

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P. No.60/2021

Sri Anupam Acharya, S/O. Sri Anil Acharya, resident of West Bhubanban,
P.O.-Ramnagar, P.S.-East Agartala, District-West Tripura.

..... Petitioner(s)

V E R S U S

1. Sri Debabrata Ghosh, son of late Chandrapada Ghosh, resident of Santipara,
P.O.-Agartala-799001, P.S.-East Agartala, District-West Tripura.

2. The State of Tripura, represented by the learned Public Prosecutor, High
Court of Tripura, Agartala.

.....Respondent(s)

For Petitioner(s) : Mr. A. Bhattacharjee, Advocate.

For Respondent(s) : Mr. S. Debnath, Addl. P.P.,
Mr. H.K. Bhowmik, Advocate.

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing : **06th February, 2023.**

Date of judgment : **10th February, 2023.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER

Heard Mr. A. Bhattacharjee, learned counsel appearing for the
petitioner. Also heard Mr. H.K. Bhowmik, learned counsel appearing for the
respondent No.1, complainant, and Mr. S. Debnath, learned Additional
Public Prosecutor appearing for the respondent No.2-State.

2. By means of this revision petition filed under Section 397 read with Section 401 of the Code of Criminal Procedure (Cr.P.C., for short), the petitioner has challenged the judgment dated 05.10.2021 passed by the learned Sessions Judge, West Tripura, Agartala in case No. Criminal Appeal 38 of 2019 whereby the learned Judge has upheld the judgment and order of sentence dated 03.10.2019 passed by the learned Additional Chief Judicial Magistrate, West Tripura, Agartala in case No. N.I. 156 of 2015 directing the accused-petitioner to pay a fine of Rs.10,25,000/- in default to suffer S.I. for 2(two) years for commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act, for short).

3. Petitioner has prayed for the following reliefs:

- "(i) Admit the revision petition;
- (ii) Call for the lower court records;
- (iii) Issue notice upon the respondents;
- (iv) Stay the further proceeding before the learned trial court till final disposal of this present revision petition;

AND

- (v) After hearing both the sides, set aside the impugned judgment and order dated 05.10.2021 passed by the learned appellate court affirming the judgment and order dated 03.10.2019 passed by the learned trial court."

4. Case of the petitioner as it revealed from the F.I.R. as well as from record, in a nutshell, is that Smt. Rani Ghosh, mother of the complainant Debabrata Ghosh, is the owner and proprietor of M/S New Ghosh Brothers situated at Motor Stand, Agartala. Smt. Rani Ghosh was in need of money and in 2006 with the assistance of the petitioner she got loan of Rs.30 lakh from the bank and as per condition, an amount of Rs.10 lakh was given to the petitioner as a matter of loan with an assurance that the petitioner will deposit the interest accrued thereon every month in the bank. It was alleged that the mother of the complainant Smt. Rani Ghosh paid the entire loan amount to the bank and requested the petitioner to pay back the loan amount of Rs.10 lakh. Meanwhile, the petitioner got a job and to repay the loan amount he issued a cheque in the name of the complainant drawn on Syndicate Bank, Agartala Branch. It was also alleged that on 11.05.2015, complainant Debabrata Ghosh submitted the said cheque in his bank account for encashment but the said cheque was dishonoured for insufficient balance. Thereafter, complainant issued demand notice requesting the petitioner to pay the loan amount, but in spite of receipt of notice, the petitioner did not pay the said amount, resulting which complainant filed a case under Section 138 of N.I. Act before the learned Chief Judicial Magistrate, West Tripura, Agartala. After completion of trial, learned trial Court vide judgment dated

03.10.2019 convicted the accused under Section 138 of N.I. Act and sentenced him to pay a fine of Rs.10,25,000/- in default to suffer S.I. for 2(two) years. Aggrieved thereby, the accused-petitioner preferred an appeal before the learned Sessions Judge, West Tripura, Agartala whereby the learned Sessions Judge vide judgment dated 05.10.2021 dismissed the appeal upholding the judgment of the learned trial Court. Assailing the impugned judgment of the learned Sessions Judge, petitioner has filed this revision petition. Hence, this case.

5. Mr. A. Bhattacharjee, learned counsel appearing for the petitioner, contends that the learned appellate Court without appreciating the factual circumstances and evidence on record and also without application of judicial mind has committed serious illegality while dismissing the appeal and passed an erroneous judgment. He also contends that admittedly the complainant, respondent No.1 herein, deposed that his mother Smt. Rani Ghosh is the owner of M/S New Ghosh Brothers and the petitioner took loan of Rs.10 lakh from her and he repaid the said amount in cash to the proprietor/owner of M/S New Ghosh Brothers and the whole transaction took place between the owner and the petitioner and as such, there was no business transaction between the complainant, respondent No.1 herein, and

the petitioner who is not liable to pay any debt to the complainant at all. He further contends that the complainant did not produce his mother Smt. Rani Ghosh, who is alive, before the trial Court as a witness. Counsel also contends that the petitioner issued some blank cheques to the mother of the complainant as security of the loan amount which he had taken from her, but Smt. Rani Ghosh despite his several requests did not return the cheques handed over to her as security although the petitioner had refunded the entire loan amount to her and taking the advantage of such blank cheques, the complainant manipulated the same by inserting his name therein and filed the present false case against the petitioner. He further contends that petitioner at no point of time handed over any cheque to the complainant rather he made transaction directly with the mother of the complainant and as such, it is merely a case of preponderance of probability. Accordingly, he prays for setting aside the impugned judgment dated 05.10.2021 passed by the learned Sessions Judge upholding the judgment and order of conviction and sentence dated 03.10.2019 passed by the learned trial Court.

