

Criminal Revision

Present: **The Hon'ble Justice Ashim Kumar Roy**

C.R.R. No. 845 of 2010

Judgment On: 16-04-2010.

Mrinal Kanti Saha
versus
State of West Bengal & Ors

POINTS:

QUASHING-Cheque drawn on a Current Account but presented to Savings Accounts -Cheque dishonoured- The petitioner contended that payment has already been made- Whether this fact can be gone into and proceeding can be quashed-Negotiable Instruments Act, 1881 S.138-Code of Criminal Procedure, 1973 S.482

FACTS:

The petitioner who has been arrayed as accused in a case relating to an offence punishable under Section 138 of the Negotiable Instruments Act, has approached this Court for quashing of the same on the ground that the cheque was drawn on a Current Account but the same was presented to his Savings Accounts and consequently the cheque was dishonoured and the cheque amount has already been repaid.

HELD:

The Court is of the opinion that none of the ground on which the petitioner is seeking quashing is tenable in law. According to the complainant the cheque was dishonoured and returned unpaid due to insufficiency of the funds and not due to the presentation of cheque for encashment in a wrong account. Moreover, the contention of the petitioner that payment has already been made is a

disputed question of fact and cannot be gone into at this stage. It is the further case of the complainant in spite of demand notice no payment has been made against the dishonoured cheque.

Para-2

For Petitioner : Mr. Debabrata Dasgupta

THE COURT:

1. Invoking Section 482 of the Code of Criminal Procedure, the petitioner who has been arrayed as accused in a case relating to an offence punishable under Section 138 of the Negotiable Instruments Act, has approached this Court for quashing of the same on the following ground;

The cheque was drawn on a Current Account but same was presented to his Savings Accounts and consequently the cheque was dishonoured and the cheque amount has already been repaid.

2. Having regard to the submission made by the learned advocate appearing on behalf of the petitioner and considering the materials on record I am of the opinion that none of the ground on which the petitioner is seeking quashing is tenable in law. This is the case of the complainant the cheque was dishonoured and returned unpaid due to insufficiency of the fund not due to the presentation of cheque for encashment in a wrong account. Moreover, the contention of the petitioner that payment has already been made is a disputed question of facts and cannot be gone into at this stage. It is the further case of the complainant in spite of demand notice no payment has been made against the dishonoured cheque.

3. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated.

4. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)