

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL. PETN. NO.10 OF 2014

Sri Parimal Chandra Baidhya,
son of late Jatindra Kumar Baidhya,
resident of eastern side of Inspector of School Office under
R.K. Pur Police Station, P.O. R.K. Pur, Udaipur,
District Gomati Tripura.

..... Petitioner

– Vs –

1. The State of Tripura
notice to be served through the Public Prosecutor,
High Court of Tripura, Agartala.

2. Sri Haran Chandra Chowdhury,
son of late Jitendralal Chowdhury,
resident of Fulkumari, P.O. & P.S. R.K. Pur,
District Gomati Tripura.

.....Respondents

B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner : Mr. I. Chakraborty, Advocate

For the respondents : Mr. A. Ghosh, P.P.
Mr. P. Saha, Advocate

Date of hearing & order : 12.01.2015

Whether fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. I. Chakraborty, learned counsel
appearing for the petitioner as well as Mr. A. Ghosh, learned

Public Prosecutor appearing for the respondent No.1 and Mr. P. Saha, learned counsel appearing for the respondent No.2.

2. By this petition filed under Section 482 read with Section 401 of the Cr.P.C., the legality of the judgment and order dated 20.12.2013, delivered in Criminal Appeal No.22(2)/2013 by the Sessions Judge, South Tripura, Udaipur, has been called in question.

By means of the judgment dated 20.12.2013, the finding of conviction as returned by the trial court by the judgment dated 18.05.2013, delivered in CR Case No.10/2011 has been affirmed.

3. The trial court, following the procedure established by law, has tried the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act) inasmuch as, the petitioner herein has failed to pay the sum of ₹4,50,000, which he took as loan from the respondent No.2 even on the notice of demand in terms of Section 138(b) of the N.I. Act. Thereafter, within the stipulated time, the respondent No.2 had filed the complaint against the petitioner herein for committing the offence made punishable under Section 138 of the N.I. Act.

4. The appellate court, on appeal, being Criminal Appeal No.22(2)/2013, has re-appreciated the evidence and found no infirmity in the finding of conviction. However, the

appellate court has modified the order of sentence. The trial court had sentenced the petitioner to suffer rigorous imprisonment (RI) for 2(two) years and to pay fine of ₹9,00,000 (rupees nine lakhs) under Section 138 of the N.I. Act and in default of payment of fine, he is to undergo RI for a further period of 1(one) year. The appellate court has recorded as under:

“9) Exhibit-4 is the cheque issued by the convict-appellant in favour of the complainant of the case. The issuing of said cheque and signature not denied by the convict-appellant. Signature of complainant contained in the back side of the cheque. Presentation of the cheque for the amount of Rs.4,50,000/- is proved by Exhibit-5 which contained the signature of Branch Manager, SBI. By that letter the Cheque No.653269 for the amount of Rs.4,50,000/- was returned. Reason for such return is insufficient fund. Exhibit-3, the Demand notice issued upon the convict-appellant supported the fact of issuing notice upon the convict-appellant by the complainant through his Learned Advocate Mr. R.K. Das. That notice was sent by registered post with acknowledgement (Exhibits- 1 and 2). Thus, it is clear that after cheque bouncing notice was given to the convict-appellant Shri Parimal Chandra Baidya informing him about the insufficient fund and payment of the amount within the stipulated period. Learned Advocate Mr. R.K. Das gave the notice. But in spite of that notice, admittedly payment was not made.

PW.1 Shri Haran Chandra Chowdhury stated that Parimal Baidya issued the Cheque vide No.653269 dated 04.07.2011 in the name of complainant for the amount of Rs.4,50,000/-. On 06.07.2011 it was presented to the UBI, Udaipur for encashment through his SB Account No.72788 by the complainant. On the next date he was informed that the said cheque was dishonoured for insufficient fund.

In the cross-examination, issuing of cheque by Parimal Chandra Baidya is challenged. But it is not denied that the cheque was not issued by Parimal Chandra Baidya.

PW.2 Debabrata Barua, the Manager of UBI, Udaipur Branch has given evidence and supported the fact of presentation of cheque. He also stated that cheque was dishonoured for insufficient fund. Scope of cross-examination was given. Nothing comes out from the cross-examination of this witness to discard the evidence about the presentation of cheque and dishonouring of cheque.

PW.3 Shyamal Chowdhury, Manager of SBI, Udaipur Branch also confirmed the fact of dishonouring of cheque due to insufficient fund.

So, it is confirmed that the cheque issued by convict-appellant Shri Parimal Baidya was dishonoured. He was maintaining account in the SBI, Udaipur Branch vide his Account No.10515438865. But the State Bank of India officially confirmed that the account had no sufficient fund for satisfying the cheque amount.

10) Learned Chief Judicial Magistrate, South Tripura, Udaipur appreciated the evidence of Manager, SBI and UBI and come to the conclusion about the dishonour of the cheque. The contention of defence is that the cheque was not issued by convict-appellant Parimal Baidya appears to be a false plea which is not supported by any evidence. No prayer was made for sending the cheque to the Forensic Science Laboratory to ascertain the signature of Parimal Baidya in the cheque. The cheque was presented within the period of its validity and after dishonour of the said cheque, statutory notice was given for payment of the debt within the stipulated period of 15 days of the receipt of notice. But admittedly debt was not recovered by making payment. So, the Learned Chief Judicial Magistrate concluded that the complainant acquired the right to file the complaint against the convict-appellant and accordingly in the right time complaint was filed. After appreciation of the evidence

both oral and documentary, Learned Court below came to the right conclusion that the convict-appellant Parimal Baidya committed offence punishable under Section 138 of the Negotiable Instrument Act. Benefit under Probation of Offenders Act not extended to the convict-appellant as the parties failed to compromise the matter. Still, substantive sentence of imprisonment should not be given in this case, if the double payment is made by the convict-appellant. Conviction is upheld. However, sentence is modified.

11) Convict-appellant Parimal Baidya is sentenced to pay fine of Rs.9,00,000/- (rupees nine lakh) only to the complainant Shri Haran Chandra Chowdhury under Section 138 of the Negotiable Instrument Act, in default of payment of fine, he is to suffer SI for 1(one) year. [Emphasis added]

5. This court does not find any infirmity in the said finding. As such, this petition stands dismissed.

It is further observed that, despite several opportunities given to the petitioner, he has failed to make any payment to the respondent No.2 so as to achieve a settlement for payment within a liberal framework.

Send down the LCRs forthwith.

JUDGE

ROY