**HIGH COURT OF TRIPURA**
**AGARTALA**

**CRL.REV.P. NO.132 OF 2006**

**Sri Dipak Kr. Sarkar,**
S/o Late Sachi Kanta Sarkar,
Resident of Swapan Villa,
87/48A Bose Pukur Road,
Kolkata, West Bengal-700042.

.... **Petitioner.**

**-- Vrs –**

**The Branch Manager,**
Tripura Gramin Bank,
Dhaleswar Branch,
Assam Agartala Road,
Dhaleswar,Agartala,
West Tripura.

..... **Respondent.**

**BEFORE**
**THE HON'BLE MR. JUSTICE S.C. DAS**

| | | |
|---|---|---|
| For the Petitioner | : | Mr. Somik Deb & Ms. D. Sengupta, Advocates. |
| For the Respondent | : | Mr. A. Lodh, Advocate. |
| Date of hearing & delivery of Judgment & order | : | **13.01.2015** |
| Whether fit for reporting | : | **No.** |

**JUDGMENT & ORDER (ORAL)**

This revisional application under Section 397 read with Section 401 of Cr.P.C. is directed against the judgment and order dated 13.09.2006 passed by learned Addl. Sessions

Judge, West Tripura, Agartala in Criminal Appeal No.72(4)/2005 whereunder the learned Addl. Sessions Judge upheld the judgment and order of conviction of the accused-petitioner passed by learned Judicial Magistrate 1st Class, Agartala, Court No.1 in Case No.CR 2892 of 2002. Learned Judicial Magistrate 1st Class found the accused-petitioner guilty of committing offence punishable under Section 138 of Negotiable Instruments Act (for short, N.I. Act) and sentenced him to pay a fine of Rs.10,000/- in default of payment to suffer S.I. for 3(three) months. The learned Addl. Sessions Judge while dismissing the appeal upheld the conviction but modified the sentence and directed that the convict shall pay a fine of Rs.1000/- in default of payment shall suffer S.I. for one month.

**2.** The respondent as complainant set the law in motion by filing a complaint alleging that the accused-petitioner is a partner of North Eastern Rubber Industries, Dukli Industrial Estate, Badharghat and that the partnership firm took a loan from the complainant bank but the loan amount was not repaid as per terms. An amount of Rs.3,20,005.20 was lying due to be paid. Out of the amount lying due the accused-petitioner paid Rs.95,000/- and the remaining amount of Rs.2.25,005.20 was lying due to be paid for which the accused-petitioner issued a cheque vide

No.366370 dated 21.06.2002 drawn on Hongkong and Sanghai Banking Corportation Ltd., and the complainant bank presented the cheque on 26.06.2002 for encashment through ICICI Bank and the cheque was dishonoured and ICICI Bank returned the cheque to the complainant on 03.07.2002 with the remarks that the cheque could not be encashed due to insufficient fund. On 06.07.2002 the complainant Bank issued notice through Advocate demanding the amount within 15 days but the accused-petitioner by writing a letter dated 22.07.2002 refused to make the payment and therefore, the complaint was filed.

**3.** In course of trial, the accused-prtitioner was examined under Section 251 of Cr.P.C. and he pleaded not guilty and claimed to be tried.

**4.** The complainant Bishnupada Saha, the Manager of the Bank examined himself as P.W.1 and proved the dishonoured cheuqe, the return slip of the cheque, report of the loan and the Advocate Notice.

**5.** The accused-petitioner was examined under Section 313, Cr.P.C. thereafter and in his turn accused declined to adduce any defence evidence.

**6.** Learned Judicial Magistrate 1st Class found the accused-petitioner guilty of the charge and convicted and sentenced him as aforesaid. In appeal, the conviction was upheld but the sentence was reduced.

**7**. It is submitted by learned counsel Mr. Deb for the accused-petitioner that during pendency of the criminal proceeding, the accused-petitioner liquidated the entire amount payable to the Bank and therefore, nothing remained for further punishment of the accused-petitioner. It is also submitted by Mr. Deb, learned counsel that after issuance of the cheque, the accused gave a notice by writing a letter that the cheque should not be deposited at once for encashment but that request was not honoured by the complainant Bank and as a result, cheque was dishonoured and that fact has not been considered by the trial Court and the appellate Court.

**8.** Learned counsel Mr. A. Lodh for the respondent has submitted that there is no evidence on record to show that the accused-petitioner wrote any letter informing the Bank not to deposit the cheque at once. Mere payment of the amount during pendency of the criminal proceeding does not absolve the offence committed by the accused-petitioner and so no interference is called for in the order of punishment.

**9.** While considering a revisional application, the revisional Court is to see the correctness, legality, propriety and regularity of the proceeding. The revisional Court is not required to re-appreciate the evidence unless there is allegation of perversity in respect of the consideration of evidence. In the present case, the evidence on record, as it appears, has been carefully considered by the trial Court and the appellate Court. There is no evidence to show that the accused-petitioner wrote any letter to the respondent Bank not to deposit the cheque at once. In absence of any such evidence, the argument advanced by learned counsel Mr. Deb, does not deserve any consideration. All legal formalities as it appears were complied in the criminal proceeding and the charges appear to be proved against the accused-petitioner. A minimum punishment has been given which does not deserve any interference by the revisional Court.

**10.** The revisional application accordingly stands dismissed.

**11.** Send back the L.C. record along with a copy of this judgment.

**JUDGE**