

**THE HIGH COURT OF TRIPURA
A G A R T A L A**

CRL.REV.P. 94 OF 2008 & CRL.PETN. 40 OF 2012

IN CRL.REV.P. NO. 94 OF 2008:

Petitioner :

Sri Kashinath Bhattacharjee,
S/O. Late Dinesh Bhattacharjee,
Resident of 38/1, Thakurpalli Road,
Krishnanagar, P.S. West Agartala,
District-West Tripura.

BY ADVOCATES :

Mr. S.M. Chakraborty, Sr. Advocate,
Mr. S.D. Choudhury, Advocate.

– **Versus** –

Respondents :

1. The State of Tripura,
(Represented by the Public Prosecutor),
High Court, Agartala.
2. Shri Goutam Saha,
S/O. Anath Bandhu Saha,
Resident of Ramnagar, Road No.2 (Last Part),
P.S.-West Agartala,
District-West Tripura.

BY ADVOCATES :

Mr. A. Ghosh, P.P.,
Mr. H.K. Bhowmik, Advocate.

IN CRL.PETN. NO. 40 OF 2012:

Petitioner :

Shri Kashinath Bhattacharjee,
S/O. Late Dinesh Bhattacharjee,
Resident of 38/1, Thakurpalli Road,
Krishnanagar, P.S. West Agartala,
District-West Tripura, PIN-799001.

BY ADVOCATES :

Mr. S.M. Chakraborty, Sr. Advocate,
Mr. S.D. Choudhury, Advocate.

– **Versus** –

Respondents :

1. The State of Tripura,
Represented by the Public Prosecutor,
High Court, Agartala-799006.
2. Shri Goutam Saha,
S/O. Anath Bandhu Saha,
Resident of Ramnagar Road No.2 (last Part),
P.S.-West Agartala, District-West Tripura,
PIN-799002.

BY ADVOCATES :

Mr. A. Ghosh, P.P.,
Mr. H.K. Bhowmik, Advocate.

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

Date of hearing and : 27.03.2015.
delivery of judgment
and order.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER(ORAL)

Both these petitions are being disposed of by a common judgment since the factual background relating to both the cases is the same and the dispute is between the same parties.

2. CRL.REV.P. 94 of 2008 has been filed by the petitioner Kashinath Bhattacharjee in which he has challenged the order passed by the learned Chief Judicial Magistrate, West Tripura, Agartala whereby he accepted the final report filed by the police whereby the police had submitted that no criminal case is made out.

3. Briefly stated, the allegations of the petitioner are that on 07-07-2007 he noticed that 11 signed blank cheques relating to his bank account with the Tripura Gramin Bank were stolen from his custody. After extensive search, he could not trace out the

same and he allegedly informed the matter to the Officer-in-Charge of West Agartala Police Station and also to his bankers.

4. According to the petitioner, in July'2007 he received a notice from a counsel dated 23-07-2007 wherein a demand of Rs.19,35,000/- was raised on account of those cheques allegedly made payable in favour of one Sri Goutam Saha, respondent No.2.

5. The order passed by the learned trial Court reads as follows:-

“Received F.R. No.80/07 dtd. 30.11.07 in connection with West Agartala PS Case No.167/07 dtd. 25.8.07 u/s 379 IPC from West Agt. PS as submitted by SI Subhash Chakraborty of West Agartala PS forwarded by the Dy. S.P.(C) Agt, for acceptance of final report as false with his recommendation with a prayer to pass necessary order for permission to submit P/R against the complainant namely Kashinath Bhattacharjee, son of Lt. Dinesh Bhattacharjee of Thakur Palli Road, Krishnanagar, PS-West Agartala, u/s 211 IPC.

Perused the contents of F.R. submitted by the I/O of the case.

Considered.

Perused record, I am satisfied to accept the Final Report. Hence F.R. is accepted.

I/O is allowed to submit F/R against the complainant u/s 211 IPC. Inform I/O accordingly. Complainant is already informed.”

