

**HIGH COURT OF TRIPURA  
AGARTALA**

**Crl. A 16 of 2022**

**Sri Dulal Baidya**  
S/o Late Monoranjana Baidya,  
R/o -Vil Sarashima, PO- Sarashima  
PS- Belonia, Dist- South Tripura.

---Appellant(s)

**Versus**

- 1. The State of Tripura**  
Represented by its Secretary Cum Commissioner,  
Department of Home, Government of Tripura,  
PO- Kunjabana, PS- New Capital Complex, Dist- West Tripura,
- 2. Sri Prakash Tripura,**  
S/o- Late Dehamani Tripura,  
R/o- Vill Shibpur, PO-Ratanpur  
PS- Belonia, Dist- South Tripura.

---Respondent(s)

**Crl. A 17 of 2022**

**Sri Dulal Baidya**  
S/o Late Monoranjana Baidya,  
R/o -Vil Sarashima, PO- Sarashima  
PS- Belonia, Dist- South Tripura.

---Appellant(s)

**Versus**

- 1. The State of Tripura**  
Represented by its Secretary Cum Commissioner,  
Department of Home, Government of Tripura,  
PO- Kunjabana, PS- New Capital Complex, Dist- West Tripura,
- 2. Sri Dipendra Uchai,**  
S/o- Late Brindamani Uchai,  
R/o- Vill Shibpur, PO-Ratanpur  
PS- Belonia, Dist- South Tripura.

---Respondent(s)

|                           |                                                |
|---------------------------|------------------------------------------------|
| For Appellant(s)          | : Mr. D. Sarkar, Adv.                          |
| For Respondent(s)         | : Mr. Rajib Saha, Adv.<br>Mr. S. Debnath, Adv. |
| Date of hearing           | : 17.07.2023                                   |
| Date of pronouncement     | : 20.07.2023                                   |
| Whether fit for reporting | : No                                           |

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

**Judgment & Order**

Both these appeals are consolidated for disposal by a common judgment at this stage as agreed to by the learned counsel appearing for the parties inasmuch as the conspectus as raised in these appeals as well as the question in respect of the right of the appellant are identical.

**In Crl. A 16 of 2022**

**[2]** It is the case of the complainant-appellant that he is a businessman at Belonia town and on account of business between the complainant and the accused,

a good relation made between them and the accused also visited the shop of the complainant on various occasions subsequently a family relation also made between them. It is further case of the complainant-appellant that out of good and friendly relation the accused demanded to borrow of Rs.4,60,000/- from the complainant for his personal purpose as he is defaulter to a bank and complainant any how managed the said amount and gave to the accused on 26.03.2021 at 10.00 am in presence of witnesses in his house at Sarashima and the accused borrowed the said amount for one month. It is further case of the complaint that after expiry of one month on 28.04.2021. Complainant demanded the said amount then the accused issued a cheque bearing no. 615352 dated 28.04.2021 drawn on Triprua Gramin Bank, Muhuripur branch in the name of the complainant and on the same day the complainant deposited the said cheque for encashment in his bank i.e. Tripura State Co-operative Bank, Belonia Branch accordingly banker of the complainant sent the cheque to Triprua Gramin Bank for encashment but banker of the accused on 10.05.2021 returned the said cheque dishonoured mentioning with remarks, "Insufficient fund". It is further case of the complainant that he requested the accused to pay the 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 20.05.2021 was sent to the accused through 'India Post' Service and also requested the accused person to make payment within 15 days from the date of receipt of the said notice and it is evident that on 25.05.2021, the accused person received the said demand notice and inspite receiving of notice the accused did not take any step to liquidate his liability then the complainant was constrained to file the present case.

**[3]** On the other hand, the accused in his plea of defence recorded on 29.09.2021 pleaded not guilty and claimed trial and stated as follows:

***"The cheque in question is completely false and fabricated and he did not issue any cheque in favour of the complainant."***

**[4]** The learned trial court framed charged under Section 138 of NI Act and to bring home the guilt of the accused the complainant had to prove the elements of section 138 of NI Act by crossing following legal formalities.

- a) The cheque was drawn by the drawer on an account maintained by him with the banker for payment of any amount of money out of that account to the complainant.
- b) The said payment was made for discharge of legally enforceable debt or other liability, in whole or in part.
- c) The said cheque were returned unpaid by the bank.

