

**HIGH COURT OF TRIPURA  
AGARTALA  
CRL. A NO.15 OF 2022**

**Sri Rajib Saha,**

S/o- Lt. Tarit Kanti Saha,  
R.O- Ramthakur Para, Belonia,  
P.O. & P.S. Belonia, District- South Tripura,  
Pin-799155, Aged about 48 years.

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

Vs.

**1. Sri Kalyan Majumder,**

S/o- Lt. Asutosh Majumder,  
R/o- Vill- Shal Tilla, P.O & P.S.- Belonia,  
District- South Tripura, Pin-799155.

**2. Sri Samar Debnath,**

S/o- Lt. Nishi Kanta Debnath,  
R/o- Vill- Rabindra Palli Opposite of Bulbul Sangit Niketan,  
P.O + P.S.- Belonia, District- South Tripura, Pin-799155.

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

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For the Appellant(s) : Mr. A. Bhaumik, Advocate.

For the Respondent(s) : Mr. K. Nath, Advocate.

Date of hearing : 15.05.2023.

Date of delivery of  
Judgment & Order : 17.05.2023.

Whether fit for reporting : NO.

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

**JUDGMENT AND ORDER**

This present appeal has been filed under Section 378(4) of the Criminal Procedure Code, 1973 against the Judgment and Order dated 19.05.2022 passed in Case No.N.I. 04 of 2020 by

the learned Chief Judicial Magistrate, South Tripura, Belonia whereby the learned Court below acquitted the respondents from the offence committed under Section 138 of the Negotiable Instrument Act, 1881.

2. The cause of action of his present appeal arose when the appellant herein lodged a complaint before the learned Chief Judicial Magistrate, South Tripura, Belonia which was registered as Case No.N.I. 04 of 2020 *inter alia* stating that the appellant is the proprietor of M/S Rajib Saha having his shop near Jagannath Bari, Belonia. The appellant runs the business of selling cement and the respondents were the partners of M/S Jogmaya Builders. In the year 2018, the respondents purchased cement from the appellant on various dates both in cash and in credit, and out of the total amount of purchased cement Rs.1,64,000/- remained unpaid by the respondents. Thereafter on 16.10.2019, in discharge of the aforesaid debts and liabilities, the respondents issued a cheque bearing No.008288 dated 16.10.2019 drawn on their bank account No.1883102000000727 lying with the IDBI bank, Bankar Bazar Branch, South Tripura, Belonia. The respondents further requested the appellant to deposit the said cheque after 2(two) months from the date of issue. On 04.01.2022, the appellant deposited the said cheque in his bank i.e., the United Bank of

India, Belonia Branch for encashment but on 10.01.2020, the bank of the appellant returned the said cheque as the cheque was dishonoured with the endorsement " funds insufficient". Thereafter, the appellant requested the respondents to pay the amount. Accordingly, the appellant issued a Demand Notice on 03.02.2020 through registered post requesting the respondents to make payment within 15 days from the date of receipt of the Demand notice. On 05.02.2020, the respondent namely, Samir Debnath received the notice and despite receipt of the Demand Notice, the respondents failed to pay the amount and accordingly, the appellant lodged the complaint under Section 138 of the Negotiable Instruments Act, 1881 before the learned Chief Judicial Magistrate, South Tripura, Belonia.

3. To prove the case of the appellant, the appellant exhibited the original cheque No.008288 dated 16.10.2019, original deposit slip dated 04.01.2020 of United Bank of India, Belonia, Branch, original return memo dated 10.01.2020 forwarded by the IDBI Bank, Bankar Bazar Branch, Belonia, original return memo dated 10.01.2020 issued by the UBI, Belonia Branch, Original Advocate Notice dated 03.02.2020, original receipt of Sub post office dated 04.02.2020 and acknowledgment card. Further to prove the case of the appellant, the appellant deposed as P.W.-1. The respondents

being the accused persons pleaded not guilty and claimed to be tried. The respondents in their plea of defence recorded on 26.02.2021 stated that the cheque in question is completely false and fabricated and the cheque was issued as a security deposit in favour of the appellant.

4. Thereafter, the learned Trial Court upon recording the evidence and in the conclusion of the Trial passed the Judgment and order dated 19.05.2022 whereby the learned Trial Court acquitted the respondents from the offence under Section 138 of N.I. Act, 1881.

5. Being aggrieved with the aforesaid Judgment and Order dated 19.05.2022 passed in Case No.N.I. 04/2020, the appellant herein approached this Court by way of filing this present appeal seeking the following reliefs:-

*"i. Admit the appeal.  
ii. Issue Notice upon the respondents.  
iii. Call for the records.  
iv. And after hearing the parties be pleased to set aside the judgment and order dated 19.05.2022 passed by the learned Chief Judicial Magistrate, South Tripura, Belonia and further convict the respondents under Section 138 of the Negotiable Instruments Act, 1881 and sentence the respondents accordingly."*

6. Heard Mr. A. Bhaumik, learned counsel appearing for the appellant. Mr. K. Nath, learned counsel appearing for the respondents pleaded to dispose the leave application bearing No. Crl.L.P. No.4 of 2022.

7. It is seen from the record that during cross-examination, the appellant stated that he have issued another legal notice through his engaged learned counsel Kishore Majumder dated, 24.06.2019 and in that matter he demanded Rs.3,14,000/- for the selling of the goods to the accused persons for the year 2018 and to discharge the liability, the accused persons on 15.03.2019 issued one cheque bearing No.008276 dated 15.03.2019. The learned Court below on perusing the said statement of the appellant concluded that "*on perusal of the same, it reveals that for the selling of the goods to the accused persons for the year 2018 and to discharge the liability, accused has already pay Rs.3,14,000/- vide cheque No.008276 dated 15.04.2019. Hence the placing of cheque No.008288 dt. 16.10.2019 for the same period if nothing but a misuse of the cheque which was given by the accused persons as a security*". Learned counsel herein submits that this finding of the learned Court below is based on no evidence since in the connected I.A. No.02 of 2022 filed in this present appeal, a copy of the original certificate dated 25.07.2022 is annexed as annexure-1 is filed as additional evidence vide I.A. No.02 of 2022, wherein it is stated that " *As per our records a cheque was presented on 15/03/2019 by IDBI bank with the instrument No.008276 amounting to Rs.3,14,000/- which was rejected due*

to reason 'Funds Insufficient' by the drawee bank and was returned to the cheque presenter Mr. Rajib Saha on 10/06/2019". So the learned Trial came to the findings as mentioned here-in-above without any evidence or basis and more so the documents in additional evidence needs to be appreciated. As such, this present matter needs to be remanded back to the Court below for taking fresh evidence and adjudication of the matter on the same.

8. This Court finds that the Court below without any basis or evidence straightway came to the finding as mentioned in the impugned Judgment and Order dated 19.05.2022. As such, this matter is remanded back to the Court below for appreciation of evidence and to pass a reasoned order as per law.

9. As a sequel the I.A. No.02 of 2022 and leave petition vide Crl.L.P. No.4 of 2022 are closed in the light of the present appeal.

10. With the above observation and direction, this present appeal stands disposed of. As a sequel stay if any stands vacated.

**JUDGE**