

**HIGH COURT OF TRIPURA  
AGARTALA**

**Crl. Petn No.09 of 2023**

**Amitabha Sengupta,**  
Son of late Bimalendu Sengupta,  
Resident of A.D. Nagar, M.B. Tilla, P.S.- A.D. Nagar,  
Agartala, District- West Tripura, PIN-799003.

.....*Petitioner(s).*

**VERSUS**

**1. Sri Atanu Banik,**  
Son of late Anil Banik,  
Resident of Banamalipur, near Ramkrishna Ashram,  
P.S.- East Agartala, District- West Tripura, PIN-799001.

**2. The State of Tripura,**  
(To be represented by the learned Public Prosecutor, Hon'ble High Court of  
Tripura)

.....*Respondent(s).*

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|----------------------------------------------|---|-----------------------------------------------------------------------|
| For Petitioner(s)                            | : | Mr. Samarjit Bhattacharjee, Advocate.<br>Mr. Dipjyoti Paul, Advocate. |
| For Respondent(s)                            | : | Mr. Ratan Datta, P.P.<br>Mr. Uttam Kumar Majumder, Advocate.          |
| Date of hearing                              | : | 29.08.2023.                                                           |
| Date of pronouncement<br>of Judgment & Order | : | 30.08.2023.                                                           |
| Whether fit for reporting                    | : | Yes.                                                                  |

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**HON'BLE MR. JUSTICE T. AMARNATH GOUD**

**Judgment & Order**

Heard Mr. Samarjit Bhattacharjee, learned counsel appearing along  
with Mr. Dipjyoti Paul, learned counsel for the petitioner. Also heard Mr. Ratan  
Datta, learned P.P. appearing for the State- respondent as well as Mr. Uttam  
Kumar Majumder, learned counsel appearing for respondent No.1.

[2] This instant petition has been preferred by the petitioner with a prayer for passing necessary order by invoking the inherent power of the High Court under Section 482 of Cr.P.C. and to set aside the impugned Order dated 28.03.2023 passed by the learned Sessions Judge, West Tripura, Agartala in case No. CrI. Revision 24 of 2022. It has further been prayed that the instant petition be allowed by invoking the inherent power of the High Court under Section 482 Cr.P.C. by referring the cheque in question for examination by the hand-writing expert for determining the hand-writing of the respondent No.1 in the said cheque and also to pass interim order, staying the further proceedings of case No.N.I. 69 of 2017 pending before the Court of learned Addl. Chief Judicial Magistrate, West Tripura till disposal of the instant petition.

[3] The brief facts of the case are that the respondent No.1 had filed a complaint petition against the petitioner, Sri Amitabha Sengupta on 22.04.2017 under Section 138 of the Negotiable Instruments Act, 1881 and under Section 420 of Indian Penal Code in the Court of learned Chief Judicial Magistrate, West Tripura, Agartala which was registered as case No. N.I. 69 of 2017. Thereafter, the same was transferred and entrusted to the Court of learned Additional Chief Judicial Magistrate, West Tripura, Agartala for disposal in accordance with law. It is contended by the respondent No.1 in N.I. 69 of 2017 that the respondent No.1, Atanu Banik and the petitioner, Amitabha Sengupta are businessmen by profession and both of them were closely associated business partners with each other.