- d) The cheque was presented to the bank within a period of three months from the date on which it was drawn or within the period of its validity whichever is earlier.
- e) The prayer of the Holder in the due course of the cheque as the case may be made a demand for the payment of the said amount of money by giving the notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.
- f) The drawer of the cheque fails to make the payment of the said amount of money to the payee or as the case may be the Holder in due course of the cheque within 15 days of the receipt of the said notice.

**[5]** The Ld. Court below after perusing the statements of the PWs and Dws and also having dealt with the entire case has observed in the following manner:

“As such, I hold that accused has remain successful in rebutting the mandatory presumption of law in favour of the complainant.

I accordingly return a finding of not guilty against the accused person namely Shri Prakash Tripura.”

**[6]** Aggrieved by the said acquittal under Section 378(4) of CrPC challenging the legality, validity of propriety of the judgment and order of acquittal dated 07.06.2022 in Connection with case No.NI 19 of 2021 passed by the Learned Chef Judicial Magistrate, South Tripura, Belonia whereby the accused Sri Prakash Tripura was acquitted for the offense punishable under section 138 of NI Act, 1881, the complainant-appellant has approached this court seeking relief against the order of acquittal dated 07.06.2022.

**In Crl.A 17 of 2022**

**[7]** It is the case of the complainant-appellant that he is a businessman at Belonia town and on account of business between the complainant and the accused, a good relation made between them and the accused also visited the shop of the complainant on various occasions subsequently a family relation also made between them. It is further case of the complainant-appellant that out of good and friendly relation the accused demanded to borrow of Rs.3,00,000/- from the complainant for his personal purpose as he is defaulter to a bank and complainant any how managed the said amount and gave to the accused on 22.03.2021 at 10.00 am in presence of witnesses in his house at Sarashima and the accused borrowed the said amount for one month. It is further case of the complaint that after expiry of one month on 25.04.2021. complainant demanded the said amount then the accused issued a cheque bearing no. 664128 dated 25.04.2021 drawn on Tripura Gramin Bank, South Sonaichari branch in the name of the complainant and on the same day the complainant deposited the said cheque for encashment in his bank i.e. Tripura State Co-operative Bank, Belonia Branch. Accordingly banker of the complainant sent the cheque to Tripura Gramin Bank for encashment but banker of

the accused on 10.05.2021 returned the said cheque dishonoured mentioning with remarks, "Insufficient fund". It is further case of the complainant that he requested the accused to pay the 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 20.05.2021 was sent to the accused through 'India Post' Service and also requested the accused person to make payment within 15 days from the date of receipt of the said notice and it is evident that on 25.05.2021, the accused person received the said demand notice and inspite receiving of notice the accused did not take any step to liquidate his liability then the complainant was constrained to file the present case.

**[8]** On the other hand, the accused in his plea of defence recorded on 29.09.2021 pleaded not guilty and claimed trial and stated as follows:

***"The cheque in question is completely false and fabricated and he did not issue any cheque in favour of the complainant."***

**[9]** The learned trial court framed charged under Section 138 of NI Act and to bring home the guilt of the accused the complainant has to prove the elements of section 138 of NI Act by crossing following legal formalities.

- a) The cheque was drawn by the drawer on an account maintained by him with the banker for payment of any amount of money out of that account to the complainant.
- b) The said payment was made for discharge of a legally enforceable debt or other liability, in whole or in part.
- c) The said cheque were returned unpaid by the bank.
- d) The cheque was presented to the bank within a period of three months from the date on which it was drawn or within the period of its validity whichever is earlier.
- e) The payee of the Holder in the due course of the cheque as the case may be made a demand for the payment of the said amount of money by giving the notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.
- f) The drawer of the cheque fails to make the payment of the said amount of money to the payee or as the case may be the Holder in due course of the cheque within 15 days of the receipt of the said notice.

**[10]** The Ld. Court below after perusing the statements of the PWs and Dws and also having dealt with the entire case has observed in the following manner:

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

I accordingly return a finding of not guilty against the accused person namely Shri Dipendra Uchai."

