

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL. REV. P. 07 of 2010

Sri Apan kumar Das,
S/O Late Jogesh chandra Das,
resident of village-Hrishyamukh, Belonia,
P.S. Belonia, District- South Tripura.

... Accused Petitioner.

- Versus -

Sri Dilip kumar Roy,
S/O Late Dhirendra kumar Roy,
resident of Chhanban, Udaipur,
P.S. Radhakishorepur, District- South Tripura.

... Complainant-Respondent.

**BEFORE
THE HON'BLE MR. JUSTICE U.B.SAHA**

For the petitioner : Mr. H. Laskar, Advocate.

For the respondent : Mr. A. Bhowmik, Advocate

Date of hearing & delivery
of Judgment and Order : **14.07.2015.**

Whether fit for reporting : YES / NO

JUDGEMENT AND ORDER (ORAL)

The instant revision petition is filed against the judgment dated 18.12.2009 passed by the learned Sessions Judge, South Tripura, Udaipur in Criminal Appeal no. 9(2) of 2009 where under the learned Sessions Judge dismissed the appeal upholding the judgment dated 28.04.2009 passed by the learned Chief Judicial Magistrate, South Tripura, Udaipur in C.R.173 of 2007 wherein the accused petitioner was found guilty and was convicted under Section 138 of the Negotiable Instruments Act, 1881 and was sentenced to pay a fine of Rs. 5,25,000/- out of which Rs.4,90,000/- will be paid to the complainant respondent and the rest amount of Rs.35,000/- will

be deposited in the treasury by challan, as being consigned to the government exchequer and in default of payment of fine, the accused petitioner shall suffer simple imprisonment for six months.

2. Heard Mr. H.Laskar, learned counsel appearing for the accused petitioner as well as Mr. A.Bhowmik, learned counsel appearing for the complainant respondent.

3. The case of the respondent, in short, is that the accused petitioner Sri Apan kumar Das was well acquainted with the complainant respondent since long back and he had monetary transaction with the complainant respondent. The accused petitioner, in order to discharge his debts and liabilities towards the complainant respondent issued a cheque bearing no. CD/A 293630 dated 15.12.2006 for an amount of Rs.5 lakh drawn on Tripura State Co-operative Bank Limited, Hrishyamukh Branch, Belonia, in favour of the respondent complainant. On presentation, the said cheque was returned with an endorsement "full cover not received". After complying with all necessary requirements, the respondent complainant lodged a complaint before the learned Chief Judicial Magistrate, South Tripura, Udaipur under Section 138 of the Negotiable Instruments Act, 1881.

3.a. The accused petitioner appeared before the learned Chief Judicial Magistrate, South Tripura, Udaipur and contested the case and, accordingly, the accused petitioner was examined under Section 251 of the Cr.P.C stating and explaining the accusation as punishable under Section 138 of the Negotiable Instruments Act, to which the accused petitioner denied the allegation and claimed to be tried and, accordingly, trial commenced.

3.b. During trial, the respondent complainant examined himself as PW-2 and one Sri Sankar Lal Sarkar, Branch Manager, Tripura State Co-operative Bank Ltd. Udaipur Branch as PW-1.

3.c. The complainant respondent relied upon certain documents including the cheque bearing no. 293630 dated 15.12.2006 issued by the accused petitioner in favour of the respondent complainant, which were marked as Exhibit 1 to 8.

3.d. The case of the petitioner, as it reveals from the trend of the cross examination of the prosecution witnesses and from the examination of the accused petitioner under Section 313 of the Cr.P.C that he took Rs.10,000/- as loan from the complainant respondent and subsequently he repaid the entire amount and he never took a loan of Rs. 5 lakh from the complainant respondent.

3.e. The accused petitioner never has denied nor led any evidence that he did not issue the cheque.

3.f. PW-2 (Dilip kumar Roy), the complainant respondent in his deposition stated that the accused petitioner, who is a contractor by profession is known to him and in July,2006 the accused petitioner borrowed Rs. 5 lakh from him in connection with his brick field business and promised to repay the amount as and when required by the complainant respondent. Subsequently, when the complainant respondent demanded the money, the accused petitioner issued him a cheque of Rs. 5 lakh on 15.12.2006 and thereafter on 15.01.2007 the complainant respondent presented the cheque at Tripura State Co-operative Bank Limited, Udaipur Branch for collection from the account of the accused at State Co-operative Bank, Hrishyamukh

Branch. On 05.02.2007, the Branch Manager of Udaipur Branch informed him in writing that the said cheque could not be encashed from the Hrishyamukh Branch due to insufficiency of fund in the account of the accused petitioner. On 08.02.2007, the complainant respondent served notice upon the accused petitioner to repay the money within 15 days from the date of receipt of the notice which was sent by registered post with AD. The accused petitioner received the notice on 13.02.2007 as was informed to him by the Director of Postal Service, Agartala. He identified by the letter issued on behalf of the Director of Postal Service, Agartala which is marked as Exhibit-5. He also identified by the copy of demand notice which was marked as Exhibit-6 but despite of the notice, the accused petitioner did not pay the money and so the complainant respondent has lodged the complainant before the Court after following the necessary procedure.

