IN THE COURT OF THE SESSIONS JUDGE,BANKURA

Present : Shri Ananda Kumar Mukherjee,
Sessions Judge,Bankura

Friday, the 31st day of August, 2018

CRIMINAL APPEAL NO. 8 OF 2018
u/s 374 of Cr.P.C.

Appeal from the judgment and order passed
by the ld. Judicial Magistrate,7th Court,Bankura
in Complaint Case No.163C of 2011 (Trial No.
294T/2011) u/s 138 of Negotiable Instrument Act.

Smt. Tanushree Gupta.................. Appellant

Vs

1) Smt. Mamoni Gorai

2) The State of West Bengal...........Respondents

Sri Chandi Charan Adhurvya, ld. Advocate.......For the Revisionist
Sri Sourish Mukherje, ld.Advocate...........For the Respondent no.1
Sri Arun Kumar Chatterjee.,ld. P.P...... .....For the Respondent no.2

J U D G M E N T

Instant Criminal Appeal has been preferred by the Appellant/convict u/s 374 of Cr.P.C., being aggrieved and dissatisfied with the judgment and order dt. 28.02.18 passed by the ld. Judicial Magistrate, 7th Court, Bankura in Complaint Case No. 163C of 2011 wherein appellant has been found guilty of the offence u/s 138 of Negotiable Instrument Act and sentenced to a fine of Rs.5,00,000/- payable as compensation to Mamoni Gorai/ respondent no. 1 in default to suffer S.I. for two years.

The fact leading to institution of the complaint case against the present appellant is that the appellant took a loan of Rs.4,00,000/- from the respondent no. 1 for the purpose of construction of a house and for purpose of discharging such debt in whole issued a cheque payable at Bankura Town Co-operative Bank Ltd. being No.021889 of Rs.4,00,000/- dt. 3.5.11 in favour of the respondent no. 1. The respondent no. 1 submitted the cheque in her account with Bankura Town Co-operative Bank Ltd. for encashment on 6.6.11 but the cheque was dishonoured with a Memo. dt. 7.6.11 stating "insufficient fund". An Advocate's notice dt. 8.6.11 was issued by the respondent no. 1/complainant through registered post with A/D demanding payment of the said amount by the appellant within fifteen days from the date of receipt of the notice. The notice was duly served but no payment was made within the statutory period of fifteen days from the date of receipt of the notice by the payee. Thus the offence u/s 138 of Negotiable Instrument Act is said to have been committed by the appellant/ convict. A complaint was lodged before the ld. Chief Judicial Magistrate, Bankura and after examining the complainant and the documents cognizance was taken and notice was issued to the accused. On 6.3.12 the accused was examined u/s 251 of Cr.P.C. Substance of accusation u/s 138 of Negotiable Instrument Act was stated and explained to the accused to which she pleaded not guilty and claimed to be tried.

Mamoni Gorai who is respondent no. 1 was examined as P.W. 1. The cheque drawn in favour of the payee bearing no. 021889 dt. 3.5.11 of Rs. 4,00,000/- was produced as Ext.1, the deposit slip with bank seal dt. 6.6.11 is marked as Ext.2,the return memo. sent to the payee with remark "insufficient fund" is produced as Ext.3,the postal slip of the advocate's notice addressed to the drawer is marked as Ext.4, A/D card as exhibit-5, a computer generated accounts of the statement of the complainant Mamoni Gorai of her account No. 22639 with Bankura Town Co-operative Bank Ltd. has been marked as Ext.-6 and another computer generated accounts statement of accused Tanushree Gupta/appellant has been marked as Ext.-7. Dhananjoy Das, the Manager of the Town Co-operative

Bank Ltd. has been examined as P.W. 2.

Ld. Magistrate while considering the evidence adduced in the case took recourse to the presumption u/s 118 of Negotiable Instrument Act regarding consideration, as to date, as to time of acceptance, as to time of transfer, as to order of indorsement, as to stamps and a holder in due course. It was held that the complainant has proved all the ingredients to constitute an offence u/s 138 of N.I. Act against the accused beyond any reasonable doubt and held Tanushree Gupta, present appellant guilty u/s 138 of the Negotiable Instrument Act and sentenced her to pay fine of Rs. 5,00,000/- payable to the complainant in default to suffer S.I. for two years.

