

**HIGH COURT OF TRIPURA
AGARTALA
Crl. A. No.03 of 2023**

Shri Apu Ghosh,
son of Late Nilmohan Ghosh,
resident of Town Rajarbag,
P.O. R.K. Pur, Udaipur, P.S. R.K. Pur,
District – Gomati, Tripura

----Appellant(s)

Versus

1. Shri Bhusan Das,
son of late Late Manindra Das,
resident of No.1 Fulkumari,
Kanel Chowmuhani, P.O. R.K. Pur,
Udaipur, P.S. R.K. Pur,
District- Gomati, Tripura

2. The State of Tripura

----Respondent(s)

For Appellant(s)	:	Mr. S. Lodh, Adv. Mr. Subham Majumder, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P. Mr. K. Datta, Adv.
Date of Hearing	:	22.05.2024
Date of delivery of Judgment & Order	:	20.06.2024
Whether fit for reporting	:	YES

**HON’BLE MR. JUSTICE BISWAJIT PALIT
Judgment & Order**

This appeal under Section 378(4) of Cr.P.C. is preferred challenging the judgment and order dated 19.01.2023 passed by Learned Judicial Magistrate, First Class, Udaipur, Gomati, Tripura, Court No.3 in connection with Case No.C.R.(N.I.)56 of 2019. By the said judgment, Learned Trial Court has acquitted the respondent No.1 for commission of offence punishable under Section 138 of Negotiable Instrument Act, i.e. N.I. Act, in short.

2. Heard Mr. S. Lodh, Learned counsel assisted by Mr. Subham Majumder, Learned counsel appearing for the appellant-complainant, as well as Mr. K. Datta, Learned counsel appearing for the respondent-complainant No.1 and Mr. Raju Datta, Learned P.P. appearing for the State-respondent No.2.

3. Before proceeding with the merit of the appeal, let us project the subject matter of dispute amongst the rival parties. According to the complainant, out of friendly relationship, the accused Bhusan Das on 29.03.2019 at about 11.00 a.m. borrowed a sum of Rs.4,50,000/- from the complainant namely Shri Apu Ghosh at Hotel Maharaja, Rajarbag in presence of one Uttam Sutradhar of 2 number Fulkumari, Udaipur and another Pritam Datta of Rajarbag, Udaipur. Thereafter, again on 03.04.2019 at about 5.00 p.m., the accused respondent further borrowed a sum of Rs.7,50,000/- at Hotel Maharaja, Rajarbag in presence of Shri Sanjib Debnath of Gakulpur, Madhyapara and Shri Ratan Chakraborty of Town Rajarbag for the purpose of his business on condition that he would returned back the money before Durga Puja of 2019. Thereafter, being approached by the complainant i.e. the appellant herein, the accused issued a cheque vide No.012853 dated 23.09.2019 for an amount of Rs.11,06,000/- in favour of the complainant, drawn on Tripura State Co-operative Bank Ltd., Udaipur Branch vide No.000211010018047 in presence of Sanjib Debnath, Raju Day and Biswajit Saha, out of his total debt amounting to Rs.12,00,000/- to discharge his debts and liabilities. Then, on the very same day i.e. on 23.09.2019 the appellant-complainant deposited the said cheque vide No.012853 dated 23.09.2019 for an amount of Rs.11,06,000/- only in his account No.0462010237253 lying with United Bank of India, Udaipur

Branch for encashment. But on 24.09.2019, the Branch Manager, United Bank of India, Udaipur Branch returned back the said cheque to the complainant stating inter alia that due to 'Funds insufficient' the cheque had been dishonoured. After that, on 03.10.2019, the appellant-complainant through his Advocate Mr. Asif Iqbal served one demand notice to the respondent-accused by registered A/D post demanding payment of cheque amounting to Rs.11,06,000/- within the stipulated period of 15 days from the date of receipt of that notice. The respondent-accused on 12.10.2019 received the registered notice dated 03.10.2019 but till the date of filing of the instant case he did not pay any amount to the complainant. Thus, according to the appellant-complainant, the accused dishonestly cheated and deceived the complainant knowing fully well that there was no sufficient fund in his Bank Account, but inspite of that issued cheque to the complainant deliberately with a view to defraud him and thus, according to the appellant-complainant, the respondent-accused had committed an offence punishable under Section 138 of N.I. Act read with Section 420 of IPC. Hence, he filed the case.