3.g. PW-1(Sankar Lal Sarkar), the Branch Manager of Tripura State Co-operative Bank, Udaipur Branch, stated that the complainant respondent deposited a cheque of Rs. 5 lakh issued by Apan kumar Das on 15.01.2007 for collection of the same from Tripura State Co-operative Bank, Hrishyamukh Branch. Accordingly, he sent the cheque dated 15.12.2006 from Hrishyamukh Branch for collection. He has identified the cheque bearing no. 293630 dated 15.12.2006 which was marked as Exhibit-1. This witness also identified the counterfoil of the cheque depositing slip against account No. 7/96-97 dated 15.01.2007 which was marked as Exhibit-2. After some days, on 30.01.2007 the Branch Manager of Hrishyamukh Branch informed him in writing that the said cheque

was dishonoured due to insufficiency of fund in the account of Apan kumar Das and, accordingly, informed the complainant respondent in writing regarding the dishonor of the cheque by the Hrishyamukh Branch. He has identified the letter dated 30.01.2007 of Branch Manager of Hrishyamukh Branch which was marked as Exhibit-3. He also identified the official letter dated 05.02.2012 issued by him which was marked as Exhibit-4.

3.h. Considering the above evidence and hearing, the learned trial Court convicted the accused petitioner under Section 138 of the Negotiable Instruments Act, 1881 and sentenced thereto, as stated supra.

3.i. Being aggrieved by and dissatisfied with the judgment and order of the learned trial Court dated 28.04.2009, the accused petitioner preferred an appeal before the learned Sessions Judge, South Tripura, Udaipur (at present Gomati District). The learned Sessions Judge, after hearing the parties uphold the judgment and order of the learned trial Court and dismissed the appeal. Hence, the instant revision petition.

4. Mr. Laskar, learned counsel appearing for the accused petitioner, while urging for setting aside the judgment of the learned appellate Court as well as the learned trial Court would contend that even after offence is proved under Section 138 of the Negotiable Instruments Act, the learned trial Court has no power to pass an order to pay a fine more than the amount mentioned in the cheque, which was dishonoured. He further submits that by way of

sentencing the accused petitioner to pay a fine of Rs.5,25,000/-, is nothing but recovery of money.

5. On the other hand, Mr. Bhowmik, learned counsel appearing for the complainant respondent submits that the learned trial Court has rightly passed the order of conviction and sentence and in support of his contention he has referred to Section 138 of the Negotiable Instruments Act, 1881, which is as follows:-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for ⁶[a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, ⁷[within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability”.

6. Upon going through the aforesaid provisions of the Negotiable Instruments Act, it appears that if a person commits an offence under Section 138 of the Negotiable Instruments Act, then

the Court has the power to punish him with imprisonment for a term which may extend to 2 years or with fine which may extend twice to the amount of the cheque or with both.

7. In the instant case, the accused petitioner did not deny that he had issued a cheque of Rs. 5,00,000/- in favour of the complainant respondent and the said cheque was dishonoured for insufficiency of fund in his account. His only plea was that he has taken an amount of Rs.10,000/- from the complainant respondent and has already paid the entire amount. Now, question arise, if the accused petitioner did not take any loan from the respondent complainant then why he had issued the cheque for an amount of Rs. 5 lakh. In his statement under Section 313 of the Cr.P.C, he did not deny the fact relating to issuance of the cheque from which it appears that the presumption arising under Section 139 of the Negotiable Instruments Act, is not rebutted by the accused petitioner. It is also not the case of the accused petitioner that the respondent complainant did not comply the statutory requirements before lodging the complainant.

8. In the instant case, admittedly the cheque amount is Rs. 5 lakh. The learned trial Court found the accused petitioner guilty for the offence under Section 138 of the Negotiable Instruments Act and sentenced him for a fine of Rs. 5,25,000/- which is lesser than to twice the amount of the cheque.

9. This court has also gone through the evidences on record as well as the judgment passed by both the appellate Court and the trial Court. Therefore, according to this Court, the learned trial Court

did not commit any wrong. At the same time the learned appellate Court, after going through the evidence has rightly held that the learned trial Court did not commit any wrong in passing the judgment.

10. With the above observation, the instant criminal revision petition is dismissed and the order dated 10.03.2010 passed by this Court staying the operation of the sentence and order passed by the learned trial Court and uphold by the learned appellate Court stands vacated.

11. Send down the LCRs along with a copy of this judgment. The learned trial Court shall take appropriate steps in accordance with law.

JUDGE

Saikat