

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
Criminal Revision Petition No.22 of 2025

Sri Rahul Majumder, S/O. late Ratan Majumder, R/O. Barpathari, P.O. Barpathari, Sub-Division- Belonia, District- South Tripura.
..... Petitioner(s)

V E R S U S

1. Sri Nandalal Bhowmik, S/O. late Chitta Ranjan Bhowmik, R/O. Kalashi, Baikhora, P.O. Kalashi, P.S. Baikhora, District- South Tripura.
2. The State of Tripura.
..... Respondent(s)

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Ms. Sutapa Deb, Advocate.

For Respondent(s) : Mr. Rajib Saha, Addl. Public Prosecutor.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

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09/04/2025

Heard Mr. P. Roy Barman learned senior counsel assisted by Ms. Sutapa Deb, learned counsel appearing for the petitioner and also heard Mr. Rajib Saha, learned Additional Public Prosecutor appearing for the respondent-State.

[2] By the impugned judgment dated 10.03.2025 in Criminal Appeal No.23 of 2022, the learned In-charge Additional Sessions Judge, South Tripura, Belonia has confirmed the judgment of conviction and order of sentence passed by the learned Chief Judicial Magistrate, South Tripura, Belonia in NI No.08 of 2022 dated 26.08.2022 whereby the petitioner has been convicted for commission of offence under Section 138 of the Negotiable Instruments Act, 1881 (*NI Act, for short*) and sentenced him to pay fine of Rs.50,000/- along with the cheque amount of Rs.1,00,000/-. On

failure to pay such compensation, petitioner shall be subjected to simple imprisonment (SI) for a period of six months.

[3] Mr. P. Roy Barman, learned senior counsel for the petitioner submits that the complainant has failed to establish that the cheque was issued by the accused-petitioner herein to discharge a legal debt or liability which is a necessary ingredient of Section 139 of the NI Act. The judgment suffers from misappreciation of the material evidence. Therefore, the same may be set aside.

[4] Mr. Rajib Saha, learned Additional Public Prosecutor has opposed the prayer. He submits that all the five ingredients constituting the offence under Section 138 of the NI Act has been duly established. Issuance of cheque by the petitioner-accused is not in dispute. In terms of Section 139 of the NI Act, there is a presumption, unless contrary is proved, that the holder of a cheque received the cheque, for the discharge, in whole or in part, of any debt or other liability. The learned Chief Judicial Magistrate has duly appreciated that the necessary ingredients of the offence under Section 138 of the NI Act has been fulfilled as per both oral and documentary evidence. The cheque bearing No.419422 dated 29.01.2022 for an amount of Rs.1,00,000/- drawn on SBI Belonia Branch was issued by the accused in discharge of legal debt and liability and on presentation by the complainant the Bank has returned the cheque for the reason 'insufficient fund'. Thereafter, on 10.02.2022 the statutory notice through registered post was issued. After receiving the Advocate's notice, the accused did not pay the

cheque amount. The complaint was filed within the period of limitation thereafter. Therefore, all the five ingredients of the offence have been duly satisfied. The learned Appellate Court has also scrutinized the evidence on record and rightly refused to interfere as no grounds were made out.

[5] I have considered the submissions of learned counsel for the parties and taken note of the materials placed from record. In order to bring home the guilt of an accused under Section 138 of the NI Act, the following ingredients are required to be established:

- (a) Cheque was drawn by the drawer on an account maintained by him with a banker for payment of any amount of money to the complainant.
- (b) The cheque was issued for payment to discharge a legally enforceable debt or other liability, in whole or in part.
- (c) The said cheque was returned unpaid by the bank.
- (d) The cheque was presented to the bank within a period of three months from the date on which it was drawn or within the period of its validity whichever is earlier.
- (e) The payee or the holder in due course of the cheque as the case may be made a demand for payment of the said amount by giving notice in writing to the drawer of the cheque within 30 days of the receipt of information from the bank.
- (f) The drawer of the cheque failed to make the payment of the said amount to the payee within 15 days of receipt of the said notice.

[6] Before the learned Chief Judicial Magistrate, the complainant had been able to establish all the five ingredients constituting the offence under Section 138 of the NI Act. Petitioner did not dispute the issuance of cheque rather admitted his signatures on the cheque which raises a presumption under Section 118 read with Section 139 of the NI Act in favour of the complainant. The accused-petitioner has not been able to rebut the presumption by any cogent evidence. The presentation of the cheque in the bank, its return with the endorsement 'insufficient fund' vide memo dated 29.01.2022 [Exbt.P-3/PW-1], the issuance of the demand notice dated 10.02.2022 [Exbt.P-4/PW-1] and failure of the petitioner-accused to make the payment within 15 days of receipt of demand are all established during trial. Based on the evidence produced by the complainant and the statement of the accused under Section 313 of Cr.P.C where his simple case was of pleading innocence, the learned Trial Court convicted the accused-petitioner relying upon certain decisions rendered by the Apex Court, such as, in case of ***Kumar Exports versus Sharma Carpets***, reported in **(2009) 2 SCC 519** for the offences alleged. The learned Trial Court instead of sentencing the accused for any term of imprisonment, only directed him to pay fine of Rs.50,000/- along with the cheque amount of Rs.1,00,000/- and on failure to pay to suffer default sentence.

[7] The learned Appellate Court has duly considered the submission of the appellant in the light of the material evidence placed from record. The appellant-petitioner could not dislodge the presumption attached to the cheque issued by him in favour of the complainant that it was in lieu of discharge of any debt or liability. Taking all the circumstances together

the learned Appellate Court did not find any error in the impugned judgment.

[8] On consideration of the rival submissions of learned counsel for the parties and the reasons recorded hereinabove, this Court does not find any error in the impugned judgment or any illegality, impropriety or irregularity in conduct of proceedings which warrant interference in revisional jurisdiction of this Court.

[9] Accordingly, the instant criminal revision petition is dismissed.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH) CJ

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