

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Crl. Rev P. No.30 of 2022

1. Sri Subhrangshu Das (Age-39) son of Sri Sukhendu Bikash Das of Ratiabari, P.S. & P.O. Kumarghat, District: Unakoti Tripura, Pin-799264.

.....Petitioner(s)

-V E R S U S-

1. Sri Prasanta Das, son of late Bhanulal Das of Pabiacherra, P.S. & P.O. Kumarghat, District: Unakoti Tripura, Pin-799264.
2. The State of Tripura, represented by the Secretary & Commissioner to the Home Department, Government of Tripura, having his office at the New Secretariat Complex, Agartala, P.O. Kunjaban, P.S. New Capital Complex, Sub-Division: Sadar, West Tripura, Pin-799006.

..... Respondents

B_E_F_O_R_E
HON'BLE THE CHIEF JUSTICE (ACTING)

For Petitioner(s)	:	Mr. K. Chakraborty, Advocate. Mr. K. Roy, Advocate. Mr. R. Chakraborty, Advocate.
For Respondent(s)	:	Mr. R. Datta Public Prosecutor. Mr. H.K. Bhowmik, Advocate.
Date of hearing & delivery of judgment and order	:	10.01.2023
Whether fit for reporting	:	NO

JUDGMENT & ORDER [ORAL]

Heard Mr. K. Chakraborty and Mr. R. Chakraborty learned counsel appearing for the petitioner. Also heard Mr. R. Datta, learned Public Prosecutor and Mr. H. K. Bhowmik, learned counsel appearing for the respondents.

[2] The present criminal revision petition has been filed under Section-397 of Cr. P.C. read with Section-401 of Cr. P.C., 1973 for setting aside/quashing the judgment dated 12.04.2022 passed by the learned Sessions Judge, Unakoti Tripura District, Kailashahar in case No. Criminal Appeal No.04 (3) of 2021, affirming the judgment and order of sentence passed by the

learned Judicial Magistrate, First Class, Kailashahar, Unakoti Tripura on 17.04.2021 in case No. CR (NI) 08 of 2014 awarding sentence upon the appellant/convict/accused-person to pay a fine of Rs.4,00,000/- and in default to suffer simple imprisonment for one year, under Section-138 of NI Act.

[3] The succinct fact of the case is that in the year 2011 the petitioner borrowed Rs.3,00,000/- (Rupees Three Lakhs) only from the respondent - complainant No. 1 for his some personal necessity by virtue of having a good relation with complainant for being a fellow businessman with an assurance that he would repay the same within a few months and thereafter on 07.04.2014, the petitioner issued a cheque bearing No 324985 for an amount of Rs. 3,00,000/- (Rupees Three Lakhs) only of the State Bank of India, Kumarghat Branch through State Bank of India, Ratiabari Branch, Kumarghat on 24.04.2014, but the said cheque was dis-honoured for insufficiency of fund in the account of the petitioner.

[4] Accordingly, the respondent No.1 issued a demand notice on 07.05.2014 demanding Rs. 3,00,000/- (Rupees Three Lakhs) only and in spite of receiving the said notice on 10.05.2014 the petitioner failed to make the payment of the said amount. Subsequently, the respondent No.1 submitted one Court complaint against the petitioner before the Court of the learned Chief Judicial Magistrate, Unakoti District, Kailashahar, which was transferred to the Court of the learned Judicial Magistrate, First Class, Kailashahar, for trial.

[5] On receipt of complaint, cognizance of offence was taken U/S 138 of the Negotiable Instruments Act, 1881 by the learned Judicial Magistrate First Class, Kailashahar against the petitioner after examining the complainant under Section-200 of Cr.P.C., summons were issued against him and accordingly he appeared before the Court and on 10.11.2014 and when the memorandum of substance of accusation under Section-138 of Negotiable Instruments Act, 1881 was prepared against the petitioner by the learned Judicial Magistrate Class, Kailashahar and conducting trial, the learned trial court convicted the petitioner and also sentenced him, as indicted above. The

learned Court below after hearing the parties and perusal of the material evidence on record, has observed as under:

9. In the result, I have no hesitation in concluding that Learned trial court did not commit any error in convicting the convict-appellant. As such, judgment of conviction and sentence dtd 17.04.2021 is upheld. No interference is hereby made in the order passed by the Learned trial Court dtd 17.04.2021.

10. Thus the file accordingly be consigned in the record room.

11. The record of the learned trial court be also returned back with a copy of this judgment.

12. Accordingly, the instant appeal stands dismissed.”

[6] Being aggrieved by and dissatisfied with the judgment and award passed by the learned Sessions Judge, Unakoti District, Kailashahar, the present petitioner has been preferred by the petitioner before this Court.

