

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

**CRL. L. P. No.08 of 2023
in CRL.A. No.12 of 2023**

Shri Shailen Debnath,
son of late Ranjit Debnath,
of Subash Nagar, P.S. Belonia
South Tripura District

..... **Petitioner**

- V e r s u s -

1. **Sri Jogesh Debnath,**
son of Sri Dulal Debnath
of Kadamtala, P.S. Belonia,
South Tripura District
2. **The State of Tripura.**
to be represented by its Secretary,
Home Department, New Capital
Complex,
PS. NCC, Agartala, West Tripura

..... **Respondents**

For the Petitioner (s)	:	Mr. D. Datta, Adv.
For the Respondent (s)	:	Mr. S. Ghosh, Addl. PP Mr. D.C. Roy, Adv.
Date of hearing	:	05.01.2024
Date of delivery of Judgment & order	:	12.01.2024
Whether fit for reporting	:	No.

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

Challenging the judgment dated 11.04.2023 passed by the Judicial Magistrate, 1st Class, South Tripura, Belonia in case No.NI 20 of 2018 under Section 138 of the NI Act., the present appeal has been filed against the order of acquittal of the respondent No.1 in the said case. For acceptance of the appeal, the leave petition under Section 378(4) of the Cr.P.C. is filed in the instant case.

[2] The allegations of the complainant-appellant in the said criminal proceeding as canvassed was that out of congenial relationship the respondent No.1 borrowed Rs.4,00,000/- from the appellant and to discharge such liability he issued a cheque of said amount of Rs.4,00,000/- on 11.07.2018. After the cheque was despoited by the appellant in the on 13.07.2018 in his bank account standing at Bandhan Bank Limited, BC Nagar Branch, it was informed by his bank on 14.08.2018 that the cheque was bounced for insufficiency of fund. On 18.08.2018 he sent a statutory notice to the respondent No.1 asking payment of bounced amount which went futile despite receipt of notice by the respondent No.1 on 18.08.2011 and finally, the complaint was filed in the trial court by him. During the trial, the respondent No.1 took the defence that he had lost one signed cheque which was mis-utilised by the complainant and he also did not receive any statutory notice.

[3] The trial court while acquitting the accused observed that no documentary evidence was produced by the appellant to prove the transaction of Rs.4,00,000/- in favour of the respondent No.1 by him and also did not submit any document to show that he had sufficient source of income to lend such huge amount and therefore, it was not clear to the trial court whether the cheque was issued in discharge of any legal debt or liability. It was further observed by the trial court that no copy of the notice was found in the record and therefore, serving of statutory notice upon the respondent No.1 by the appellant was also not proved.

[4] Mr. D. Datta, learned counsel appearing for the appellant-petitioner argued that during trial the complainant was examined and many documents were also proved into evidence by him but on that day the defence counsel was not present and accordingly, chapter of recording of evidence was closed. But after so many days when the case was fixed for argument, the learned counsel for the appellant without any instruction from the appellant, submitted a petition in the court under Section 311 of the Cr.P.C. for re-examination of the appellant and when he appeared for such re-examination, his said counsel did not adduce any further evidence rather gave a space to the defence counsel to cross-examine the complainant at length, by exercising malpractice for helping the respondent No.1 in this way, causing miscarriage of justice. Therefore, according to Mr. Datta, for due administration of justice, leave may be granted by accepting the appeal.

[5] Mr. D.C. Roy, learned counsel appearing for the respondent No.1 argued that despite ample scope given to the appellant he did not submit the copy of the advocate notice in the trial court and therefore, the trial court committed no error in acquitting the respondent No.1.

[6] Mr. Samrat Ghosh, learned Addl. PP appearing for the state-respondent No.2 also submitted that no error or impropriety could be detected in the impugned judgment and therefore, leave may not be granted.

[7] Vide order dated 29.09.2023 this Court directed the appellant to submit one affidavit containing certified copies of the exhibited documents placed before the trial court to satisfy that all five ingredients as stipulated in Section 138 of NI Act was satisfied. Despite sufficient scope given, the appellant did not submit such affidavit rather on 05.01.2024 photocopies of certified copies of some exhibited documents and photocopy of one uncertified copy of one purported advocate notice dated 18.08.2018 were submitted. From the available record, it is found that during trial the copy of the statutory notice was not proved into the evidence. The photocopy of the said advocate notice purportedly issued on 18.08.2018 (not exhibited) as submitted in the court, surprisingly demonstrates that the notice giver Advocate has signed the notice on 18.08.2022. Therefore, said document is not reliable.

[8] As indicated above, despite specific order no affidavit is also submitted by the complainant. Therefore, even if the observation of the trial court that it was doubtful that the cheque was issued in discharge of any legal debt or liability, is ignored or is decided in favour of the appellant, still the factum of service of statutory notice upon the respondent No.1 remains not proved. The allegation of the appellant that illegally scope was made available to the defence counsel to cross-examine him under the pretext of re-examination cannot cure such odd in the prosecution case and same has no nexus with it.

[9] For the reasons as discussed above, the leave as sought for is not granted. Accordingly, this instant petition stands rejected and consequently, the connected Criminal Appeal No.12 of 2023 is also disposed of being not admitted.

Pending application, if any, also stands disposed of.

JUDGE



SATABDI DUTTA

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DUTTA
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Sujay