

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL. L.P. NO. 07 OF 2014,
IN CRL.A. NO.23 OF 2014

Sri Jiban Krishna Saha,
son of Sri Haridas Saha,
sole proprietor of H.P. Electricals,
1, Akhaura Road, P.O. Agartala,
P.S. West Agartala, District West Tripura.

..... Petitioner

– Vs –

1. Sri Ashok Choudhury,
son of Sri Sadhan Choudhury,
care of Hotel Palace Inn,
Palace Compound, P.O. Agartala,
P.S. West Agartala, District West Tripura.
2. The State of Tripura,
represented by the Secretary,
Home Department, Govt. of Tripura,
Secretariat Building, Capital Complex,
Agartala, District West Tripura.

..... Respondents

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

For the petitioner : Mr. N. Majumder, Advocate

For the respondents : Mr. A. Ghosh, P.P.
Mr. D. Bhattacharji, Advocate
Mr. S. Das, Advocate

Date of hearing & order : 13.02.2015

Whether fit for reporting:

Yes	No
	√

ORDER (ORAL)

Heard Mr. N. Majumder, learned counsel appearing for the leave-petitioner as well as Mr. A. Ghosh, learned Public Prosecutor appearing for the state and Mr. D. Bhattacharji, learned counsel with Mr. S. Das, learned counsel appearing for the respondent No.1.

2. For filing an appeal under Section 378 of the Cr.P.C., this petition for leave has been presented before this court. The grounds taken in the appeal has been relied by Mr. Majumder, learned counsel appearing for the petitioner, stating that despite giving the notice after the cheque in question was returned by the bank for varying signatures, the respondent did not pay the said amount. The fact itself stands to prove that there was dishonest intention and with that dishonest intention he induced the petitioner for making delivery of the goods amounting to ₹13,000. The accused even issued the cheque of ₹13,000 and as such the finding in the impugned judgment and order of acquittal dated 20.10.2013 delivered in C.R. No.156/2008 by the Judicial Magistrate 1st Class, Agartala, West Tripura, is entirely perverse. However, Mr. Majumder, learned counsel has fairly admitted that the cheque which was returned for varying signature, was not returned to the respondent for issuing a fresh

cheque, rather by the said notice dated 11.06.2008 (Exbt.5), the petitioner demanded a sum of ₹19,641.

3. In reply to the said notice dated 11.06.2008, the petitioner took a stand that he cannot be made liable for payment of additional sum of ₹6,641 for the purchase which was carried out by someone else, namely Azad Ali Khan. Even thereafter, the petitioner did not issue a fresh notice after returning the cheque for issuing a fresh cheque on demanding an amount of ₹13,000 as the demand of ₹19,641 was disputed by the respondents. Even the respondents did not deny issuance of the cheque for ₹13,000 to the petitioner, in his examination under Section 313 of the Cr.P.C.

4. Mr. D. Bhattacharji, learned counsel appearing for the respondent No.1, has raised a preliminary objection regarding the maintainability of the leave petition, as the leave petition is bereft of any ground as to satisfy this court why it would re-examine the matter on the face of the consolidated presumption of innocence, for which the special provision of leave has been inserted under Section 378 of the Cr.P.C. He has further submitted that even after the reply was given to the petitioner, he has neither stated the correct account rather he straightway approached the court by filing the complaint against the respondent No.1 for taking cognizance of the offence punishable under Section 420 of the IPC. He has further

submitted that there was no evidence at all to show that there had been an element of cheating or inducement for causing delivery of goods with dishonest intention from the beginning of the transaction.

5. For appreciating the rival contentions, this court has considered the observations made by the trial court, which are as follows :

"18. On a bare perusal of the above testimonial evidence of complainant in the light of other available documentary materials and the evidence of PW.3, it indicates that on 14/07/2006 the accused Ashok Chowdhury purchased some electrical goods for using his hotel from the shop of complainant on credit and on the next following day, he issued a cheque of Rs.13000/- drawn on UCO Bank towards his payment of purchase. The said cheque returned unpaid with a remark of drawers signature different when the PW-1, complainant deposited the said cheque for credit in his account maintained with the Tripura Gramin Bank where from cheque was dispatched to the drawer's Bank for clearance. It also reveals that after return of the said cheque the complainant communicated the accused to a legal Notice asking him to make payment of the dishonoured cheque amount. The accused also denied the aforesaid fact in his reply. The oral account of evidence of PW.1 is strengthened by the comments of documents (Exhibits 1,2,5&6) wherein it evolves the above consistent evidence in favour of the complainant's case. In support of the evidence of PW.1, the evidence of PW.2 also reveals that the accused Ashok Choudhuri used to purchase Electrical goods from the SP electrical shop of PW.1. Sometimes PW.2 being electrician of the Hotel Palace Inn of the accused used to accompany the accused for purchase of electrical goods in the shop of the complainant. But from the evidence of PW.2 and other available exhibited document (Ext.3, series) it is not visible that on 14-7-06 PW.2 gave company to the accused for purchase of electrical goods on credit from the shop of complainant.