[7] Mr. K. Chakraborty, learned counsel appearing for the petitioner has submitted that the impugned judgment and order of sentence passed by the learned Court below is illegal and improper. The learned counsel below erred both on the point of law and facts in passing the judgment and order of sentence which needs to be set aside. The cognizance of offence in the case by the learned Judicial Magistrate, First Class was bad in law and therefore, a valid trial count not be held.

[8] He has further contended that the Court below also did not consider the important aspect that the alleged cheque was lost by the petitioner one year before the advocate notice and for which an information was given to the Kumarghat P.S. vide Kumarghat P.S. G.D. Entry No.739 dated 22.07.2013 and the said information was also given to his Banker i.e. the State Bank of India, Kumarghat Branch on 22.07.2013 and this fact has also been informed to the respondent No.1.

[9] At the time of examination of complaint under Section-200 of the Cr. P.C. and in the memorandum of substance of accusation under Section-251 of Cr. P.C. explained to the petitioner as an accused, was also highly defective.

[10] It has been further contended that, the account number stated by the complainant i.e. the respondent No.1 in his complaint petition that the accused number was 11855825508 against which the petitioner issued cheque. But in the examination under Section-200 Cr. P.C. and memorandum of substance of accusation under Section-251 of Cr. P.C. the cheque issued under the account No.1185825508. As such, the trial itself is illegal and no trial could sustain in that perspective and thereby the petitioner was seriously prejudiced to defend himself.

[11] The learned trial Court should have considered the petition of the petitioner dated 24.10.2017 for issuing summon upon the Branch Manager of SBI, Kumarghat Branch and calling upon the Kumarghat P.S. G.D. Entry No.739 dated 22.07.2013 from the custody of officer-in-charge, Kumarghat P.S. to find out the truth as to whether the cheque was issued from the account for the discharge of a legally and enforceable debt as on 27.04.2014 and also loosing of cheque.

[12] Mr. Chakraborty, learned counsel has further averred that the petitioner is quite innocent on the face of the evidence of PW-4. The alleged cheque was lost by the petitioner on 25.05.2013 i.e. long before filing the complaint case and it was duly informed to the Branch Manager, SBI, Kumarghat by the petitioner and therefore he informed all the Branches of SBI, but, suppressing this fact, the PW-4 i.e. the Branch Manager SBI issued the return memo dated 24.04.2014 which is also unwarranted on the part of the branch manager, SBI, Kuamrghat as he admitted in cross examination that it is a fact that when a customer reports to any branch of SBI about the loss of his cheque leaf the information is transmitted to all other branches of SBI if there is specific instruction of stop payment and hence it has no value at all.

[13] The learned Court below being bias upon the respondent No.1 had not allowed the revision petitioner to depose evidence in the case for which the petitioner is very much prejudiced and to ascertain the actual fact and for the interest of justice the case record may kindly be remanded back to the trial Court again, after setting aside the judgment and order of sentence and

kindly be directed the learned Court below to call for the G.D. Entry and to examine the witness including the petitioner.

[14] The respondent No.1 has suppressed the reply of the petitioner dated 02.04.2014 against the demand notice of advocate of the respondent No.1 intentionally, but in cross examination he admitted the lost of the cheque on 25.05.2013 by the petitioner and giving information to the branch manager SBI, Kumarghat Branch and Officer-in-charge, Kumarghat P.S. on 22.07.2013. Therefore, it is crystal clear that the respondent No.1 has collected it by means of an offence of fraud against the petitioner.

[15] In view of above and after gone through the material evidence on record and after hearing the arguments advanced by the learned counsel appearing for the parties, this Court after taking consent from both sides comes to a conclusion that the petitioner herein should repay the amounts to the respondent No.1 in three equal installments i.e. the first installment of Rs.1,00,000/- shall be paid on or before 10th of February, 2023, Second installment @1,00,000/- on or before 10th of March, 2023 and the third installment @1,00,000/- on or before 10th of April, 2023 under proper acknowledge and it is ordered accordingly. It is made clear that, in the event, if the petitioner fails to pay the same, it is open for the respondents to take appropriate steps in accordance with law.

[16] In terms of the above, the impugned judgment dated 12.04.2022 passed by the learned Sessions Judge, Unakoti Tripura District, Kailashahar in case No. Criminal Appeal No.04 (3) of 2021, stands set aside and disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed.

CHIEF JUSTICE (ACTING)

A.Ghash