

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.p 40 of 2023

Sri Nandesh Das Gupta

---Petitioner(s)

Versus

Sri Prasanta Bhattacharjee and Anr.

---Respondent(s)

For Petitioner(s)	:	Mr. S.M. Chakraborty, Sr. Advocate. Ms. A. Pal, Advocate.
For Respondent(s)	:	Mr. S. Ghosh, Addl. PP. Mr. S. Lodh, Advocate.
Date of hearing and date of judgment and order	:	08.07.2024
Whether fit for reporting	:	No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order (Oral)

Heard learned counsel for the parties.

[2] This is a revision petition under Section 397(1) read with Section 401 of the Code of Criminal Procedure, 1973, against the impugned order dated 15.05.2023, passed by the Ld. Addl. Sessions Judge, West Tripura, Court No.2.

[3] The case of the petitioner is that the respondent filed a complaint against the petitioner under section 420 of IPC, thereafter cognizance was taken by the learned Judicial Magistrate 1st Class, Agartala, West Tripura, Court No. 7, after observing legal formalities of the case. After receiving the summon from the learned Trial Court below the revisional petitioner prayed for bail and he was enlarged on bail by the learned trial Court. There date was fixed for evidence before charge and after hearing the petitioner and the respondent the learned trial court below was pleased to discharge the petitioner. And against that order the respondent filed the revision petition before the learned Sessions Judge, West Tripura, Agartala and the same was transferred in the court of the Additional Sessions Judge, West Tripura, Agartala, Court No. 2 for adjudication. On the

date of the order the learned Sessions heard both the sides and without considering the submission made by the respondent before the learned Trial Court below and without going through the order passed by the learned trial court below remand back the case in the court of the learned Judicial Magistrate, 1st Class, Agartala, West Tripura, Court No.7 with direction to examine all the witnesses offered by the respondent ignoring the submission made from the side of the respondent before the learned Judicial Magistrate, 1st Class, Agartala, West Tripura, Court No.7 that he has no witness at the stages of evidence before charge. The order passed by the Ld. Additional Sessions Judge, West Tripura, Agartala, Court No. 2 is arbitrary and mechanical which was passed without considering the submissions made by the respondent before the learned Judicial Magistrate, 1st Class, Agartala, West Tripura, Court No.7. Hence the revisional petitioner filed this criminal revision petition before this Hon'ble High Court.

[4] Being aggrieved by the impugned order dated 15.05.2023, the petitioner has approached this court by way of filing this revision petition for seeking the following relief(s):

- (i) *Admit the revision petition*
- (ii) *Issue notice upon the respondents*
- (iii) *Call for the Lower Court record of Case No.C.R.650 of 2016 pending before the Ld. Judicial Magistrate 1st Class, Court No.8, Agartala, West Tripura and record of Criminal Revision Petition no.11 of 2022 from the Court of the Ld.Addl. Sessions Judge, West Tripura Agartala Court No.2;*
- (iv) *Stay the proceeding of Case no.C.R.650 of 2016 pending before the Ld. Judicial Magistrate 1st Class, Court No.8, Agartala, West Tripura;*
- (v) *After hearing be pleased to set aside the impugned order dated 15.05.2023 passed by the Ld. Addl. Sessions Judge, West Tripura, Court No.2 in Criminal Revision Petition No.11 of 2022 in c/w case no. CR. 650/2016 under Section 420 of IPC and*
- (vi) *Pass necessary order/orders as your honor may deem fit and proper.*

[5] On the other hand, Mr. S. Lodh, learned counsel appearing for the respondents has contended before this court that the impugned order dated 15.05.2023 as passed by the learned Addl. Sessions Judge, Court No.2, West Tripura Agartala is just and proper and need no interference from this Court and hence the petition be dismissed.

[6] Having heard the learned counsel for the parties and also perusing the record, this court finds that the dispute between the parties was essentially a civil dispute for non refunding the amount of advance, the same would not constitute an offence of cheating but the Ld. Revisional Court below did not consider the same and set aside the order of the Ld. Trial Court. On perusal of the record, it surfaces that the Ld. Trial court has taken cognizance of the matter and after giving equal opportunities to both sides had discussed the materials in question at length. Since the ingredients of offence punishable under section 420 of IPC could not be established by the respondents, the petitioner herein was discharged from criminal liability. The respondents herein have failed to make out their case and it seems to this Court that their plea of dismissing the instant revision petition cannot be allowed.

[7] In view of the above discussion, the instant criminal revision petition stands allowed and disposed of. The impugned order dated 15.05.2023, passed by the Ld. Addl. Sessions Judge, West Tripura, Court No.2 in Criminal Revision petition is set aside. The order dated 10.02.2022 passed by the Ld. Judicial Magistrate 1st Class, West Tripura Court No.7 passed in CR.650 of 2016 stands confirmed.

JUDGE

Dipak

**DIPAK
DAS**

Digitally signed
by DIPAK DAS
Date: 2024.07.10
16:40:55 +05'30'