

**HIGH COURT OF TRIPURA
AGARTALA**

**I.A. No.01/2023 in Crl.A. No.09/2023
Crl.L.P. No.06/2023 in Crl.A. No.09/2023
Crl.A. No.09/2023**

Smt. Smriti Debbarma Kalai

..... Appellant/Applicant(s).

V E R S U S

Smt. Anita Chakraborty & another

.....Respondent(s).

For Appellant/Applicant(s) : Mr. Sankar Bhattacharjee, Advocate,
Mr. Subendu Noatia, Advocate.

For Respondent(s) : Mr. Ratan Datta, P.P.,
Mr. Sankar Lodh, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

16/08/2023

I.A. No.01/2023 in Crl.A. No.09/2023:

Respondent No.1 has also entered appearance on notice.

Heard Mr. Sankar Bhattacharjee, learned counsel for the appellant/
applicant, Mr. Ratan Datta, learned Public Prosecutor appearing for the
respondent No.2-State and Mr. Sankar Lodh, learned counsel appearing for the
respondent No.1-accused on the delay condonation application being I.A.
No.01 of 2023.

Having considered the submissions of learned counsel for the
parties, the explanations urged and there being no serious opposition to the
prayer, delay is condoned in the interest of justice.

I.A. No.01 of 2023 stands disposed of.

Crl.L.P. No.06/2023 in Crl.A. No.09/2023:

Heard Mr. Sankar Bhattacharjee, learned counsel for the petitioner, Mr. Ratan Datta, learned Public Prosecutor appearing for the respondent No.2-State and Mr. Sankar Lodh, learned counsel appearing for the respondent No.1-accused on the special leave to appeal petition preferred under Section 378(4) of the Cr.P.C. which is directed against the judgment of acquittal dated 09.03.2023 passed by the learned Chief Judicial Magistrate, North Tripura, Dharmanagar in case No. N.I./03/2021.

Learned counsel for the petitioner at the outset submits that the impugned judgment suffers from perversity in its findings and is, therefore, vulnerable to be questioned in appeal. Learned counsel for the petitioner has drawn the attention of this Court to the findings rendered by the learned trial Court on the points for determination which are as under:

"7. The points for determination in this case are:

i) *Whether the accused drew the cheque bearing No. 511447 dated 22.12.2020 of Rs. 1,95,000/- (Rupees one lakh ninety five thousand only) from her account No.8077012331042 maintained in Tripura Gramin Bank, Dharmanagar Branch for payment of the amount to complainant Smt. Smriti Debbarma Kalai from out of that account?*

ii) *Whether such cheque was drawn for the discharge, in whole or in part, of any debt or other liability?*

iii) *Whether the cheque was returned by the bank unpaid because of the amount of money standing to the credit of that account to be insufficient to honour the cheque or that it exceeded the amount arranged to be paid from that account by any agreement made with the bank?*

iv) *Whether the complaint has been lodged to the Court after fulfilling the legal requirements provided under section 138 proviso and section 142 of the Negotiable Instruments Act, 1881?"*

It is submitted that the issuance of cheque bearing No.511447 dated 22.12.2020 for Rs.1,95,000/- from the account of the accused bearing

No.8077012331042 maintained in Tripura Gramin Bank, Dharmanagar Branch for payment in favour of the complainant/petitioner has been established. The cheque was presented within its validity period but was returned by the Bank because of insufficient balance. The notice in terms of Section 138(b) of the Negotiable Instruments Act, 1881 (N.I. Act, for short) was also complied. The accused failed to make the payment within the 15 days period upon receipt of the notice. The complaint was made within the time prescribed in terms of Section 142(1)(b) of the N.I. Act, 1881. However, despite all these findings in favour of the complainant/petitioner, the learned trial Court has acquitted the accused by arriving at a finding that the complainant failed to prove that the cheque in question was drawn for the discharge, in whole or in part, of any debt or other liability beyond reasonable doubt.

Learned counsel for the petitioner submits that the accused was known to the complainant and amount of Rs.7,80,000/- was taken as loan by the accused for some personal reason. The complainant had *bona fide* extended the loan. The accused is a school teacher. However, she failed to pay the total amount and in lieu thereof issued a cheque of Rs.1,95,000/- which got dishonoured. However, learned counsel for the petitioner does not dispute that for advancing a loan of Rs.7,80,000/-, no instrument or papers or documents were prepared between the parties. The parties are not in any business relationship from before neither are they related in that sense. No evidence to that effect has been adduced. The date and time of disbursement of the loan amount was also not evidenced on the part of the complainant. Being confronted with these findings, learned counsel for the petitioner has, however,

insisted that if leave is allowed and lower Court records are summoned, the appeal can be heard on merits to re-appreciate the evidence on record.

Mr. Sankar Lodh, learned counsel for the respondent No.1, has strongly opposed the prayer. He submits that a mere perusal of the special leave to appeal petition shows that the complainant has not made out any grounds whatsoever to question the findings of the learned trial Court for grant of leave to prefer this appeal. Since the primary liability to discharge the burden of proof has shifted upon the complainant/petitioner during course of the trial, the complainant has miserably failed to show that the cheque was issued for discharge of any liability whether in whole or in part. As such, the learned trial Court though found that the ingredients of Section 138(a), (b) & (c) of the N.I. Act have been duly complied with along with Section 142 of the Act regarding presentation of cheque and dishonour and service of notice upon the accused but if the burden to show that the cheque was issued in discharge of any debt or other liability has not been established, the learned trial Court had no other option than to acquit the accused person.

Mr. Ratan Datta, learned Public Prosecutor appearing for the respondent No.2-State, has also supported the submission of learned counsel for the respondent No.1-accused.

I have considered the submissions of learned counsel for the parties and taken note of the special leave to appeal petition. At the outset, it needs to be observed that the petition does not contain any ground to make out a case for grant of special leave to appeal against the impugned judgment. However, this Court's attention was drawn to the findings of the learned trial Court in the impugned judgment. On perusal of the impugned judgment also,

this Court finds that though the ingredients of Section 138 of the N.I. Act were satisfied by presentation of cheque to the Bank, return memo issued by the Bank on account of insufficient funds, the issuance of notice, service of notice and failure of the accused to make payment within 15 days thereof, but since the petitioner had failed to discharge the burden on the part of the complainant that the cheque was issued to discharge the debt or liability arising out of a loan advanced by the complainant in her favour, the learned trial Court had no alternative than to acquit the accused.

Having regard to the totality of the facts discussed hereinabove and upon consideration of the submissions of learned counsel for the parties, this Court finds that the petitioner has failed to make out any ground for grant of special leave to appeal.

Accordingly, the instant leave to prefer petition [Crl.L.P. No.06 of 2023] is dismissed.

Crl.A. No.09/2023:

In view of dismissal of the special leave to appeal petition, the instant appeal [Crl.A. No.09 of 2023] also stands dismissed.

(APARESH KUMAR SINGH), CJ

PULAK BANIK Date: 2023.08.17
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