6. On the other hand, Mr. H.K. Bhowmik, learned counsel appearing for the respondent No.1-complainant, in rebuttal of the submissions advanced by the learned counsel for the petitioner, contends

that the business concern was in the name of the mother of the complainant but it was run exclusively by the complainant himself and the cheque was issued by the petitioner in the name of the complainant. He also contends that after sanction of the loan, as per commitment, complainant handed over Rs.10 lakh to the petitioner but he on different pretext was avoiding for repayment of the loan and also threatened the complainant that he would not spare the complainant if any legal action is taken against him. However, on repeated persuasion the petitioner issued a cheque on 24.04.2015 in favour of the complainant but that was dishonoured on 11.05.2015 and accordingly, complainant issued a demand notice to the petitioner. Counsel further contends that from the cross-examination of the petitioner as DW-1 it is apparent that he had received the demand notice and the petitioner also admitted that the cheques which were handed over by him to the mother of the complainant as security for loan were signed by him and he had not cited any witness in support thereto. Counsel also contends that during cross-examination of the complainant, suggestion was put to him to the effect that he had inserted his name in the cheque given to his mother by the petitioner as security and got it dishonoured which he denied, but in evidence-in-chief of the petitioner he had taken a plea that after full repayment of loan he requested mother of the complainant several times to return all cheques

which were handed over to her as security of loan amount but she did not return the same and he did not take any legal step considering good relation with the family of the complainant. Counsel further contends that firstly the petitioner had taken the plea that he handed over the cheque to the mother of the complainant, secondly his plea was that he handed over some blank cheques to the mother of the complainant as security of loan amount and lastly, his plea was that out of those cheques one new cheque bearing No.042552 was manipulated by the complainant. Counsel also submits that on perusal of the judgment of the appellate Court, it transpires that from the evidence on record it was established that the complainant, who is the son of Smt. Rani Ghosh, the proprietor of New Ghosh Brothers was managing all affairs of the concern on behalf of his mother and the petitioner failed to rebut this very fact.

In support of his contentions, learned counsel for the respondent No.1 has placed reliance on two decisions of the Apex Court, viz.

- (i) ***Rahul Sudhakar Anantwar vrs. Shivkumar Kanhiyalal Shrivastav*** in ***Criminal Appeal No.1598 of 2019*** decided on 21.10.2019; and
- (ii) ***M/S Womb Laboratories Pvt. Ltd. vrs. Vijay Ahuja & another*** in ***Criminal Appeal Nos.1382-1383 of 2019*** decided on 11.09.2019.

In view of above, learned counsel for the respondent No.1-complainant, submits that there is no error in the judgment of the appellate Court as well as the trial Court and prays for dismissal of the revision petition affirming the judgments of the learned Courts below.

7. Mr. S. Debnath, learned Addl. Public Prosecutor appearing for the respondent-State, adopted the submissions advanced by the learned counsel for the respondent No.1 and contends that there is no error in the impugned judgment passed by the learned Sessions Judge and prays for dismissal of the revision petition.

8. Having considered the submissions of learned counsel for both the parties, this Court is of the considered view that the complainant, respondent No.1 herein, has not explained properly with proof that the petitioner did not repay the loan amount as per commitment and has also not made out a case on the point of legal enforceable debt since for commission of an offence under Section 138 of the N.I. Act, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or representation. From the evidence on record, it also transpires that there is no direct transaction between the complainant and the accused-petitioner. The entire story runs around the mother of the complainant Smt.

Rani Ghosh, who is a vital witness, but she has not been produced and examined as a witness before the trial Court. During obtaining loan from the bank, involvement of one Milton Ghosh as a third party witness was spoken by the complainant, but said Milton Ghosh has not been examined as witness. In view of the disputed question of facts and crucial persons like mother of the complainant and third party witness not being examined, conviction based on sole deposition of PW-1, the complainant, cannot be appreciated. Hon'ble Supreme Court in several cases like, (i) ***Rahul Sudhakar Anantwar vrs. Shivkumar Kanhiyalal Shrivastav*** in ***Criminal Appeal No.1598 of 2019***, and (ii) ***M/S Womb Laboratories Pvt. Ltd. vrs. Vijay Ahuja & another*** in ***Criminal Appeal Nos.1382-1383 of 2019*** decided on the point that under the N.I. Act, "legally enforceable debt" has to be established which, in the instant case, the complainant failed.

9. In view of above, the revision petition is allowed. The impugned judgment dated 05.10.2021 passed by the learned Sessions Judge, West Tripura, Agartala in case No. Criminal Appeal 38 of 2019 is hereby set aside. Consequently, the judgment and order of sentence dated 03.10.2019 passed by the learned Additional Chief Judicial Magistrate, West Tripura, Agartala in case No. N.I. 156 of 2015 also stands quashed.

10. Send down the lower court records forthwith.

Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)

Pulak