19. The evidence of PW.3 who is bank Official of UCO Bank serving as Chief Manager supported the complainant case. His above mentioned evidence reflects that they received a cheque bearing No.282861 dated 15-7-06 for the amount of Rs.13,000/- from the Tripura Gramin Bank, Agartala main Branch for credit in the account of PW.1 as issued by the Account Holder of their UCO Bank namely the accused Ashok Chowdhury. It also reveals that the said cheque returned unpaid due to the drawer's signature being different on the body of the said cheque. While examination U/s 313 Cr.P.C. the accused also admitted the alleged fact that he issued the cheque dated 15.7.06 for the amount of Rs.13,000/- in favour of the complainant. Here it is expedient to raise that if such admission of the accused could be relied upon while appreciating the evidence and taking decision of issue either adverse or favourable to the accused. In this regard section 313(4) of Criminal Procedure Code states that "The answer given by the accused may be taken into consideration in such inquiry or trial and put in evidence for or against him in any other inquiry into or trial for any other offence which such answers may tend to show he has committed." So following the above provisions of law the admission of accused given while examination U/s 313 Cr.P.C. can be taken into consideration even for taking adverse inference against him.

20. Relying upon the above appreciation of evidence and discussion, it can easily be arrived at the decision that on 14-7-06 the accused Ashok Choudhuri purchased the electrical goods from the shop of PW.1, complainant on credit and on the next following day he issued a cheque for Rs.30,000/- in favour of the complainant for payment towards his purchase of goods. Now the fundamental point to be determined is that whether the accused issued the said cheque with dishonest and fraudulent intention. According to the ingredients of alleged offence the complainant is required to prove that at the relevant time of issuing cheque the accused have culpable intention to commit the cheating upon him by putting different signature on it. From the reply of the accused to legal Demand Notice (Exhibit 6) it discloses that the accused denied that he issued the cheque for Rs.13,000/- on the alleged date in favour of the complainant and

subsequently when it was deposited in the bank account of the complainant for encashment and credit, but the cheque returned unpaid from the Bank of the accused having a remark of his signature different in the cheque itself. He refrained himself from making payment of dishonoured cheque amount. On the basis of such subsequent conduct of the accused in absence of any other cogent evidence, it can not be inferred with all certainty that at the time of issuing cheque the accused had fraudulent and dishonest intention. Moreover, the cheque in question (Exhibit-1) explicitly contains signature of accused Ashok Chowdhury. The evidence of PW.3 indicates that their UCO Bank obtained fresh signatures of account holders for introducing computerization during the year 2006-2007 and hence, those signatures might cause slight change from earlier signatures. There is no evidence on record that the aforesaid cheque returned unpaid due to slight change or totally different signature. The specimen signatures of the accused was not produced from UCO Bank to find out the discrepancies with the signature of accused given in the cheque issued in favour of complainant, rather considering the attending facts and circumstances of the instant case basing on the foregoing available evidence, it appears that two views can be taken that either because of slight change of signature the cheque returned unpaid or on the ground of totally different signature of accused. It is settled principle of law that if two views are susceptible from the facts and evidence of the case : one view favouring the accused and another adverse to accused, the former would prevail over the later. Here in the instant case at hand the accused is deserved to get the benefit of doubt.

Under the above premise, it leads to the conclusion that the complainant failed to prove the charge of accused by adducing adequate reliable inculpatory evidence beyond reasonable shred of doubt.” [Emphasis added]

6. The view taken by the trial court cannot be stated to be a perverse view. Even if on scrutiny, another alternative view is possible, this court in an appeal against the order of acquittal,

will not adopt this view by discarding the possible view taken by the trial court.

7. Accordingly, this leave petition stands dismissed.

JUDGE

ROY