

**HIGH COURT OF TRIPURA
AGARTALA**

CRL. L.P. No.09 of 2024
in CRL.A. No.17 of 2024

Sri Swapan Deb Roy

..... Petitioner(s)

V e r s u s

The State of Tripura & Anr.

..... Respondent(s)

For Petitioner (s)	:	Mr. D. Bhattacharya, Sr. Adv. Mr. S. Das, Adv. Mr. S. Saha, Adv.
For Respondent(s)	:	Mr. R. Datta, PP Mr. B. Debnath, Adv.

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

Order

21.09.2024

Heard Mr. D. Bhattacharya, learned senior counsel assisted by Mr. S. Saha, learned counsel appearing for the petitioner.

Also heard Mr. R. Datta, learned PP appearing for the State and Mr. B. Debnath, learned counsel appearing for the respondent No.2.

The special leave to appeal has been filed in respect of the appeal challenging the judgment of the acquittal passed by the learned Addl. Chief Judicial Magistrate, West Tripura, Agartala on 24.05.2024 in case No. N.I. 312 of 2014 acquitting the respondent No.2 in a case under Section 138 of the NI Act.

Mr. Bhattacharya, learned senior counsel referring to the relevant paragraphs of the impugned judgment submits that the respondent No.2 was acquitted mainly on the ground that the complainant had failed to show his financial capacity to lend Rs.12,00,000/- as involved in the cheque. Learned trial court also took the exception that no money receipt or any other document was proved into evidence to establish the loan transaction between the complainant and the accused regarding said amount. According to Mr. Bhattacharya, learned senior counsel, learned trial court has failed to raise the statutory presumption as laid down in Section 139 of the NI Act and erroneously laid the burden upon the complainant to prove his financial capacity to make such transaction which,

according to Mr. Bhattacharya, learned senior counsel, is perverse and, therefore, for fair ends of justice, the leave may be granted.

Mr. Bhattacharya, learned senior counsel in this regard relies on a decision of the Hon'ble Apex Court in Rohitbhai Jivanlal Patel vs. State of Gujarat & Anr. [judgment dated 15.03.2019 delivered in Criminal Appeal No.508 of 2019 arising out of Special Leave Petition (Crl.) No.1883 of 2018), wherein the following has been observed:

19. The observations of the Trial Court that there was no documentary evidence to show the source of funds with the respondent to advance the loan, or that the respondent did not record the transaction in the form of receipt of even kachcha notes, or that there were inconsistencies in the statement of the complainant and his witness, or that the witness of the complaint was more in know of facts etc. would have been relevant if the matter was to be examined with reference to the onus on the complaint to prove his case beyond reasonable doubt. These considerations and observations do not stand in conformity with the presumption existing in favour of the complainant by virtue of Sections 118 and 139 of the NI Act. Needless to reiterate that the result of such presumption is that existence of a legally enforceable debt is to be presumed in favour of the complainant. When such a presumption is drawn, the factors relating to the want of documentary evidence in the form of receipts or accounts or want of evidence as regards source of funds were not of relevant consideration while examining if the accused has been able to rebut the presumption or not.

20. On perusing the order of the Trial Court, it is noticed that the Trial Court proceeded to pass the order of acquittal on the mere ground of 'creation of doubt'. We are of the considered view that the Trial Court appears to have proceeded on a misplaced assumption that by mere denial or mere creation of doubt, the appellant had successfully rebutted the presumption as envisaged by Section 139 of the NI Act. In the scheme of the NI Act, mere creation of doubt is not sufficient.

On the other hand, Mr. R. Datta, learned PP appearing for the State submits that the basic law in this regard is that initial burden is not upon the complainant to show that he has the financial capacity. However, the accused has always his right to demonstrate that the complainant in a particular case did not have the capacity and such onus may be discharged by producing his own evidence by the accused or even by cross-examining the complainant's witnesses.

Mr. Debnath, learned counsel appearing for the respondent No.2 seriously opposes the prayer stating that unless there is gross perversity in the judgment of the trial court in acquitting the accused and there is lack of total reasonableness, normally, the findings of the trial court rendering acquittal of the accused are not disturbed in an appeal against acquittal. Mr. Debnath, learned counsel also submits that when two views are possible, one of which is favourable to the accused should be taken into consideration.

Considered the rival submissions and also have taken the note of the judgment as referred by Mr. Bhattacharya, learned senior counsel in **Rohitbhai Jivanlal Patel** (supra).

The basic reasoning as rendered by the learned trial court, as appears from the impugned judgment, is that the complainant failed to prove the fact of granting any loan to the accused person and even no money receipt was produced in this regard and also he failed to produce his records of business to establish such transaction of monetary loan given by him and simultaneously, he failed to show his financial capacity to advance such a loan. As it appears, the learned trial court also relied on a decision of the Hon'ble Apex Court in **Basalingappa vs. Mudibasappa, (2019) 5 SCC 418** to support its view.

Anyway from the materials placed and the submissions made by learned counsel as well as on perusal of the impugned judgment and other materials available with the records, it appears to this court that there is need of deeper deliberation and consideration on the issues involved in the matter and therefore, the appeal is required to be heard on merit. Though Mr. Debnath, learned counsel points out that in the petition for such leave, except a bold sentence that the appellant has a good and reasonable ground to entertain the appeal, no other specific ground has been taken by the petitioner-appellant to justify his claim in seeking the leave to prefer the appeal, however said point as raised appears to be very technical inasmuch as several grounds are taken by the petitioner-appellant in the memo of appeal challenging the impugned judgment.

Considering thus, the petition for leave as filed under Section 378(4) of the Cr.P.C. is allowed.

The leave petition is disposed of accordingly.

JUDGE

SUJAY GHOSH Digitally signed by SUJAY GHOSH
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