4. After registration of the case, notice was served upon the accused-respondent. The respondent-accused appeared before the Court and thereafter, the substance of acquisition as required under Section 251 of Cr.P.C. was narrated to the accused in Bengali to which he pleaded not guilty and claimed to be tried. Hence, the trial was commenced. During trial, to substantiate the allegation of acquisition, the appellant-complainant adduced 5(five) witnesses including himself and exhibited some documents which were marked as Exbt.1 to Exbt.10. Thereafter, the respondent-accused was examined under Section 313 of

Cr.P.C. when he desired to adduce witness in support of his defence and accordingly, the respondent-accused adduced 2(two) witnesses as DW-1 and DW-2 and also relied upon some documents which were also marked as Exbt.D/1 and Exbt.D/2 on identification. The defence case was that of total denial, rather, the respondent took the plea that a blank cheque bearing No.012853 drawn on Tripura State Cooperative Bank Ltd. Udaipur Branch, Udaipur containing his signature was missing from the beneath of his pillow and on that date, the appellant-complainant visited his house. Thereafter, the respondent-accused made a G.D. Entry at R.K. Pur P.S. in regard to missing of cheque and submitted a prayer before the bank authority for cancellation of missing cheque. But after 10 months 22 days of the incident, when the appellant-complainant lodged the case against him, that time he could understand that his cheque, as alleged was stolen by the complainant. However, to determine the case, Learned trial Court formulated 4(four) points and thereafter, after hearing of arguments vide judgment and order dated 19.01.2023 acquitted the respondent-accused from the charge under Section 138 of N.I. Act. For the sake of convenience, I would like to refer herein below the relevant portion of the order of the Learned trial Court which runs as follows :

"In the result, the accused Sri Bhusan Das(A1), is hereby acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act and he is set at liberty at once.

The surety of the accused person during trial stand discharged from the liability of bail bond.

The bail bond furnished by the accused person in compliance of Section 437A, Cr.P.C. shall remain in force for a further period of 6(six) month.

The case is disposed of on contest with an order of acquittal.

Enter the result in CIS as well as in the Trial Register.

The record shall be consigned to the record room after complying all legal formalities."

5. At the time of hearing of argument, Mr. S. Lodh, Learned counsel appearing for the appellant submitted that Learned trial Court below could not appreciate the evidence on record, rather, believed the concocted story of the respondent-accused and ultimately by the impugned judgment acquitted the respondent-accused from the charge of this case. He further submitted that initially, at the time of filing of the complaint through bonafide mistake the cheque number was wrongly written as 012583 but later on, the fault was detected and thereafter, amended the complaint mentioning the exact number of the cheque as 012853. He also stressed upon Exbt.D/1 and Exbt.D/2 and submitted that no police officer relating to GD Entry was produced by the respondent-accused before the Court to substantiate his manufactured story of missing of cheque. Even, no police report was submitted to substantiate the story leveled by the respondent-accused that the cheque was actually found to be missing. Furthermore, from D/1 the money slip deposited for the missing cheque it cannot be said that the said money was deposited for the purpose of alleged cheque. In this regard, there was no explanation from the side of the respondent-accused, even, as alleged by the respondent-accused no legal action was taken against the complainant that he had stolen the cheque from his residence. Even, the GD Entry Book of the police station was not produced, nor any extract of GD Entry was produced to substantiate his evidence. Furthermore, Learned counsel for the appellant also submitted that it is on record that the respondent-accused during his examination before the Court himself admitted that the present appellant-complainant had filed another case against him which was settled through Lok Adalat. So, the story of absence of any business relation as

projected by the respondent-accused cannot be believed. Furthermore, the evidence of Bank Official adduced by the respondent-accused is also not trustworthy which was also confusing one. So, according to Learned counsel for the appellant-complainant that the Learned trial Court below did not appreciate the evidence on record properly and ultimately came to an erroneous finding for which he urged before the Court to interfere with the judgment of setting aside the respondent-accused from the charge under Section 138 of N.I. Act.