[4] In the month of March, 2016, the petitioner allegedly proposed and requested the respondent No.1 to join in the business of the petitioner as a partner and requested to invest some money but the respondent No.1 refused to accept the proposal of the petitioner. Thereafter, on 25<sup>th</sup> April 2016, the petitioner further requested the respondent No.1 to join the business of the petitioner as a partner by investing capital in presence of some witnesses and at that time, the respondent No.1 accepted the proposal of the petitioner and thereafter, on 27.04.2016, the respondent No.1 allegedly made payment of Rs.2,52,060/- (Rupees Two Lakh Fifty Two Thousand Sixty) only through Bank Draft vide No.069336 dated 27.04.2016 to the petitioner as capital of their partnership business. Subsequently, on 31.05.2016, the petitioner prepared one agreement and handed over the said agreement to the respondent No.1 in presence of witnesses. At the time of signing of the agreement by the respondent No.1, an amount of Rs.2,060/- only, was returned to the respondent No.1 by the petitioner, in cash, but after expiry of the agreement period, the petitioner allegedly paid Rs.2,50,000/- only through Cheque vide No.764967 dated 26.12.2016 to the respondent No.1 which was earlier invested by the respondent No.1 to the business of the petitioner in presence of witnesses. On 03.03.2017, the respondent No.1 deposited the aforesaid cheque in his account with the United Bank of India, Barmura Branch, Math Chowmuhani, West Tripura but on the same date, said cheque was returned to the respondent No.1 due to insufficient fund in the bank account of the petitioner. Thereafter, on 11.03.2017, the respondent No.1 served a legal notice through his engaged

learned counsel upon the petitioner informing the fact of dishonor of said cheque and requested the petitioner to make payment of cheque amount of Rs.2,50,000/- only, with interest and costs within 15 days from the date of receipt of the notice but the petitioner did not pay the cheque amount to the respondent No.1 in spite of receipt of demand notice and as such, the respondent No.1 filed the complaint petition under Section 138 of N.I. Act which was registered and numbered as N.I. 69 of 2017 currently pending before the learned Additional Chief Judicial Magistrate, West Tripura.

[5] The petitioner to prove his case before the learned Additional Chief Judicial Magistrate in N.I. 69 of 2017, filed an application before the learned Magistrate to refer the concerned cheque to a handwriting expert for verification of the writings therein and to prove his case that the respondent No.1 has manipulated the said cheque. The petitioner categorically and specifically stated that the concerned cheque has been manipulated by the respondent No.1 by writing his own name without the consent/prior intimation to the petitioner herein. Learned Additional Chief Judicial Magistrate, West Tripura, passed impugned order dated 27.04.2022 in case No. N.I. 69 of 2017, whereby the learned Court rejected the prayer of the petitioner for referring the concerned cheque to a hand writing expert.

[6] The petitioner being aggrieved by the said order dated 27.04.2022 in N.I. 69 of 2017, preferred a criminal revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure before the learned Sessions Judge, West Tripura. The learned Sessions Judge, West Tripura vide

impugned order dated 28.03.2023 rejected the Criminal Revision 24 of 2022 affirming the order dated 27.04.2022 passed by the learned Additional Chief Judicial Magistrate, West Tripura, Agartala in case No. N.I. 69 of 2017.

[7] Mr. Samarjit Bhattacharjee, learned counsel for the petitioner contends that the impugned order dated 28.03.2023 passed by the learned Sessions Court, West Tripura suffers from illegality, impropriety and incorrectness as manifest error has been caused in deciding the grounds agitated by the petitioner in the Criminal Revision 24 of 2022. It is further contended that the Court below has failed to consider that for ends of justice, it would have been apposite to send the concerned cheque to a hand writing expert so that the petitioner herein is not denied of the opportunity to a fair trial.

[8] Learned Counsel for the petitioner has placed his reliance on the judgment of the Hon'ble Apex Court in *Kalyani Baskar (MRS.) vs. M.S. Sampooranam (MRS.)* reported in (2007) 2 SCC 258, which reads as under:

“12. Section 243 (2) is clear that a Magistrate holding an inquiry under Cr.P.C. in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a hand-writing expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the hand-writing expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. 'Fair trial' includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and courts should be jealous in seeing that there is no breach

of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243 Cr.P.C. without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As noticed above, Section 243(2) Cr.P.C. refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defence. The appellant in this case requests for sending the cheque, in question, for the opinion of the hand-writing expert after the respondent has closed her evidence, the Magistrate should have granted such a request unless he thinks that the object of the appellant is vexation or delaying the criminal proceedings. In the circumstances, the order of the High Court impugned in this appeal upholding the order of the Magistrate is erroneous and not sustainable.”