**[11]** Aggrieved by the said acquittal under Section 378(4) of CrPC challenging the legality, validity of propriety of the judgment and order of acquittal dated 06.06.2022 in Connection with case No.NI 18 of 2021 passed by the Learned Chef Judicial Magistrate, South Tripura, Belonia whereby the accused Sri Dipendra

Uchai was acquitted for the offense punishable under section 138 of NI Act, 1881, the complainant-appellant has approached this court seeking relief against the order of acquittal dated 06.06.2022.

[12] Today in course of the argument, Mr. Sarkar, learned counsel for the appellant has referred to the judgment of the apex court in **Rangappa vs Sri Mohan** reported in **(2010) 11 SCC 441** with regard to the complainant giving loan to the accused and the accused persons issuing a cheque which was dishonoured by the bank of the accused persons and also the complainant sending a legal notice to the accused persons. The relevant portion of the above cited judgment is extracted herein under:

13. The High Court in its order noted that in the course of the trial proceedings, the accused had admitted that the signature on the impugned cheque (No. 886322, dated 8-2-2001) was indeed his own. Once this fact has been acknowledged, Section 139 of the Act mandates a presumption that the cheque pertained to a legally enforceable debt or liability. This presumption is of a rebuttal nature and the onus is then on the accused to raise a probable defence. With regard to the present facts, the High Court found that the defence raised by the accused was not probable.

16. All of these circumstances led the High Court to conclude that the accused had not raised a probable defence to rebut the statutory presumption. It was held that:

6. Once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then initial presumption as contemplated under Section 139 of the Negotiable Instruments Act has to be raised by the Court in favour of the complainant. The presumption referred to in Section 139 of the N.I. Act is a mandatory presumption and not a general presumption, but the accused is entitled to rebut the said presumption.

What is required to be established by the accused in order to rebut the presumption is different from each case under given circumstances. But the fact remains that a mere plausible explanation is not expected from the accused and it must be more than a plausible explanation by way of rebuttal evidence. In other words, the defence raised by way of rebuttal evidence must be probable and capable of being accepted by the Court....."

17.....138. Dishonour of cheque for insufficiency, etc., of funds in the account.  
- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:...

20. The Counsel appearing for the appellant- accused has relied on a decision given by a division bench of this Court in Krishna Janardhan Bhat v. Dattatraya G. Hegde, (2008) 4 SCC 54, the operative observations from which are reproduced below (S.B. Sinha, J. at Paras. 29

"29. Section 138 of the Act has three ingredients viz.:

(i) that there is a legally enforceable debt

(ii) that the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which presupposes a legally enforceable debt; and

(iii) that the cheque so issued had been returned due to insufficiency of funds.

[13] Mr. Sarkar, has also relied on a judgment passed by this court in **Keshab Banik vs. Sekhar Banik** reported in **(2013) 1 TLR 528**. The relevant portion of the judgment is extracted herein below:

6. I have meticulously gone through the complaint and the evidence on record. Except denial there is nothing in the cross-examination of PW-1 regarding the alleged-advance of Rupees one lakh to the accused by the complainant and issuance, of the cheque by the accused assuring repayment of the amount.

Section 138 has been incorporated to protect the holder of a negotiable instruments in due course. If a cheque is issued and the payee presented the cheque for encashment and it is dishonoured for not having the adequate amount in the accout of the drawer of the cheque and he is informed by a notice by the payee and if it is found that still the drawer of the cheque fails to make the payment, he is liable to be booked under section 138 of the NI Act.

8. According to the complainant, notice was sent, on 14.12.2005, through a courier service and the notice received by the accused Ext. 4 is the document proved by the complainant in respect of notice and Ext.5 is the copy of the notice. Ext.4 (consignment note) indicates, the names of the consigner and consignee and a separate block with the heading 'received by consignee in good condition'. The name of the consigner Keshab Banik has been mentioned as M/s. Electronics, Battala, Agartla and in the Receipt Column an initial with date 17.12.2005 has been written which indicates that it was received by the proprietor of M/s. S.S. Electronics. The name of the accused has not been mentioned by the courier, but the name of the consignee, S.S Electronics which is not denied by the accused, has been clearly mentioned. PW1, in his cross-examination, clearly stated that he has submitted the acknowledgment of proper service of the notice upon the accused and there is signature of the accused in the said acknowledgement. The complainant being full-blood brother is likely to know the signature of his brother and he has asserted that his brother received it by putting his initial.