6. On the other hand, Mr. K. Datta, Learned counsel appearing for the respondent No.1 submitted that the Learned Court below rightly after elaborate discussion of the evidence on record acquitted the respondent-accused from the charge of this case. According to him as mandated by law, the appellant-complainant issued notice upon the respondent-accused mentioning the wrong cheque number and thus, the complainant-appellant has violated the principle of Section 138 of N.I. Act. Furthermore, during trial no objection was raised by the complainant-appellant against Exbt.D/2 i.e. the alleged complaint on the basis of which the GD Entry was made. So, the story according to Learned counsel, raised by the appellant-complainant cannot be accepted, rather, the defence story is much more acceptable and believable in the eye of law. No bank statement was furnished by the appellant-complainant to substantiate the payment made by him to the respondent-accused, even, according to Learned counsel, no income tax return or other relevant papers were submitted by him to substantiate his contention. Furthermore, the amendment petition so submitted was totally silent about wrong entry of cheque number. So, according to Learned counsel for the respondent-accused, the Learned Court below

rightly and reasonably delivered the judgment acquitting the respondent-accused from the charge of this case for which there was no merit of this case and urged for dismissal of this appeal.

7. It is to be noted here that on 07.03.2020 the appellant-complainant filed one petition before the Learned trial Court for amendment of the complaint and thereafter, after hearing both the sides by order dated 20.07.2021 the said petition was allowed by the Learned Court.

8. In a case under Section 138 of N.I. Act to made out the case against the any accused the complainant must prove the following facts :

- "1. The accused issued a cheque on account maintained by him with a Bank and the said cheque has been presented to the bank within a period of three months from the date of cheque or within the period of its validity.**
- 2. The said cheque had been issued in discharge, in whole or in part, of any legal debt or other liability.**
- 3. The aforesaid cheque, when presented for encashment was returned unpaid/dishonoured.**
- 4. The payee of the cheque issued a legal notice of demand to the drawer within 30 days from the receipt of information by him from the bank regarding the return of the cheque.**
- 5. The drawer of the cheque failed to make the payment within 15 days of the receipt of aforesaid legal notice of demand."**

9. Now, here in the case we are to examine what was the evidence on record of the parties to satisfy the aforesaid ingredients to substantiate the charge under Section 138 of N.I. Act. As already stated, the appellant-complainant examined five witnesses including himself.

10. CW-1, Shri Apu Ghosh, the appellant-complainant filed examination-in-chief in affidavit before the Court. He also relied upon some documents in support of his claim which were marked as Exhibits as narrated below:

- 1) Cheque vide No.012853 dated 23.09.2019 amounting to Rs.11,06,000/- issued by Bhushan Das in his favour marked as Exhibit.1.**
- 2) Counter part of the Deposit Slip, dated 23.09.2019 submitted to United Bank of India, Udaipur Branch, marked as Exhibit.2.**

- 3) Bank Return Memo, dated 24.09.2019, issued by United Bank of India, Udaipur Branch.**
- 4) Counter part of the Postal Receipt dated 03.10.2019 marked as Exhibit.3.**
- 5) Copy of Legal Notice dated 03.10.2019 (in 03 pages), served upon the accused by him, marked as Exhibit.4.**
- 6) Acknowledgement Card dated 12.10.2019 with regard to Notice served upon the accused, marked as Exhibit.5.**
- 7) Copy of Registration Certificate of vehicle bearing Registration no.TR-03-1389 (OM Bus) in the name of appellant-complainant, marked as Exhibit.6.**
- 8) Copy of Notification vide No.F.8(5)-PWD(C)/2012/ dated 4th November, 2015 enlisting the name of contractors including the name of the appellant-complainant which on comparison with the original marked as Exhibit.7, Exhibit.7/1 and Exhibit.7/2 (in 03 pages).**
- 9) Copy of Trade Licence, issued by the Udaipur Municipal council, in the name of partner of the appellant Shri Ratan Chakraborty, which on comparison with the original marked as Exhibit.8.**
- 10) Partnership agreement between the appellant and 02(two) others, marked as Exhibit.9.**