[9] It is contended on behalf of the petitioner that learned Sessions Judge did not take into consideration the basic principle of natural justice of affording all reasonable opportunities to the accused-petitioner. As such, the impugned order dated 28.03.2023 is the result of about absolute non application of mind by the learned Sessions Judge. Learned counsel for the petitioner submits that learned Sessions Court failed to consider that the impugned order dated 27.04.2022 passed by the learned Addl. Chief Judicial Magistrate, West Tripura which was challenged by invoking revisional jurisdiction of the learned Sessions Court is de hors and Court below has failed to exercise the revisional jurisdiction vested on it under Section 397 Cr.P.C. causing miscarriage of justice as well as abuse of the process of law. He submits that the Hon’ble High Court has territorial jurisdiction to try and adjudicate the instant petition as the cause of action has arisen within the territorial limit of the High Court.

[10] Reliance has also been placed by the learned counsel of the petitioner on the judgment of the Hon’ble Apex Court in *Krishnan and another vs. Krishnaveni and another* reported in (1997) 4 SCC 241, the relevant part of which reads as under:

“4. Shri Krishnamurthy, learned counsel for the appellants, contended that the State as well as the respondents having availed of the remedy of revision under Section 397 of the code of Criminal Procedure, 1973 (for short, "the Code") the High Court was devoid of power and jurisdiction to entertain the second revision due to prohibition by sub-section (3) of Section 397 of the Code, therefore the impugned order is one without jurisdiction and vitiated by manifest error of law warranting interference, In support of his contention, the learned counsel placed strong reliance on the abovesaid two decisions of this Court. He further contended that when there is a prohibition under section 397 (3) of the code, the exercise of the power being in violating thereof, is non est. He further placed reliance on the decisions of this Court in *Simrikhia v. Dolley Mukherjee* and *Deepti v. Akhil Rai*. The question, therefore, is whether the High Court has power to entertain a Revision under section 397 (1) in respect of which the Sessions Judge has already exercised revisional power and whether, under the circumstances of the present case, it could be considered to be one under Section 482 of the Code.

5. Chapter 30 of the code relating to reference and revisional powers of the High Court, consists of the Sections 395 to 405. Under the codes, the revisional power of the High Court has concurrently been given by operation of sub-section (1) of Section 397 to Sessions Judge, to call for the records of any proceeding and to exercise powers of revision . The power is given to examine the record of any proceedings before nay inferior Criminal Court situated within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence , or order, recorded or passed, and as to the regularity of any proceeding of such inferior court. Sub-Section (3) thereof provides that if an application under the said section has been made by any person either to the High Court or to the Sessions judge, no further application by the same Person shall be entertained by the other of them. This was brought by way of amendment to Section 435 of the predecessor Code i.e., Act V of 1898.

6. Section 401 of the Code gives to every High Court power of revision. Sub-Section (1) of the said section provides that in the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the power conferred on a Court of Appeal by Sections 386, 389 and 391 and on a Court of Sessions by Section 307. Apart form the express power under Section 397 (1), the High Court has been invested with suo motu power under Section 401 to exercise revisional power. In addition, Section 482 saves inherent powers of the High Court postulating that:

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice"

Section 483 enjoins upon every High Court to so exercise its continuous superintendence over the Courts of judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates. It is, therefore, clear that the power of the High Court of continuous supervisory jurisdiction is of paramount importance to examine correctness, legality, or propriety of any finding, sentence or order recorded or passed as also regularity of the proceedings of all inferior criminal courts.

7. It is seen that exercises of the revisional power by the High Court under Section 397 read with Section 401 is to call for the records of any inferior criminal court and to examine the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior court and to pass appropriate orders. The Court of Sessions and the Magistrates are inferior criminal courts to the High Court and Courts of Judicial Magistrate are inferior criminal courts to the Sessions Judge. Ordinarily, in the matter of exercise of power of revision by any High Court, Section 397 and Section 401 are required to be read together. Section 397 gives powers to the High Court to call for the records as also suo motu power under Section 401 to exercise the revisional power on the grounds mentioned therein, i.e. to examine the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court, and to dispose of the revision in the manner indicated under Section 401 of the Code. The revisional power of the High Court merely conserves the power of the High Court to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that its subordinate courts do not exceed the jurisdiction or abuse the power vested in them under the Code or to prevent abuse of the process of the inferior criminal courts or to prevent miscarriage of justice.