The accused adduced no evidence to discard the cogent evidence by the complainant. The accused even did not specifically deny the initial and date in Ext.4, in the block meant for the consignee with the heading "Received by consignee in good condition," as not of him.

[14] Mr. D. Sarkar, learned counsel appearing for the appellant has also relied on a judgment of this high court in **Benu Roy vs. Rajib Ghosh** reported in **(2018) 2 TLR 463**. The relevant paragraphs have been extracted here in below:

34. Section 118 of the NI Act, which deals specially with the special rule of evidence under the NI Act, 1881 provides the rule of presumption as to ramification of the negotiable instrument. It provides further that, until the contrary is proved, the following presumptions shall be made:

(a) of consideration – that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date- that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance – that every accepted bill of exchange was accepted within the reasonable time after its date and before its maturity;

(d) as to time of transfer – that every transfer of a negotiable instrument was made before its maturity;

(e) As to order of indorsements - that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps – that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course – that the holder is a holder of a negotiable instrument in due course:

Provided that, where instrument has been obtained for its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

46. In Hiten P Dalal (supra) the Apex Court has distinguished or made distinction between the two types of presumption but also has delineated the nature of evidence required to rebut the two. In the case of discretionary presumption, the presumption drawn may be rebutted by the expression,

"might reasonably be true and which is consistent with the innocence of the accused". In case of statutory presumption, the burden on the accused is heavy and it cannot be held to be discharged merely by reason that explanation offered by the accused is reasonable and probable. It shall be shown that the explanation has its true and probable foundation. The words "unless the contrary is proved" which occur in this provision, make it clear that the presumption is required to be rebutted by proof not by mere explanation. So probably that a reasonable man would act on the supposition that the probable cause so offered did exist. Unless, explanation is founded on proof, the presumption created by that provision cannot be said to have rebutted.

56. This Court has also noticed that the accused respondent has acted sometimes in a manner which cannot be stated to be bona fide. Even in the Court, he has stated that he did not receive the notice but the record from the postal department has squarely established that notice was duly served. Even he did not make any attempt to bring someone from the postal department to demonstrate that the communication dated 23.02.2013 (Exhibit-B) is not based on delivery of the registered article. Even there is no infirmity in the admission of the communication received from the Postal Department. As such, this Court does not have any other alternative but to observe that the accused-respondent has grossly failed to rebut the presumption under Section 139 read with Section 138 of the NI Act. Therefore, this Court is persuaded to interfere with the judgment and order of acquittal dated 27.05.2016 delivered in case No. NI 19/2013. From the evaluation as made above, the accused-respondent is liable to be convicted and is accordingly convicted under Section 138 of the NI Act.

[15] Reliance has also been placed on another judgment of this High Court in **Shri Subal Chandra Ghosh vs The State of Tripura** dated 24.04.2019 by Mr. D. Sarkar, learned counsel appearing for the appellant. The relevant portion of which is extracted herein below:

29) While dealing with the next point of the argument of Mr. Chakraborty, learned Sr. counsel that the loan was not given through account payee cheque as is required under Section 269-SS of the Income Tax Act relying upon the decision of Krishna Janardhan Bhat (Supra), wherein a Division Bench of the Apex Court dismissed the petition under Section 138 of N.I. Act on the ground that the complainant failed to follow the legal provisions as enshrined in Section 269-SS of the Income Tax Act. But the said judgment has been overruled by three judges Bench of the Hon'ble Supreme Court in Rangappa vs Sri Mohan reported in (2010) 11 SCC-441 wherein the Apex Court upheld the order of the High Court convicting the appellant. It was held that the principle of Krishna Janardhan Bhat(Supra) is in conflict with the statutory provisions as well as the established line of precedence of the Apex Court.

56) The explanation appended to Section 138 explains the meaning of the expression „debt or other liability“. The provision includes not only debt but other liability as well. The word „liability“ denotes the state of being liable. The debt or other liabilities for the purpose of attracting the provision are to be legally enforceable. Section 138 treats dishonored cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. In the trial, the accused had admitted that the signature on the impugned Cheques were indeed his own. Once this fact is acknowledged, Section 139 read with Section 118 of the N.I. Act mandates a presumption that the cheques pertained to a legally enforceable debt or liability. This presumption is of a rebuttal nature and onus is then on the accused to raise a probable defence.