11. During cross-examination by the respondent-accused he admitted that no notice was issued by him with regard to the cheque No.012853. Witness volunteered that there was typographical error in mentioning the cheque number in notice. He further admitted that in the complaint petition as well as in examination-in-chief in the form of affidavit submitted that before amendment mentioned the cheque No.012583. He has further submitted that he has not submitted any work order regarding work done by him as a contractor for a period from 2018 to 2020. Also stated that he is not an income tax payee. He never filed any income tax return nor submitted any Bank document or any other document to show that he had cash in hand or in bank a sum of Rs.12,00,000/- on or before 23.09.2019. Again, he stated that he used to maintain Register regarding the cash transaction done by him on each day.

12. CW-2, Sri Uttam Sutradhar in his examination-in-chief in affidavit stated that he knows both the parties of this case. The accused Bhusan Das who is well acquainted with the complainant and have a

friendly relationship. The accused on 29.09.2019 at about 11 p.m. borrowed an amount of Rs.4,50,000/- only from the complainant from Hotel Maharaja at Rajarbag in presence of him and one Sri Pritam Datta of Town Rajarbag for the purpose of his business with promise that he would return back the said amount before Durga Puja of 2019. He has also stated that he had heard that the accused person further borrowed a sum of Rs.7,50,000/- only from the complainant. Said witness further stated that on being approached on 23.09.2019 the accused indemnified his due debts by issuing a Cheque vide No.012583 dated 23.09.2019 for Rs.11,06,000/- out of Rs.12,00,000/- in favour of the complainant on Tripura State Co-operative Bank Ltd., Udaipur Branch vide A/C No.000211010018047 in presence of witness towards discharge the liabilities of the accused person. Thereafter, on 23.09.2019, the complainant had deposited the said Cheque No.012583 dated 23.09.2019 for Rs.11,06,000/- only in his account No.0462010237253 lying with United Bank of India, Udaipur Branch for encashment of the same. But on 24.09.2019, the Branch Manager, United Bank of India, Udaipur Branch returned back the cheque with a certificate to the complainant that due to 'Funds insufficient' the cheque has been dishonoured. He has further stated that on 03.10.2019 through Advocate the complainant gave demand notice to the accused person by registered post demanding payment of the cheque amounting to Rs.11,06,000/- from the accused person failing which it was stated in the legal notice that legal action shall be taken against the accused person. On 12.10.2019 the accused person received the registered notice dated 03.10.2019 but till date the accused person did not make any payment to the complainant.

During cross-examination, nothing came out relevant.

13. CW-3, Sri Sanjib Debnath @ Sanjit Debnath deposed that he knows both the parties of this case. The accused Bhusan Das is also well acquainted with the complainant and have a friendly relationship with him. The accused person on 03.04.2019 at about 5 p.m. borrowed a sum of Rs.7,50,000/- from the complainant from Hotal Maharaja at Rajarbag in presence of him and Sri Ratan Chakraborty of Town Rajarbag for the purpose of business with condition that he will returned back the money before Durga Puja of 2019 A.D. He also heard that the accused person previously also borrowed an amount of Rs.4,50,000/- from him. Thereafter, on being approach on 23.09.2019 the accused person to indemnify his debts issued a cheque vide No.012583 dated 23.09.2019 for Rs.11,06,000/- out of Rs.12,00,000/- only in favour of the complainant on Tripura State Co-operative Bank Ltd., Udaipur Branch vide A/C No.000211010018047 in presence of him and Sri Raju Dey of Gakulpur, Sri Biswajit Saha of Badarmokam towards the discharge the liabilities of the accused. Thereafter, on 23.09.2019, the complainant had deposited the said cheque No.012583 dated 23.09.2019 for Rs.11,06,000/- in his account No.0462010237253 lying with United Bank of India, Udaipur Branch for encashment of the same. But on 24.09.2019 the Branch Manager, United Bank of India, Udaipur Branch returned back the cheque with a certificate to the complainant that due to 'Funds insufficient' the cheque has been dishonoured. After that, the complainant served legal notice upon him.

