

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A NO.11 OF 2022**

Sri Binay Sarkar,
S/o- Sri Sunil Baran Sarkar,
Resident of Village- East Charakbari,
P.S.- Baikhora, District- South Tripura.

..... **Appellant(s)**

Vs.

1. Sri Debasish Dey,
S/o- Sri Santu Dey,
R/o- Village- West Jumardhapa,
P.S.- Melaghar,
District- Sepahijala, Tripura.

2. State of Tripura,
To be represented by the L'd
Public procecutor, The Hon'ble the High Court of Tripura.

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

For the Appellant(s) : Mr. P. Roy Barman, Sr. Advocate.
Mr. S. Bhattacharjee, Advocate.
Mr. D. Paul, Advocate.

For the Respondent(s) : Mr. S. Das, Advocate.
Ms. A. Banik, Advocate.

Date of hearing and delivery of
Judgment & Order : 19.05.2023.

Whether fit for reporting : NO.

HON'BLE MR JUSTICE T. AMARNATH GOUD

JUDGMENT AND ORDER(ORAL)

This present appeal has been filed under Section 378(4) of the Cr.P.C. read with Section 372 of Cr.P.C. against the Judgment dated, 08.06.2022 passed by the learned Chief

Judicial Magistrate, South Tripura, Belonia in Case No.N.I.01/2020.

2. The brief fact of this present appeal is that the appellant filed a complaint petition under Section 138 of the N.I. Act against respondent No.1 for dishonor of Cheque bearing No.002127, for Rs.24,73,850/-, dated 30.11.2019, drawn on SBI, Melaghar Branch, Sepahijala Tripura. In the complaint petition, the appellant stated that the appellant and respondent No.1 are known to each other and they have good relations and both of them are rubber traders. For a long time, respondent No.1 has been purchasing rubber from the appellant, and out of good faith, the appellant sold rubber sheets on credit to respondent No.1 and he became liable to pay Rs.24,73,850/- to the appellant. Thereafter, the appellant asked respondent No.1 to return the due amount and respondent No.1 issued a cheque bearing No. 002127, for Rs.24,73,850/- dated, 30.11.2019, drawn to SBI Melaghar Branch, District- Sepahijala, in favour of the appellant. Accordingly, on 30.11.2019, the appellant presented the aforesaid cheque at SBI Santirbazar Branch for encashment and the said cheque was dishonored due to insufficient funds. Thereafter, on 06.12.2019, the appellant gave legal notice to respondent No.1. Despite receiving the legal notice, respondent No.1 did not make payment.

3. The learned Court below issued a summon to respondent No.1 and thereafter, respondent No.1 appeared before the learned Court. Respondent No.1 pleaded not guilty to the charge framed against him and claimed to be tried.

4. In the course of the Trial, the appellant was examined and cross-examined as P.W.1, and one Pintu Pal was examined and cross-examined as P.W.-2. Some documents were also exhibited.

5. Thereafter, on 08.06.2022, the Court below delivered the Judgment in Case No.N.I. 1/2020 and dismissed the case. The learned Court below held that the appellant failed to disclose the loan amount in the ITR for the relevant year. The Court below further stated that the appellant failed to disclose the loan of Rs.24,73,850/- in his ITR and also raised doubt regarding the truthfulness of the complaint version. The Court below further held that the appellant has failed to prove the actual liability of respondent No.1 to the extent of the cheque. The appellant has not been able to prove that the cheque was issued by respondent No.1 in the discharge of legal debt or liability towards the loan.

6. Aggrieved by the aforesaid Judgment, the appellant herein has filed this present appeal to set aside the impugned

Judgment and Order dated 08.06.2022 passed in Case No.N.I. 01 of 2020.

7. Heard Mr. P. Roy Barman, learned Sr. counsel assisted by Mr. K. Nath, learned counsel appearing for the appellant as well as Mr. S. Das, learned counsel appearing for the respondent No.1 and Mr. S. Debnath, learned Addl. P.P. appearing for the State-respondent.

8. Mr. P. Roy Barman, learned Sr. counsel appearing for the appellant submits that the learned Court below failed to consider that respondent No.1 did not dispose the presumption by leading cogent and reliable evidence. The learned Court below failed to consider that in reply to the demand notice, respondent No.1 admitted that he received rubber sheets valued at Rs.24,73,850/- and he issued a cheque in favour of the appellant and the said cheque was dishonored due to insufficient fund. In reply to the demand notice, respondent No.1 assured the appellant, that, he will pay the entire amount and not to proceed with the dishonor of cheque. Arguing thus, learned Sr. counsel prayed to dismiss this appeal.

9. On the other hand, Mr. S. Das, learned counsel appearing for respondent No.1 submits that the said reply notice has never been exhibited or produced before the learned Trial Court. Learned counsel further submits that the learned Court

below has rightly passed the impugned Judgment as the party has to be the person who has given the rubber sheet or commodity and the person has to prove his capacity to do so. There is no legally enforceable debt as per the Negotiable Instrument Act and respondent No.1 herein has categorically stated that he has never issued any cheque toward the appellant herein for any enforceable debt.

10. Heard both sides and perused the evidence on record.

11. Mr. Roy Barman, learned Sr. counsel while arguing has drawn the attention of this Court to the reply dated 13.01.2020 to the demand notice issued by the respondent-accused person wherein respondent No.1 has categorically accepted with regard to the transactions between the complainant and the accused-respondent. This strengthens the case with regard to the commercial transaction between both persons. This issue has not been dealt with by the Court below by the way of exhibiting evidence. Since the same has not been denied by respondent No.1, with regard to not issuing the content of the reply notice, this Court prima facie feels that in order to meet the ends of justice, it would be appropriate to remand the matter back to the Trial Court for re-appreciating the evidence and to pass a reasoned order.

12. Accordingly, this present matter is remanded back to the learned Court below to re-appreciate the evidence and then pass a reasoned order. Both parties are at liberty to file any additional evidence and adduce the same before the Court below. Further, it is needless to observe that both parties would be given reasonable opportunity before taking the decision by the Court below.

13. With the above observation and direction, this present appeal stands disposed of. Stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE



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