59) True, it is, that the Apex Court in the long line of decisions has held that unless an order passed by Magistrate is perverse or the view taken by the Court is wholly unreasonable or there is non-consideration of any relevant materials or there is palpable misreading of records, the revision Court will not be justified in setting aside the order, merely because another view is possible. While viewing so, the Apex Court has further held that if the findings of the Courts below, which decision is sought to be revised, is shown to be perverse or untenable to law or is grossly erroneous and glaringly unreasonable or where the decision is based on no material or where the material are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the Courts may not interfere with decision in exercise of their revisional jurisdiction.

[16] Mr. D. Sarkar, learned counsel appearing for the appellant has submitted before this court that the court below has acquitted the accused only on the solitary ground that the appellant could not prove his income source. According

to him, the court below has failed to cite any judgment passed by the apex court showing that the complainant has to show his source of income. He further submits that the appellant is capable of lending that money which has been given to the accused persons by way of loan on various dates. The complainant having a good relation with the accused persons and having known them for a long time gave them the money. He further urges this court to interfere with the impugned judgment & order of acquittal dated 07.06.2022 & 06.06.2022 respectively.

**[17]** On the contrary Mr. Rajib Saha, learned counsel appearing for the accused persons has submitted before this court that since the complainant has failed to prove his enforceable liability against the accused persons, Section 139 of the NI Act shall come into play. For ready reference, Section 139 of the NI Act is extracted below:

139. Presumption in favour of holder: It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.

**[18]** Mr. Saha, learned counsel appearing for the accused-responded has drawn the attention of this court to the state of the DW2 Tarunjit Nag which is extracted herein below.

*"That I say that I know the complainant and the accused person. Accused person is a day labour. Approximately 1 year ago in Shibpur bazaar both the complainant Dulal Baidya and accused came and Dulal Baidya said to Prakash Tripura to sign in the cheques and accordingly Prakash Tripura signed in the blank cheques in my presence and handed over the chequebook to Dulal Baidya after signed the cheques."*

**[19]** From the above statement, it appears to this court that the complainant has taken the sign on the cheque book for making his own story. It is further submitted by the counsel for the respondents that the complainant has failed to produce any record during the trial showing that he has given the money in question to the accused persons.

**[20]** It is further stated by the counsel for the accused persons that the court below has rightly dealt stating that once presumption under Section 139 NI Act is rebutted, burden of proof shifts upon the complainant to prove as a matter of fact that cheque was actually issued in discharge of liability.

**[21]** In view of the above observation, this court is of the opinion that the complainant has failed to prove his source of income. It is evident from the record that during the cross-examination in the court below the complainant had stated that he had filed two numbers of NI case against the accused person namely Prakash Tripura for an amount of Rs.4,60,000 and Rs.2,00,000/-. The complainant

also states that he is a businessman by profession and earning Rs.10,000/- to Rs.20,000/- per month approximately. He also lodged one number of NI case against Pranab Chowdhury for an amount of Rs.3,00,000/-. He also admitted that he is not any income tax payee. This court finds it hard to believe if a person is earning barely Rs.10,000 to Rs.20,000/- per month what makes him able to advance a sum of Rs.9,60,000/- in couple of days. Further, it is unreasonable to belief as to giving loan of huge sum to a person coming to have Xerox copy. No transaction is established to consider the cheque amount as legally enforceable debt. Moreover, the citations referred by Mr. D. Sarkar, learned counsel for the appellant is of no relevance to the present context of the case.

**[22]** This court feels that the capacity to advance loans to the accused persons has not been established by the complainant and the alleged loans was not reflected in the ITR by the complainant. The defence of the accused persons that they had not taken any loan from the complainant and signing the blank cheque as security for loans of lesser amount has been subsequently filled up for an inflated amount and misused in filing the present complaint seems quite probable.

**[23]** Having regard to the evidence on record and the discussion made hereinabove, this Court is of the view that the appellant has failed to prove his projected case against the accused persons and consequently, the instant appeal preferred by the appellant stands dismissed. Hence, the orders of acquittal dated 07.06.2022 in connection with case No.NI 19 of 2021 and order of acquittal dated 06.06.2022 in connection with case No.NI 18 of 2021 passed by the Learned Chief Judicial Magistrate, South Tripura, Belonia do not require and interference from this court. Both the Judgment and order of acquittal passed by the learned Court below are affirmed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

**JUDGE**