

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P. No.15 of 2022

Sri Abhijit Das, son of Sri Debabrata Das, resident of Rangamati Panchayet, Poultry Road, PO: R.K Pur – 799120, PS: R.K Pur, District: Gomati, Tripura.

.....Petitioner(s)

Versus

1. Sri Ranjan Datta, son of late Suresh Chandra Datta, resident of Badarmokam, PS & PO: Radhakishorepur – 799120, District: Gomati Tripura

2. The State of Tripura.

.....Respondent(s).

For Petitioner(s) : Mr. D.K. Daschoudhury, Advocate.

For Respondent(s) : Mr. Sumit Debnath, Addl. P.P,
Mr. A. Acharjee, Advocate,
Mr. Rupak Nama, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

JUDGMENT & ORDER (ORAL)

19/05/2023

By the impugned judgment dated 18.02.2022 passed in Criminal Appeal No.02 of 2020, the learned Additional Sessions Judge, Gomati District, Udaipur has affirmed the judgment of conviction and order of sentence passed by learned Judicial Magistrate 1st Class, Udaipur, Gomati District in CR (NI) No.21 of 2017 under Section 138 of the Negotiable Instruments Act, 1881 (NI Act, *for short*) whereby the

accused/petitioner herein has been ordered to pay fine of Rs.2,00,000/- (Rupees Two lakhs only) with a default sentence of 3(three) months.

2. Petitioner, being aggrieved, has preferred this revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure,1973 (Cr.P.C., *for short*). Learned counsel for the petitioner has *inter alia* raised a number of grounds including that the petitioner had issued a blank cheque in the nature of a security and the amount shown therein has not been verified to be in the signature of the accused by a handwriting expert. These facts have not been taken into consideration by the learned Trial Court and also by the learned Appellate Court.

3. However, Mr. A. Acharjee, learned counsel for the complainant, has referred to the materials adduced during trial and strongly contested the plea. It is submitted that all the ingredients of the offence have been duly satisfied i.e. the issuance of Cheque No.000017 dated 25.04.2017 (Exhibit-1), the Cheque Return Memo dated 27.04.2017 showing "*Funds Insufficient*" (Exhibit-4). The Demand Notice (Exhibit-6) which was prepared on 19.05.2017 and the Postal Receipt (Exhibit-3) with A/D (Exhibit-2) show that it was served on 26th May, 2017 upon the accused-petitioner for payment of the amount within 15(fifteen) days from the date of receipt of notice. It is only upon failure of the accused-

petitioner herein to pay the amount within the time specified under Section 142 of the NI Act that the complaint was lodged.

4. Both learned Trial Court and learned Appellate Court have considered the deposition of the complainant's witnesses who are the complainant (CW-1) and CW-2 who also deposed that the accused had taken loan for an amount of Rs.2,00,000/- (Rupees Two lakhs only) from the complainant in his presence with a condition to return it within 5(five) months which he did not fulfil. The cheque was issued thereafter on being approached by the complainant.

5. Petitioner has also adduced two other witnesses one of them being the Deputy Branch Manager, Axis Bank, Udaipur Branch who has deposed that the said Cheque No.000017 was sent for clearing to the Axis Bank Limited, Udaipur Branch and then to the Bandhan Bank and returned on the same date due to insufficiency of funds. He has identified the Joint Account Statement of the complainant at Axis Bank, Udaipur Branch for the period of 01.04.2017 to 31.03.2018 (Exhibit-7). Defendant Witness i.e. DW-1 (accused) has, however, not been able to rebut the presumption under Section 139 of the NI Act to escape liability as such the impugned judgment is proper in the eye of law and does not require

any interference in revision, as petitioner has failed to make out any grounds of illegality or perversity in the appreciation of the evidence.

6. Mr. Daschoudhury, learned counsel for the petitioner, however, after some arguments submits that the petitioner shall be willing and ready to pay the amount of fine of Rs.2,00,000/- (Rupees Two lakhs only) in four installments over a period of 6(six) months. Learned counsel for the complainant/respondent also agrees to the payment of the fine amount in four installments at intervals of 1½ month each to be paid over 6(six) months.

7. Having regard to the last submission made by the learned counsel for the petitioner, this Court is not required to go into the merits of the challenge. As such, the instant revision petition is disposed of without interfering in the impugned judgment dated 18.02.2022 passed in Criminal Appeal No.02 of 2020 by the learned Additional Sessions Judge, Gomati District, Udaipur.

8. The petitioner shall pay the fine amount in 4(four) installments of Rs.50,000/- (Rupees Fifty thousand only) each to be paid at intervals of 1½ month over the next 6(six) months. The 1st installment is to be paid by 30th June, 2023, the next installment is to be paid by

15th August, 2023, the 3rd installment by 30th September, 2023 and the last installment to be paid by 15th November, 2023. These installments have to be deposited before the learned Court of Judicial Magistrate 1st Class, Udaipur, Gomati District. The fine amount, upon realization in the aforesaid mode, shall be paid in full to the complainant as compensation as ordered by the learned Trial Court upon proper identification.

Pending application(s), if any, also stands disposed of.

Send down the LCRs forthwith.

(APARESH KUMAR SINGH), CJ