

**(2011) 05 CAL CK 0104**

**Calcutta High Court**

**Case No:** C.R.A.N. No. 918 of 2011 and C.R.R. No. 1208 of 2008

Recreation Advertising Services

APPELLANT

Vs

State of West Bengal <BR> In Re:  
Manika Poti Biswas

RESPONDENT

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**Date of Decision:** May 20, 2011

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 362
- Negotiable Instruments Act, 1881 (NI) - Section 138
- Penal Code, 1860 (IPC) - Section 64, 65, 66

**Citation:** (2011) 2 CHN 987

**Hon'ble Judges:** Kanchan Chakraborty, J

**Bench:** Single Bench

**Advocate:** Sujan Chakraborty and Debasish Basu, for the Appellant; Sandipan Ganguly, Ayan Bhattacharyya, Anjan Dutta and Swapan Kr. Mallick Advs., for the Respondent

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**Judgement**

Kanchan Chakraborty, J.

Mr. Sujan Chakraborty, learned Counsel appearing for the Recreation Advertising Services, the Petitioner in C.R.R.1208 of 2008, files the affidavit-in-opposition. Let it be kept with the record.

2. Mr. Sandipan Ganguly, learned Counsel appearing for the Manika Poti Biswas, the applicant in this CRAN application, contends that while disposing of the revisional application being C.R.R.1208 of 2008, this Court made a mistake apparent on the face of the record, which is contrary to the statute and for that his client is not supposed to suffer. He takes me to the concluding portion of the order dated 16.3.2011 passed in C.R.R.1208 of 2008 and submits that this Court in Clause (a) directed--

That the order of sentence passed by the learned Magistrate is however, modified to the effect that "in case of failure to pay compensation amount, the opposite parties

should suffer simple imprisonment for two years" be added to what has been sentenced by the learned Trial Court.

3. He refers to Sections 64, 65 and 66 of the Indian Penal Code and submits that according to provisions of law, the period for which the Court may direct the offender to suffer imprisonment in default of payment of a fine shall not exceed 1/4th of the term of the imprisonment which is maximum fixed for the offence, if the offence is punishable with imprisonment as well as fine. Mr. Ganguly submits that the offence u/s 138 of the NI Act is punishable with imprisonment as well; as fine. In fact, the learned Trial Court passed substantive sentence of imprisonment by way of detaining his client and Ors. till rising of the Court and to pay compensation of Rs. 6,50,000/-. No default clause was added to in case: of failure to pay compensation. This Court while disposing of the criminal revisional application added that default clause only and directed the opposite parties therein to pay compensation amount, failing which they suffer S.I. for 2 years.. The client of Mr. Ganguly, in fact, appeared in the Court and wanted to deposit proportionate fine on 7.5.2011. The learned Trial Court found it difficult to accept that proportionate fine amount because of the order passed by this Court in the criminal revisional application whereby all the opposite parties were put under joint liability to pay the whole compensation amount of Rs. 6,50,000/-.

4. Mr. Ganguly submits, when this mistake of statutory provisions of law on the part of this Court caused sufferance to his client, it should be rectified by an appropriate order.

5. Mr. Sujan Chakraborty, learned Counsel appearing for the Recreation Advertising Services contends that in view of provisions of Section 362 of the Cr. PC, this Court cannot alter or review its order which has once been passed.

6. Mr. Swapan Kr. Mallick, learned Counsel appearing for the opposite party/ State contends that in view of the decisions of this Court in M. S. Tirupathi v. C.H. Ramakrishna Rao and Anr. reported in 2010 (1) CLR (Cal) 391 and in view of Vishnu Agarwal v. State of U.P. and Anr. by the Hon"ble Apex Court together with A.R. Antulay's case, no man should suffer cause because of mistake of the Court. The matter is entirely technical one and as such, he submits, Court should consider this for ex debito justitiae.