This order has to be set aside because before accepting the final report the Chief Judicial Magistrate has not even issued notice to the complainant to put forth his case. It is made clear that this Court is not expressing any view on the merits of the case

but the order under challenge is being set aside solely on the ground that the final report of the police in which it was stated that no case is made out could not have been accepted without giving the petitioner-complainant a chance of being heard.

6. As far as the second petition, i.e. CRL.PETN. 40 of 2012 is concerned, in this case the petitioner has challenged the order passed by the learned Judicial Magistrate Ist Class, Agartala, West Tripura whereby he has rejected the prayer of the petitioner for keeping the proceedings filed against the petitioner by Sri Goutam Saha under section 138 of the Negotiable Instruments Act (hereinafter referred to as the N.I. Act) in abeyance till the present revision petition filed by the petitioner is finally disposed of.

7. I find no merit in the petition. This Court has considered a similar matter in ***Criminal Revision Petition 11 of 2014 [Smti. Sarmistha Debnath (Chakraborty) vs. The State of Tripura and another]*** wherein also the issue involved was whether proceedings under the N.I. Act should be stayed when the respondent-accused in the proceedings under the N.I. Act has filed a complaint that the negotiable instruments were stolen. This Court held as follows:-

“5. There can be no quarrel with this proposition. I am also of the view that in this case also though the offences may be different, the genesis is the same, that is whether the cheque was actually issued for discharge of a liability or whether the respondent no.2 misused a cheque which was handed over to him by the petitioner. Having held so, this Court cannot lose sight of the fact that the case filed by the petitioner is still at

the stage of investigation. The question that arises is whether proceedings in a pending case can be stayed only on the basis of an investigation being carried out by the police. What will be the result of the investigation or when will the investigation end is not something which this Court can speculate about.

6. To attract section 138 of the N.I. Act, the cheque must have been issued for discharge of a legally payable debt. Under section 139 of the N.I. Act, there is a presumption that there was a legal debt in favour of the holder of the cheque. This presumption is, however, a rebuttable presumption and it is always open to the person who issued the cheque to prove by leading evidence that there was no legal liability to pay any amount. The question whether legal liability to pay the debt was there or not has nothing to do with the offence, if any, committed by the respondent no.2. If he has misused the cheque, he can be dealt with under criminal law. However, even if the cheque has not been misused but the cheque has been issued by the petitioner, then also the petitioner can always lead evidence to show that the cheque was not issued for the discharge of the payment of any legal debt.

7. The law is also well settled that if the facts of the case are such that the criminal Court comes to the conclusion that it cannot decide whether there was any legal liability or not, then the matter has to be decided in favour of the accused and not against him. These are the matters which the petitioner can raise in the trial by cross-examining the complainant and his witnesses and also by leading evidence on herself. These issues can be decided without going into the question whether the respondent no.2 has committed any offence or not. Therefore, without going into the issue as to whether any offence has been committed by the

respondent no.2 or not, I am clearly of the view that it is open for the petitioner in the proceedings under section 138 of the N.I. Act to lead evidence and discharge the burden on her to prove that the cheque was not issued for discharge of any legally payable liability. This is the crux of the dispute and if that is decided, other questions will become immaterial. Therefore, I am of the opinion that the proceedings under section 138 of the N.I. Act which are at an advanced stage should not be stayed or delayed by tagging them with the complaint of the petitioner.”

8. I am clearly of the view that the proceedings under section 138 cannot be stayed, only because the respondent-accused in these proceedings has taken up the plea that the negotiable instruments were stolen from his custody. He can prove this fact in proceedings under the N.I. Act and in case, he is successful in satisfying the Magistrate dealing with proceedings under the N.I. Act that he has raised a dispute which is a tangible and reasonable dispute, the Magistrate has the authority to direct the complainant to file a civil suit instead of proceedings under the N.I. Act.

9. At the same time, it must be clarified that this cannot be done as a matter of course. The case set up by the accused must be a believable case. If his case is not believable, then merely because he has filed a criminal complaint alleging that the negotiable instruments were stolen is not sufficient to delay the proceedings. The case set up by the accused must be a reasonable, probable case and then only the Magistrate can relegate the parties to a civil suit.

10. With these observations, the petitions are disposed of.
11. Send down the lower court records forthwith.

CHIEF JUSTICE