In the Memorandum of Appeal the appellant contended that the case filed against her was based on false and fabricated story. Ld. court erred in law and fact and failed to consider the defence case. It is urged that the judgment passed by the ld. Judicial Magistrate suffers from illegality, perverseness and violation of natural justice and the same is liable to be set aside.

Along with the appeal an application for stay of operation of order dt. 28.2.18 of ld. Judicial Magistrate,7th Court, Bankura in the aforesaid case was filed. On 9.4.18 stay of operation of the judgment dt. 28.2.18 was granted subject to deposit of Rs. 4,00,000/- in court by the appellant before 8.5.18. On 8.5.18 the appellant filed a petition praying for time for deposit of Rs. 4,00,000/- and a separate petition for extension of stay. However, on considering the same the petition was rejected and the stay granted earlier was vacated.

Both the respondent no. 1 and 2 appeared through their ld. advocates.

The appeal was taken up for hearing on 21.08.18.

Ld. advocate for the respondent no. 1 argued that there is no merit in the appeal. Ld. Judicial Magistrate,7th Court,Bankura has passed the judgment and order on the basis of documents filed in court. The present appeal is liable to be dismissed.

Ld. advocate for the respondent no. 2 submitted that there is no illegality in the judgment passed and the appeal is liable to be dismissed.

The point for consideration before us is whether the impugned order suffers from any illegality, arbitrariness and irregularity ?

DECISION WITH REASONS

I have considered the entire sequence of facts leading to this case and examined the evidence on record. It is undisputed that a cheque of Rs. 4,00,000/- was issued by the appellant in favour of the payee. Under Section 118 of Negotiable Instrument Act apart from the evidence of P.W. 1 who stated that the cheque was issued for repayment of the loan taken by Tanushree Gupta, the appellant, the provision of Section 139 of N.I. Act comes to the aid of the complainant/respondent no. 1 giving rise to the presumption that the holder of the cheque received the same for discharge, in whole or in part, of any debt or other liability.

Section 118 of Negotiable Instrument Act also gives rise to the presumption that the negotiable instrument was made or drawn for consideration, and that every such instrument,when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration, such transactions are also fortified by the presumption under the law that date, time, indorsement were made in the order in which they appear . Therefore there is no ambiguity regarding the liability of the appellant for which the cheque of Rs. 4,00,000/- was issued by her.

It appears from the return memo. of the bank marked as Ext.- that on 7.6.11 when the cheque was presented to Bankura Town Co-Operative Bank Ltd. the same was dishonoured due to "insufficiency of fund" in the account of the appellant. It looms large from the postal receipt and the A/D card that notice was sent to the appellant demanding payment within fifteen days from the date of receipt of notice but as the same have not been complied a complaint u/s 138 of Negotiable Instrument Act has been filed on

6.7.11,within statutory period of thirty days after expiry of the period of fifteen days mentioned in the notice.

The quantum of sentence passed by the ld. Judicial Magistrate, 7th Court, Bankura appears to be just and reasonable. From the transaction in question it appears that the appellant for discharging his liability had issued a cheque of Rs. 4,00,000/- in favour of the payee bearing No. 021889 dt. 3.5.11. Till date no payment has been made after passage of more than seven years. The fine amount adjudged by the ld. Magistrate is Rs. 5,00,000/- which is directed to be paid as compensation. Therefore, the actual compensation amount for such delay in payment to respondent no. 1/complainant would be Rs.1,00,000/- only. The compensation amount does not appear to be excess or harsh upon the appellant. I find no illegality arbitrariness or irregularity in the impugned judgment or order. In order to ensure payment of compensation a default sentence of simple imprisonment for two years has also been passed by the ld. Magistrate. In such view of the matter I find no merit in the Criminal Appeal and the same is dismissed on contest.

Hence,

O R D E R E D,

that the Criminal Appeal u/s 374 of Cr.P.C. is dismissed on contest.

The impugned judgment and order dt. 28.2.18 passed by the ld. Judicial Magistrate, 7th Court, Bankura in Complaint Case No.163C/2011(Trial No. 294T/2011) is affirmed.

Let a copy of this judgment along with the LCR of Case No. 163C/2011 (Trial No. 294T/2011) be sent to the 7th Court of ld. Judicial Magistrate, Bankura for information.

Sd/- A.K.Mukherjee
Sessions Judge,Bankura
31.08.18

Dictated and corrected by me
Sd/- A.K.Mukherjee
Sessions Judge,Bankura