7. Upon considering the rival contentions of the learned Counsels of the parties and upon perusal of the record, order passed in C.R.R.1208 of 2008, prayer made in C.R.A.N.918 of 2011 and the grounds taken opposing that prayer, this Court finds that the provisions of Sections 64, 65 and 66 of the Indian Penal Code had to be taken into consideration while this Court disposed of the criminal revisional application. This Court wrongly modified the sentence by directing that in case of failure to pay compensation amount, the opposite parties should suffer simple imprisonment for two years. According to the Section 138 of the N. I. Act, maximum

term of imprisonment can be imposed is two years. In view of provisions of Sections 64, 65 and 66 of the Indian Penal Code, it should not be exceeded 1/4th term, i.e., six months in case fine is not paid. This proposition of law was clarified by the Hon''ble Apex Court in [Vijayan Vs. Sadanandan K. and Another,](#). No doubt, it was a glaring mistake on the part of this Court and for which the client of Mr. Ganguly should not suffer. At the same time, it is true that there is impediment for this Court to get that corrected in view of the provision of Section 362 of the Code of Criminal Procedure. Now, the question comes in what is the way out.

8. In [A.R. Antulay Vs. R.S. Nayak and Another,](#) the Hon''ble Apex Court held;

No man should suffer cause because of the mistake of the Court. No man should suffer a wrong by technical procedure of irregularities. Rules of procedures are the hand made of justice and not the mistress of the justice. Ex debito justitiae, we must justice to him. If a man has been wrong so long as it lies within the human machinery of administration of justice that wrong must be remedied.

9. Again, in Vishnu Agarwal v. State of U.P. and Anr. (collected from Supreme Court Website as - 2011 STPL (Web) 171 SC, the Hon''ble Apex Court opined that Section 362 cannot be considered in a rigid and over technical manner to defeat the ends of justice.

10. In this case, the order passed by this Court in the revisional application cannot possibly be given effect to because the terms of the order appear to be misleading and confusing in nature. Firstly, this Court made a mistake by directing the opposite parties in the revisional application to suffer two years of imprisonment in place of six months, in case of default of payment of compensation.

11. Secondly, it is not clear from the order whether the opposite parties therein severally or jointly liable in paying the compensation amount. This Court ought to have passed a specific order in that regard. It was not the intention of this Court that each and every opposite party of the revisional application should pay Rs. 6,50,000/- towards compensation to the Petitioner and by that way he would be getting a total sum of Rs. 26 lakhs towards compensation. Naturally, that fact ought to have been clarified otherwise, it would be impossible for the learned Trial Court to give effect to the order passed by this Court.

12. The cheque amount which the opposite parties did not pay is to be realized by the Petitioner. He is not supposed to make profit out of that. The amount of the cheque was Rs. 6,30,207/-. Awarded of compensation was in the tune of Rs. 6,50,000/-. It covers the penalty. Naturally, the Petitioner was not supposed to suffer because of delayed payment. At the same time, he is not supposed to gain undue profit out of this. In such a circumstances, the patents wrong on the part of this Court causing sufferings to the applicants of Mr. Ganguly should be corrected and in my opinion, in doing so, provision of Section 362 of the Code will not be coming in the way.

13. Accordingly, I allow the prayer. The order passed in the revisional application dated 16.3.2011 to the effect that "in case of failure to pay compensation amount, the opposite parties should suffer simple imprisonment for two years" is modified to the extent "that in case of failure to pay the proportionate compensation amount by each of the opposite party, they should suffer simple imprisonment for six months each".

14. Accordingly, the CRAN 918 of 2011 is disposed of. Mr. Ganguly, be provided with a plain copy of this order for placing it before the learned Trial Court so that the learned Trial Court can act on it. However, other terms of the order passed in the revisional application in C.R.R.1208 of 2008 will remain unchanged.

15. Xerox plain copy of this order countersigned by the Assistant Registrar (Court) be given to the appearing parties on usual undertaking.

16. Let urgent Photostat certified copy of this order, if applied for, be given to the learned Advocates of the parties upon compliance of necessary formalities.