During cross-examination by the respondent-accused he stated that the complainant and the accused used to work together but

he could not say the cheque number in relation to which the instant case was filed. Nothing more came out relevant.

14. CW-4, Ratan Chakraborty also deposed in the same manner like witness Sanjib Debnath in his examination-in-chief in affidavit.

During cross-examination, he stated that he is running hotel in partnership with the complainant and monthly turnover from the business of hotel is about Rs.70 to 80 thousands and yearly Rs.8 to 9 lacs. Again he stated that he never visited the house of Bhushan Das and he had no business transaction with the accused Bhushan Das.

15. CW-5, Shri Subhrangshu Samanta deposed that he is the Branch Manager of Punjab National Bank, Udaipur Branch. He appeared on receipt of the notice of the Court. The United Bank of India has become Punjab National Bank after amalgamation. On 23.09.2019, Shri Apu Ghosh deposited one cheque vide No.012853 dated 23.09.2019 drawn by Shri Bhushan Das on Tripura State Cooperative Bank, Udaipur Branch for encashment. Cheque could not be encashed because same was dishonoured by the drawee bank on the ground of 'insufficiency of fund' in the bank account of the drawer of the cheque. Therefore, bank authority returned the cheque to Shri Apu Ghosh by issuing a Return Memo and he identified the Return Memo marked as Exbt.10. During cross-examination, he stated that when the cheque was presented for encashment that time he was not posted in the same branch. He personally verified that Apu Ghosh had Bank Account with their bank. Again stated that the Return Memo was issued based on the intimation provided by the drawee bank informing the ground on which the cheque was dishonoured. He could not say as to whether the cheque was stolen or not. Again stated that if the cheque is returned on the ground that it

is freezed then the drawee bank will not issue intimation stating insufficiency of the fund as a ground for dishonour of cheque.

16. Although, the complainant submitted the examination-in-chief in affidavit of witnesses Raju Dey and Biswajit Saha, but finally, they could not be produced. So, by the order dated 06.08.2022, the evidence of the complainant was closed.

17. DW-1, Shri Bhusan Das the respondent-accused in his examination-in-chief in affidavit submitted that he is the accused of this case. The accused filed the case against him for illegal gain. He is an enlisted contractor vide enlistment No.2030 under P.W. Department, Government of Tripura and his enlisted amount is Rs.50,00,000/-. He further stated that he had good relation with Apu Ghosh and used to visit to his residence about contract work time to time. He has got one current account in Tripura State Co-operative Bank Ltd., Udaipur Branch vide A/C No.000211010018047 and he used to use the cheque for withdrawal of money. On 30.10.2018 he signed his cheque No.012853 without writing any amount and date in that cheque 12853 and kept the cheque book under his pillow of his bed at home Fulkumari. On that day, complainant Apu Ghosh came to his residence and left his house in the afternoon. On 31.10.2018 when he was going to withdraw some money from State-Cooperative Bank by his cheque, he found that the cheque No.12853 was missing from his cheque book. Thereafter, he searched at his house everywhere, but he could not trace out the same cheque. Thereafter, he wrote an application addressing to O.C. R.K. Pur P.S. on 31.10.2018 and on 01.11.2018 he submitted that application to O.C. R.K. Pur P.S. which was registered vide G.D. Entry No.17 dated 01.11.2018. On 01.11.2018 he informed the matter of missing his

