

**HIGH COURT OF TRIPURA
AGARTALA**

CRL. L.P. No.05 of 2024
in CrI.A. No.08 of 2024

Sri Ajit Datta

..... Petitioner(s)

V e r s u s

Sri Mithan Das & Anr.

..... Respondent(s)

For Petitioner (s)	:	Mr. K.K. Pal, Adv.
For Respondent(s)	:	Mr. S. Lodh, Adv.

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

Order

02.08.2024

Heard Mr. K.K. Pal, learned counsel appearing for the petitioner and Mr. S. Lodh, learned counsel appearing for the respondent No.1. None appears for the State.

This petition seeking leave has been filed under Section 378(4) of the Cr.P.C. for admitting the connected appeal filed against the judgment and order dated 22.12.2023 passed by the learned Sub-Divisional Judicial Magistrate, Bishalgarh, Sepahijala, Tripura in case No. NI 15 of 2022 acquitting the respondent No.1 from the offence punishable under Section 138 of the NI Act, 1881.

The challenge regarding the said judgment as canvassed before this Court by learned counsel, Mr. Pal, is mainly on two folds-firstly that the learned trial court acquitted the accused for want of evidence regarding service of notice upon him under Section 138 of the NI Act and secondly that a huge amount of Rs.20,00,000/- was involved in the cheque but satisfactory explanation was not put forward from the side of complainant regarding the source of such amount. Mr. Pal submits that the notice was duly sent by registered post with AD to the accused but by mistake, the same was not placed in the record and was also not proved due to evidence. The photocopies of such documents now submitted in this leave petition before this court. Regarding disclosure of the source of such money, Mr. Pal also contends that there is no requirement under Section 138 of the NI Act fastening the liability upon the complainant to disclose such source and therefore, according to learned counsel, Mr. Pal, the trial court has committed gross error in deciding both the points against the complainant.

On the other hand, Mr. Lodh, learned counsel submits that a specific denial was given to the complainant during evidence recording that no such notice was ever served upon the accused person and though photocopies of those photocopies of documents have been submitted in this court, but this court has no jurisdiction to consider the documents at this appellate stage. Regarding the source of money, Mr. Lodh vehemently argues that it is quite unnatural that a small businessman like the owner of a rubber garden to have so much wish amount in cash without any explanation and therefore, it creates a serious doubt about the authenticity of the loan transaction as alleged by the complainant.

Considering the rival submissions of the parties and also on perusal of the impugned judgment, this court is of the view that there are materials to hear the appeal on merit for ends of justice. Thus, the connected appeal is admitted by granting leave.

In view of the above, the leave petition is accordingly allowed and disposed of.

JUDGE



SUJAY GHOSH

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