

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev. P. 26 of 2023

Sri Jiban Kumar Rakshit

---Petitioner(s)

Versus

Sri Subrata Bikash Dutta

---Respondent(s)

For Petitioner(s)	:	Mr. S. Lodh, Advocate. Mr. S. Majumder, Advocate.
For Respondent(s)	:	Mr. Rajib Saha, Advocate.
Date of hearing and date of judgment and order	:	22.07.2024
Whether fit for reporting	:	No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order (Oral)

Heard Mr. S. Lodh, learned counsel for the petitioner also heard Mr. Rajib Saha, learned counsel for the respondent.

[2] This is a petition for revision under Section 397 & 401 of the Code of Criminal Procedure, 1973 challenging the legality, correctness & propriety of the impugned judgment dated 27.03.2023 passed by Ld. Sessions Judge, North Tripura, Dharmanagar, bearing case No. Crl. Appeal 03/2020.

[3] The case of the petitioner is that the accused-petitioner is the proprietor of M/S Trishna Mineral Water situated at Nayapara Dharmanagar and the accused-petitioner proposed to the respondent to become a super stockist regarding purchase of entire production of 1 liter bottle of drinking water. The petitioner requested the respondent to make advance payment for early production. The respondent on good faith made advance payment of Rs.9,57,640/- in total from time to time. Subsequently, the accused petitioner issued 3 Nos. of cheque in respect of said advance payment with condition that if the production is delayed the respondent may get his advance money by encashing those cheques.

[4] On 14-09-2015 the respondent deposited the cheque bearing No.003497 dated 30-07-2015 for an amount of Rs.7,57,640/- in the United Bank of India, Dharmanagar Branch for encashment but the cheque was dishonoured with the remarks "payment stopped by drawer". On 23-09-2015 the respondent issued a demand notice to the accused to pay the aforesaid amount but the petitioner did not make the payment. The respondent thereafter finding no other alternative filed a complaint under section 138 of the NI Act before the learned Trial Court against the accused-petitioner.

[5] The accused petitioner on receipt of the notice appeared before the learned Trial Court and substance of accusation under section 138 of the NI Act was read over to him to which he pleaded not guilty and claimed to be tried.

[6] The learned Session court below after hearing the parties and on perusal of the material evidence on record has observed as under:

In the result, the appeal filed by the appellant is devoid of merit and it is dismissed.

The judgment of the learned Trial Court dated 12-02-2020 in C.R(NI) 17 of 2015 is upheld and affirmed.

The appellant is directed to surrender before the learned Trial Court within a period of one month from the date of the judgment to undergo the sentence of imprisonment and to deposit the fine.

[7] Aggrieved by the impugned order dated 27.03.2023 passed by the learned court below, the petitioners have approached this Court seeking the following relief(s):

- I. Admit this Revision Petition;
- II. Call for the records;
- III. Issue notice upon the respondents &
- IV. After hearing the parties may be pleased to set aside the impugned judgment dated 27.03.2023 passed in Criminal Appeal No.03 of 2020 upholding the conviction and sentence passed by the Ld. Chief Judicial Magistrate, Dharmangar, North Tripura dated 12.03.2020 in case No.CR(NI)17 of 2015
- V. In the mean time, the conviction and sentence passed by the Ld. Chief Judicial Magistrate, Dharmanagar, North Tripura dated 12.03.2020 in case No. CR(NI) 17 of 2015 may be suspended;

[8] On the other hand, it is contended by the counsel for the respondent that as per the agreement the respondent made advance payment total amounting to Rs.9,57,640/-

to the accused-petitioner. Later on the accused person issued 3 nos. of cheque in respect of the said advance payment with the condition that if the production is delayed the complainant may get his advance money back from the bank by depositing the aforesaid cheque. The complainant on 30.07.2015 presented the cheque bearing No.003497 of the United Bank of India, Dharmanagar Branch of sum of Rs.7,57,640/- and on 14.09.2015 the complainant deposited the said cheque to the said bank but the said cheque was dishonoured with the remarks "payment stopped by drawer". Therefore, the impugned dated 27.03.2023 passed by Ld. Sessions Judge, North Tripura, Dharmanagar, bearing case No. Criminal Appeal 03/2020 in confirming the order of the trial court is just and proper and does not need any interference from this court. He further prayed to dismiss the revision petition.

[9] On perusal of the record, this court is of the opinion that the scope of revision is very limited. Mr. S. Lodh, learned counsel for the petitioner has contended before this Court that a similar allegation was made that the respondent made advance payment of Rs.9,57,640/- to the petitioner herein from time to time for purchasing drinking water. It was allegedly agreed that if supply cannot be made in time, the respondent might realize the money by encashing the 3 three cheques allegedly given by the petitioner. The petitioner herein has already been acquitted by the learned trial court below with regard to the other two cheques. According to Mr. Lodh, learned counsel for the petitioner, since the petitioner has got clean chit in other matters, the present petition is also liable to be allowed by setting aside the impugned order.

[10] Admittedly there is an agreement between the complainant and the accused person and to the said agreement it is seen from the record the accused person issued the present cheque in question. Mere filing of case by the accused against the complainant does not prove that the cheque with the signature of the accused thereon had been fraudulently procured by the complainant.

[11] Now coming to the issuance of present cheque is concerned, the signature of the accused person has been established. Regarding the receipt of payment of Rs.9 lakhs, it surfaces from the statement of the PW-5 (Sri Radhakanta Nath) that on the basis of agreement between the accused-person and the complainant-respondent, the complainant invested more than 9 lakhs to M/s Trishna Mineral Water.

[12] It is an admitted fact that the accused person was acquitted from the offence punishable under Section 138 of the Negotiable Instrument Act, 1881. But in the present case in hand, this court is of the view that technical breach shall not come into way to determine the fate of the case. Since the learned court below has examined all the witnesses and dealt with them diligently, it surfaces that the complainant paid advance amount to the accused person as per the terms of the agreement but subsequently the agreement did not materialize and the cheque was issued by the accused person to clear his liability towards the respondent.

[13] This court is not inclined to hold that the present case is also covered by the previous orders passed by this court wherein the accused person was acquitted from all charges leveled against him. Each cheque is an instrument under the Negotiable Instrument Act and each cheque has to be dealt independently and decided in the light of the evidence. The evidence of PW5 who is signatory to the agreement which has been also signed by his employer/accused as witness and deposed that complainant has paid the amounts to the accused for running the business. There being employer and employee relations and on the doctrine of vicarious liability, it is not open for the accused to deny the evidence of PW-5. Here is the case where the petitioner had issued the cheque and not maintained the sufficient fund and while doing so has committed an economic offence of dishonor of cheque which is punishable under Section 138 of the Negotiable Instruments Act, 1881. This court feels that the petitioner herein has not come with clean hands before this Court and his case is liable to be dismissed.

[14] Accordingly, the present criminal revision petition is dismissed. The impugned judgment dated 27.03.2023 passed by Ld. Sessions Judge, North Tripura, Dharmanagar, bearing case No.Clr. Appeal 03/2020 stands confirmed.

JUDGE

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