cheque to Branch Manager Tripura State Co-operative Bank, Udaipur Branch and he deposited Rs.71 as a cancellation fees for that cheque and the said cheque was cancelled. After filing of the case he became sure that the complainant had stolen his cheque bearing No.012853. The complainant Apu Ghosh issued Advocate demand notice by giving a false cheque vide No.012583 dated 23.09.2019. He replied that notice denying the issue of cheque No.12583 and Apu Ghosh filed this case by giving cheque No.012583 and he had submitted examination-in-chief mentioning cheque No.012853. He also relied upon the copy of information in writing dated 31.10.2018 given by him and counter signed by O/C R.K. Pur P.S., which was marked as Exbt.D/2. He also identified Bank Slip dated 01.11.2018 issued by him to Tripura State Cooperative Bank Ltd. Udaipur Branch on payment of Rs.71/- as a charge for stopping the payment of cheque vide No.012853. During cross-examination, he admitted that the complainant lodged another case against him in the Court for dishonor of cheque for an amount of Rs.90,000/- issued by him and subsequently, the matter was amicably settled at Lok Adalat and as per terms of settlement in the Lok Adalat he paid Rs.70,000/- to the complainant. He further admitted that the complainant had a Hotel and Hardware Shop at Rajarbag Motor Stand. Also stated that he heard that the complainant had also business of Bus Service and the complainant was a Contractor. He further stated that he had not submitted any documents in support of his contention that he had enlistment of Rs.50,00,000/- as a Contractor and he had not submitted any documents in the Court regarding the investigation/inquiry conducted by police upon the information entered in the G.D. He had not submitted any documents showing that payment of

the cheque was stopped because Bank did not issue any such document. He only complied the procedural formalities for stopping the payment of lost cheque.

18. DW-2, Shri Swapan Jamatia deposed that he is the Branch Manager of Tripura State Cooperative Bank Ltd., Udaipur Branch. He appeared before the Court on receipt of notice of the Court. As per bank records one copy of information entered into the G.D. of R.K. Pur P.S. was submitted stating that blank cheque vide No.012853 against the Account of the applicant of Shri Bhusan Das with Tripura State Cooperative Bank Ltd., Udaipur Branch, Udaipur bearing his signature was lost and based on such information, the payment of said Cheque was stopped on 01.11.2018 from the Bank and accordingly, they issued a bank slip dated 01.11.2018 and he identified the Bank slip marked as Exbt.D/1.

19. During cross-examination, he deposed that on 24.09.2019 their Bank received the said cheque forwarded by the then United Bank of India, Udaipur (now PNB, Udaipur) on being deposited by Shri Apu Ghosh for encashment. He further admitted that the Tripura State Cooperative Bank Ltd., Udaipur Branch returned back the said cheque unpaid stating that the cheque had been dishonoured on the ground of insufficiency of fund on the account of Shri Bhusan Das. Again stated that the return memo must have been issued based on the information given by the official by the Tripura State Cooperative Bank Ltd., Udaipur Branch, Udaipur. Being asked by the Court he stated that it must have been done by mistake because encashment of the said cheque was already been stopped by the Bank. Again stated the he had not brought any official record nor he had gone through the official records except

the bank slip issued by their Bank. In the said bank slip, commission of Rs.71/- was charged from their bank from Shri Bhusan Das and as per the Bank Rules & Regulations, the said amount is only for stopping payment of cheque. He further admitted that in the said Bank slip there is nothing indicating the number or details of the cheque the payment of which was stopped by their bank. He further admitted that there is no record of the bank with him specifically mentioning that the payment of the said cheque was stopped from their bank. Also he stated that he was posted in another bank at that time and did not have any personal knowledge in that regard. He further volunteered that the relevant details of the cheque mentioned on the copy of the information received by the police officials of R.K. Pur P.S. with necessary endorsement and there is receipt seal of Bank Authority on the copy of information and further the bank slip was attached with the copy of such information.

These are the sum and substance of the evidence on record of both the parties in support of determination of the case before the Learned trial Court.

20. After hearing both the sides and after going through the evidence on record of both the parties, it appears that :

(I) Admittedly, the complainant initially filed one complaint mentioning the cheque No.012853 although the same was later on amended by the order of the Court mentioning the correct cheque No.012853.

(II) Admittedly, at the time of serving of notice, the complainant mentioned the cheque No.012853 i.e. prior to amendment. But on perusal of the evidence on record, it appears that since the amendment was allowed by the Court after hearing both the sides, so, the respondent-accused is not entitled to get any benefit on this point that

