

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE, KALNA.
DISTRICT – PURBA BARDHAMAN**

PRESENT: SRIMAYI KUNDU,
ADDITIONAL SESSIONS JUDGE, KALNA
(J.O. Code-WB00655)

CRIMINAL APPEAL NO. 08 OF 2022

(An appeal against the Judgement and order dated 29-09-2022 passed by the Ld. J.M (1st Court), Kalna, Purba Bardhaman in Cr. Case No. 59 of 2016)

(E. Filing No. 393 of 2022, CNR No.WBBD11-001110-2022, E. Regd. No. 08/ 2022)

1) Nijam Ali Mondal Appellant

-Vs-

1) Doli Mallick,

2) State of West Bengal

Respondents

DATED: 17th day of February, 2025

Judgment

This is an appeal against the Judgment and order dated 29-09-2022 passed by the Ld. J.M (1st Court), Kalna, Purba Bardhaman in Cr. Case No. 59 of 2016, wherein Ld. Trial Court found the present appellant as guilty of offence punishable u/s 138 N I Act and sentenced him to suffer SI for a period of 3 months and a fine of Rs. 2 lakhs and the said amount to be paid within 60 days of passing of the judgment id SI for one year.

Although, the Title of the Appeal do not reflect the provision under which the same is preferred but it is filed as per provision of Sec. 374(3)(a) Cr.PC.

The appellant filed the present case against the respondents, on the following grounds :-

1) that the impugned judgment and order are bad in the eye of law;

2) that the Learned Trial court failed to appreciate the evidences of the witnesses and arrived a wrong finding and thereby passed the order of conviction.

3) for that the appellant has filed a case before Kalna PS which is registered as Kalna PS Case No. 52 of 2016 dtd. 30-01-2016 against the respondent No. 1 and her husband and on the basis of the same the present order of conviction to be set aside.

4) The respondent No.1 had failed to prove that she served notice properly upon the appellant and on this issue Ld. Trial court came to wrong finding and passed the conviction.

The appeal was preferred by the appellant on 21-11-2022 and thereafter, on 28-11-2022 all further proceeding in respect of judgment and order dated 29-09-2022 passed by Ld. J.M, 1st Court, Kalna in C.R. Case No. 59 of 2016 was stayed till disposal of this case. Thereafter, LCR was called for and the same was received by this Court on 28-03-2023. Subsequently, 27-09-2023 was fixed for hearing of the present case. Since then till date, both the parties filed haziras through advocate and never proceeded with hearing of the case. Vide order dated 13-08-2024 this Court issued show cause order as to why necessary order shall not be passed by this Court and against that order no show cause was submitted and today this Court has taken up the present case for passing necessary order on merit.

POINTS FOR CONSIDERATION BEFORE THIS COURT :

How far the present appeal is maintainable before this Court and whether the impugned judgment and order is aptly justified or not.

DECISION WITH REASONS.

The appeal is preferred against the Judgment and order dated 29-09-2022 passed by the Ld. J.M (1st Court), Kalna, Purba Bardhaman in Cr. Case No. 59 of 2016, wherein Ld. Trial Court found the present appellant as guilty of offence punishable u/s 138 N I Act and sentenced him to suffer SI for a period of 3 months

and a fine of Rs. 2 lakhs and the said amount to be paid within 60 days of passing of the judgment id SI for one year.

As per provision of Sec 374 (3) (a) the present appellant can file the appeal and so the same is maintainable before this Court.

On perusal of the impugned judgment passed by Ld. Trial Court it appears that the Ld. Trial Court preferred to distribute the subject matter of the case before her, into six points.

As per point No. 4 the notice necessary is discussed and thereby the judgment reflects that the complainant before the Ld. Trial Court/respondent No. 1 before this Court is able to justify the notice was properly served.

About point No. 5 and 6 Ld. Trial court proceeded to discuss whether the present appellant/accused before the Ld. Trial Court had paid the said demanded amount and whether the cheque in question was drawn by the present appellant/accused before the Ld. Trial Court, or not.

Against point No. 5 Ld. Trial Court found that accused person before it failed to establish that the entire amount is paid by him.

Against point No. 6 Ld. Trial Court held that the accused issued the cheque in question to discharge his liability.

Thereafter, Ld. Trial Court analyzed the evidences adduced before it and proceeded to find the present appellant as guilty and convicted him.

This Court finds that the judgment and order in question is aptly justified and there is no necessity of interference of this Court therein.

It is also relevant to note that the present appellant of this case have not argued before this Court, in spite of giving several opportunity, nor brought any supportive document to substantiate the point No. 5 of Memorandum of Appeal.

Memorandum of Appeal is correctly stamped.

Hence, it is,

ORDERED

that the Judgment and order of conviction dated 29-09-2022 passed by the Ld. J.M (1st Court), Kalna, Purba Bardhaman in Cr. Case No. 59 of 2016 is hereby affirmed and the instant Criminal Appeal is dismissed on merit and without any cost.

Let a copy of this order be forwarded to the Ld. Judicial Magistrate 1st Court, Kalna in connection along with the case record of Cr. Case No. 59 of 2016.

Dict. & corrected by me,

Additional Sessions Judge
Kalna,Purba Bardhaman

Additional Sessions Judge
Kalna,Purba Bardhaman

Memo No.....Dated, Kalna, the 17th day of February, 2025

Copy of this order be forwarded to the Ld. Judicial Magistrate 1st Court,
Kalna in connection along with the case record of Cr. Case No. 59 of 2016.

Additional Sessions Judge, Kalna,
Purba Bardhaman.