

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. 7798 OF 2017

Abdul Arif

...Petitioner

Versus

Rani Amutha K & Anr.

...Respondents

ORDER

The Petitioner is an Accused in C.R. No. 106/2015 on the file of Judicial Magistrate First Class, Port Blair. The Trial Court vide order dated 29.03.2016 acquitted the Petitioner holding that the Petitioner is not guilty for an offence under Section 138 of the Negotiable Instruments Act, 1881. The main reason to acquit the Petitioner as assigned by the Trial Court was that the complaint filed by the Respondent/Complainant was premature, inasmuch as the same is filed without completion of 15 days after the receipt of the notice by the Accused. The High Court of Calcutta (Circuit Bench at Port Blair) in CRA No. 026 of 2016 has set aside the judgment and order of acquittal passed by the Trial Court and convicted the Accused. Hence, the accused is before us

questioning the judgment and order of conviction passed by the High Court.

2. It is alleged by the complainant in his complaint that the Accused had taken a sum of Rs.9,20,000/- in cash from the Complainant as financial help due to his personal needs. In order to settle the amount, the accused person issued four post-dated cheques bearing Nos. 019060 to 019063. One notarized undertaking was also given on 21.12.2014. The accused was to repay the said amount within six months.

However, after the expiry of six months the accused did not make the payment. Subsequently, the cheque bearing No. 019060 was returned to the accused person on receipt of Rs.2,70,000/-. The accused thereafter gave an undertaking to repay the balance Rs.6,50,000/- within a month. All the remaining cheques on presentation before the bank were returned with an endorsement "funds insufficient". Hence, the litigation arose.

3. Though the Trial Court did not take pains to enter into the merits of the matter despite the fact that it has recorded the evidence of the parties fully, the High Court on evaluation of the material concluded that the offence is made out against the accused. Having regard to the material on record, we find that the

High Court is justified in concluding so.

4. When the matter was posted before this Court on 04.12.2018, this Court directed the Learned Counsel for both the parties to explore the possibility of settling the matter. The matter was thus adjourned on two occasions subsequently. Since the parties have not settled the matter *inter se* and as we think that by remanding the matter to the Trial Court, there would be a further delay in deciding the issue, we find it fit to take the decision by exercising our jurisdiction under Article 142 of the Constitution of India. Litigation is pending since 2015 in respect of an offence under Section 138 of the Negotiable Instruments Act. If the matter is remanded at this stage, the parties will continue to litigate at least for a few years, which would not only lead to loss of valuable time of the Court, but will also monetary loss to the parties. Having regard to the totality of facts and circumstances of the case on hand, in our considered opinion, the interest of justice would be met if the Accused/Petitioner is directed to pay a sum of Rs.7 Lakhs to the Complainant in equal bimonthly instalments. Which means, the Accused/Petitioner shall pay an amount of Rs.1 Lakh every two months to the complainant till he re-pays an amount of Rs.7 Lakhs in all, as mentioned supra. The first instalment shall be paid by

the Petitioner on or before 01.04.2019. We make it clear that in case of default of payment of two instalments continuously, the impugned Judgment dated 27.07.2017 passed by the High Court of Calcutta (Circuit Bench at Port Blair) in CRA No. 026 of 2016 shall revive and the order of this Court will vacate automatically. The petition is disposed of accordingly.

.....J.
[N. V. RAMANA]

.....J.
[MOHAN M. SHANTANAGOUDAR]

NEW DELHI;
February 22, 2019.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).7798/2017

(Arising out of impugned final judgment and order dated 27-07-2017 in CRA No.026/2016 passed by the High Court of Calcutta Circuit Bench at Port Blair)

ABDUL ARIF

Petitioner(s)

VERSUS

RANI AMUTHA K & ANR.

Respondent(s)

Date : 22-02-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s) Mr.Gaurav Jain, Adv.
Ms.Abha Jain, AOR
Mr.Aniteja Sharma, Adv.For Respondent(s) Mr.D.Bharat Kumar, Adv.
Mr.Tadimalla Baskar Gowtham, Adv.
Mr.Aman Shukla, Adv.
Mr.Abhijit Sengupta, AORFor RR.No.2 Mr.Mirnal Kanthi Mondal, Adv.
Mr.K.V.Jagdishvaran, Adv.
Mrs.G.Indira, Adv.UPON hearing the counsel the Court made the following
O R D E RThe special leave petition stands disposed of in terms of
the signed order.(SATISH KUMAR YADAV)
AR-CUM-PS(RAJ RANI NEGI)
ASSISTANT REGISTRAR
(Signed order is placed on the file)