wrong notice was issued mentioning a wrong cheque number, even, in this regard, no proper step was taken by the respondent-accused before any other forum. Now, the story as projected by the respondent-accused that from his bed room under the beneath of pillow his cheque was found missing and later on, when the case was filed he could understand that the said cheque might have been stolen by the complainant as on that day, the complainant came to his residence. In this regard, it is submitted that if the story of the respondent-accused is found to be correct, in that case, no legal action was taken by him against the complainant-appellant that he had stolen the cheque. Furthermore, there was no declaration in the form of paper publication that his cheque was stolen for the information of the general public so that nobody could take any benefit against his alleged missing cheque. Furthermore, the respondent-accused before the Learned trial Court did not submit any police report regarding his alleged GD Entry nor adduced any police officer to support his defence. More so, the respondent-accused by the trend of cross-examination could not raise any doubt to disbelieve the evidence on record of the complainant and his witnesses regarding making payment of cash money in their presence to the respondent-accused. Admittedly, the complainant-appellant before the Court could not submit any bank statement nor could submit any income tax papers to substantiate that he had sufficient money for landed to the respondent-accused. But at the same time, it is on record that he has got total business and other connected business at Udaipur.

21. At the time of hearing of argument, Learned counsel of both the parties referred few citations but on perusal of those citations, it appears to me that those are not relevant for the decision of the present

case. On perusal of the evidence on record it appears to me that although the Learned trial Court below acquitted the respondent-accused from the charge under Section 138 of N.I. Act, but the Learned Court below failed to appreciate properly the presumption laid down under Section 118A of the N.I. Act in determination of the case under Section 138 of N.I. Act. So, for proper adjudication of this case, in my considered view further enquiry is to be made by Learned trial Court below on the allegation and counter allegation of the rival parties. As already stated, the appellant-complainant could not submit his bank statement or other income tax related documents before the Learned trial Court but there is evidence on record that he is running business of hardware and he is also a Contractor by profession. There is no dispute in this regard from the side of the respondent-accused. At the same time, the respondent-accused also a Contractor having enlistment which is also not been disputed by the appellant-complainant. A question was raised regarding holding of so much of cash amount which the appellant-complainant gave the respondent-accused, although some sort of clarification/explanation was given by the complainant but the explanation made was not satisfactory. At the same time, the respondent-accused in support of his allegation of missing of cheque could not adduce the police officer to substantiate his contention nor proved or produced any police report to substantiate his defence.

22. Situated thus, it appears to this Court that for proper adjudication of the dispute, the Learned Court below shall proceed for taking of further evidence of both the sides to substantiate the allegation and counter allegation on the following points :

- 1) Whether the story of missing cheque as alleged by the respondent-accused is true or not and if it is true then what was the report of the police in respect of his alleged GD Entry vide No.17 dated 01.11.2018 ?
- 2) Whether the bank slip dated 01.11.2018 i.e. Exbt.D/1 relates to disputed cheque or not and if the answer is 'Yes' then how the United Bank of India now PNB has issued Exbt.10 ?
- 3) Whether the respondent-accused took any legal action against the complainant-appellant regarding missing of cheque which has been stolen and if the answer is 'No' then why no step was taken ?
- 4) Whether the appellant-complainant has been able to substantiate his case against the respondent-accused in accordance with law ?
- 5) Whether the notice was properly issued by the appellant-complainant in accordance with law in view of the amendment made in the complaint petition by the appellant-complainant ?

23. To ascertain the aforesaid points, the Learned Court below shall, if required, call upon the bank officials to appear before the Court along with the relevant documents and the Learned Court below shall ask both the parties to adduce their evidence afresh in support of their respective contentions. If the respective parties relies upon their earlier evidence then in that case, no fresh examination of the witnesses would be required.

24. In the result, the appeal filed by the appellant is hereby disposed of with a direction that the case be remanded back to the Learned trial Court to conduct afresh trial after calling upon witnesses of both the sides including the banking officials and to deliver a fresh judgment covering the aforesaid points without being biased by the observation made by this Court. The entire exercise shall be done by the Learned trial Court within a period of 4(four) months from the date of

receipt of copy of this judgment/order. Both the parties shall appear before the Court of Learned Trial Judge on 06.07.2024.

With this observations and directions, this case is accordingly stands disposed of.

Send down the LCR forthwith along with a copy of the judgment/order.

JUDGE

Digitally signed by SABYASACHI
BHATTACHARJEE
Date: 2024.06.21 12:59:34 +05'30'

Sabyasachi. B