the other hand Section 138 of the Negotiable Instruments Act lays down as under:-

"138. Dishonour of cheque for insufficiency, etc., of funds in the account. - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to[two] years, or with fine which may extend to twice the amount of the cheque, or with both:

Provide that nothing contained in this section shall apply unless-

- a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
- b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
- c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the che\ue within fifteen days of the receipt of the said notice.

Explanation.- for the purposes of this section "debt or other liability" means a legally enforceable debt or other liability."

The provisions contained in Section 138 of the Negotiable Instruments Act is a special penal provision relating to the offence of dishonour of cheques.

Special penal provision may regulate the manner of inquiry and trial. That means if the special provisions contain special procedure regarding in

inquiry, investigation or trial then the said provisions have to be followed.

Now I revert back to the facts of the case at hand.

In the instant case, charge-sheet was submitted against the accused for commission of alleged offences punishable under Sections 420/120B of the Indian Penal Code and under Section 138 of the Negotiable Instruments Act.

As per the allegations contained in the petition of complaint under Section 156(3) of the Code of Criminal Procedure, the cheque in question was issued in discharge of liability and the same had bounced on presentation for encashment due to 'insufficient fund.' Thereafter complainant served notice and no payment was received subsequent thereto. Instead of taking legal action, the complainant again deposited the said cheque for encashment and the same was again dishonoured due to 'insufficient fund.' Thereafter, the complainant filed a petition of complaint under Section 156(3) of Code of Criminal Procedure and that was treated as an FIR.

After completion of investigation charge-sheet was submitted under Sections 420/120B of the Indian Penal Code and under Section 138 of the Negotiable Instruments Act. In the present case, the complainant did not issue any notice to the accused after the dishonour of the cheque in question for second time on 18.04.1996. Thereafter on 21.06.1996 the complainant filed the application under Section 156(3) of the Code of Criminal Procedure. Having failed to bring an action under the specific provision of Section 138 of the Negotiable Instruments Act, the opposite party No.2/complainant started the proceedings under Section 156(3) of the Code of Criminal Procedure. Dishonour of a cheque constitutes an offence under Section 138 of the Negotiable Instruments Act. Moreover, the averments of the petition of complaint do not prima facie disclose the existence of the offence of cheating as defined in Section 405 of the Indian Penal Code.

In my opinion, the continuance of the criminal proceedings against the petitioners would be an abuse of the process of Court.

Hence, the proceedings being G.R. Case No.1389/1996 arising out of Barasat Police Station Case No.508 of 1996 under Sections 420/120B of the Indian Penal Code and under Section 138 of Negotiable Instruments Act are hereby quashed.

Thus the Criminal Revisional Application being No.857 of 2015 is allowed.

Certified copy of the case diary be handed over to the Learned Advocate for the State immediately.

Urgent certified photocopy of this judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.