8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401 upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court therefore is very wide. However, High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397 (1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.

9. The inherent power of the High Court is not one conferred by the Code but one which the High Court already has in it and which is preserved by the Code. The object of Section 397 (3) is to put a bar on simultaneous revisional applications to the High Court and the Court of Sessions so as to prevent unnecessary delay and multiplicity of proceedings. As seen, under sub-section (3) of section 397 revisional jurisdiction can be invoked by "any person" but the Code has not defined the word "person". However, under section 11 of the IPC, "person" includes any company or association or body of person whether incorporated or not. The word "person" would, therefore include not only the natural person but also juridical person in whatever form designated and whether incorporated or not. By implication the State stands excluded from the purview of the word "person" for the purposes of the limiting its right to avail the revisional power of the High Court under Section 397 (1) of the Code for the reason that the State, being the prosecutor of the offender, is enjoined to conduct prosecution on behalf of the society and to take such remedial steps as it deems proper. The Object behind criminal law is to maintain law, public order, stability as also peace and progress in the society.

Generally, private complaint under Section 202 of the Code are laid in respect of non-cognizable offences or when it is found that police has failed to perform its duty under Chapter XII of the Code or to report as mistake of fact. In view of the principle laid down in the maxim *ex debito justitiae* i.e. in accordance with the requirements of justice, the prohibition under section 397 (3) on revisional power given to the High Court would not apply when the state seeks revision under Section 401 . So the State is not prohibited to avail the revisional power of the High Court under section 397 (1) read with section 401 of the Code.”

[11] Mr. Ratan Datta, learned P.P. appearing for the State respondent on the other hand has countered the submission of learned counsel Mr. Bhattacharjee appearing for the accused-petitioner and contended that the instant petition filed by the petitioner is not maintainable as the accused-petitioner did not dispute his signature on the cheque in question and the learned trial Court also passed the impugned order after considering the provision of Section 20 of the Negotiable Instrument Act. He submits that as the accused-petitioner did not dispute his signature on the cheque in question, learned trial Court in case No. N.I.69 of 2017, rejected the petition of the accused-petitioner for referring the cheque in question to a hand writing expert for determining the hand writing of the complainant-respondent who wrote the name of the payee “Atanu Banik in the column of the cheque” and subsequently, the case No. Criminal Revision 24 of 2022 preferred by the accused-petitioner has also been rejected by the Court below by order dated 28.03.2023.

[12] Having gone through the material evidence on record and after interacting with the learned counsel appearing for the parties, this Court is of the view that the learned Court below has failed to apply its judicious mind at the time of determining the case of the petitioner. The basic principle of natural justice of affording adequate opportunity has not been provided to the

petitioner. The learned Court below has failed to exercise the revisional jurisdiction vested on it under Section- 397 of the Cr.P.C. causing miscarriage of justice as well as abuse of the process of law. This Court is of the view that it would have been apposite to send the concerned cheque to a hand writing expert, so that the petitioner herein is not denied of the opportunity to a fair trial.

[13] On the ground of delay, the learned Court below has decided the matter which is not at all a good ground for deciding such cases. Basic principle of natural justice is to afford the petitioner an opportunity to defend his case in all probable manner following procedure of law, as it is the petitioner who would have to bear the penal burden if a decision is arrived at without giving him an opportunity. Accordingly, the impugned order dated 28.03.2023 passed by the learned Court below stands set aside consequently, the present petition stands allowed by referring the cheque in question for examination by the hand writing expert for determining the hand writing of the respondent No.1 in the said cheque.

In that view of the matter, the present petition stands allowed and disposed of. As a sequel, miscellaneous applications, pending if any, shall stand closed.

**JUDGE**

*Sabyasachi G.*

**SABYASACHI GHOSH** Digitally signed by SABYASACHI  
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