

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A. 14 of 2022

For Appellant(s)	: Mr. D. Sarkar, Adv. Mr. M. Saha, Adv.
For Respondent(s)	: Mr. S. Debnath, Addl. PP Mr. Samarjit Bhattacharjee, Adv.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

ORDER

22.05.2023

This is an appeal against acquittal under Section 378(4) of Cr.P.C challenging the legality, validity and propriety of the judgment and order of acquittal dated 12.05.2022 in connection with Case No.NI 10 of 2021 passed by Chief Judicial Magistrate, South Tripura, Belonia whereby the accused Sri Minal Sen was acquitted for the offence punishable under Section 138 of the NI Act, 1881.

[2] It is the case of the complainant-appellant that the he is known to the accused person (the respondent No.2 herein) as both of them resided in the same locality i.e, Bash para colony, Belonia and they have a good friendly relation. Out of good friendly relation, the complainant along with the accused and his wife made an agreement applied for obtaining a foreign liquor licence in the name of accused's wife namely Pampi Sen Malakar for this an amount of Rs.8,20,000/- should be deposited before the licencing authority. Out of said amount 50% share amount i.e, Rs.4,10,000/- will be borne by the complainant as a partner as per written agreement between them. Thereafter, the complainant that after obtaining licence of foreign liquor in the name of the accused's wife, the accused will run the business with the complainant as a partner and the accused will bear all the expenditures and also obey all the conditions which were written on a non-judicial stamp paper of Rs.5/- in presence of witnesses. Thereafter, the complainant that on the stamp paper it is

mentioned that the complainant has given to the accused Rs.6,00,000/- in total for purchasing goods of foreign liquor shop and also for obtaining licence as tender amount. The accused also borrowed money from the complainant on previous occasions but after obtaining the licence accused did not run the business with the complainant as a partner. Thereafter, the complainant demanded his indebted amount and after few days the accused liquidated the amount of Rs.1,90,000/- out of Rs.6,00,000/- and regarding the remaining amount i.e, Rs.4,10,000/-, the accused issued a cheque bearing no.854812 dt.19.02.2021, UCO Bank, Belonia branch in the name of the complainant. On the same day, the complainant deposited the said cheque for encashment in his bank i.e, UCO Bank, Belonia Branch but on 22.02.2021 banker of the complainant returned the said cheque dishonoured mentioning with remarks, "Insufficient Balance". In due course the complainant had requested the accused to pay indebted cheque amount but the accused did not pay the said amount and also did not pay any heed after which, a legal demand notice dated 02.03.2021, was sent to the accused through ' PROFESSIONAL' Courier Service and also requested the accused person to make payment within 15 days from the date of receipt of said notice. It is evident that on 04.03.2021, accused person received the said demand notice and inspite of receiving notice the accused did not take any step to liquidate his liability then the complainant was constrained to file the present case.

[3] It is evident from the record that the appellant herein before approaching this court moved to the court of the Chief Judicial Magistrate, South Tripura, Belonia where the court below after examining the case has observed in the following manner:

"As such, I hold that accused has remained successful in rebutting the mandatory presumption of law drawn in favour of the complainant.

I, accordingly return a finding of not guilt against the accused Sri Mrinal Sen.

The accused Sri Mrinal Sen is hereby acquitted for the offence as punishable under Section 138 N.I.Act, 1881."

[4] Aggrieved thereby, the complainant-appellant has approached this court for admitting his appeal and thereafter issue notice upon the respondents. The appellant has also prayed this court for setting aside and quashing the judgment and order of acquittal dated 12.05.2022 in connection with the case No. NI 10 of 2021 by CJM, South Tripura, Belonia, whereby the accused Sri Mrinal Sen was acquitted for the offence punishable under Section 138 of NI Act, 1881.

[5] Heard learned counsel appearing for the respective sides.

[6] After perusing the entire records, this court is of the view that this court is not in a position to appreciate the finding reached by the court below. The court below seems to have overlooked the ingredients of Section 138 of NI Act, 1881. It appears that the court below ought to have appreciated negotiable instrument, signature, demand notice sent by the complainant-appellant to the accused-respondent No.2 and failure to reply to the notice and also appreciation of evidence. The same could have been accepted by the concerned court below since there is no valid denial by the respondent by way of any reply. However, without appreciating the said transaction under Section 138 of the NI Act, 1881 the court below has dealt with the issue on the point of agreement and contract. Ambit of Section 138 of the NI Act, 1881 is more relevant than going into the disputed question of facts relating to contract. One crucial thing which is established is the transaction between complainant & respondents.

[7] In view of the above discussion, this court is remanding back the present case to the concerned court below to deal with the matter in its entirety and also in the light of the judgment passed by the Supreme Court in **Rangappa vs S. Mohan** reported in **(2010) 11 SCC 441** and also in the light of the other judgments of the apex court.

[8] With the above observation and direction, this present criminal appeal stands disposed of and judgment in case No. NI 10 of 2021 on the file of CJM, South Tripura, Belonia, dated 12.05.2022 stands set aside. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE

