HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P No.79 of 2017

Nitai Majumder
son of late Jitendra Kumar Majumder
Ramesh Chowmuhani, Udaipur
District : Gomati Tripura

……..…Petitioner(s)

Versus

Tanmoy Krishna Das
son of late Sunil Krishna Das
Village: khilpara
Udaipur, near U.B.I, Killa Branch
P.S.:R.K.Pur
District: Gomati Tripura & Anr.

……..Respondent(s)

For the Petitioner(s) : Mr. S.Lodh, Adv.

For the Respondent(s) : Mr. Samar Das, Adv.
Mr. S.Debnath, Addl. PP.

Date of hearing : 20.10.2020

Date of delivery of
Judgment & order : 17.11.2020

Whether fit for reporting :

Yes	No
	✓

B E F O R E

HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY

J u d g m e n t & O r d e r

[**1**] The Courts below have concurrently held that complainant Tanmoy Krishna Das(respondent herein) has established his case under the provisions of Section 138

of the Negotiable Instruments Act, 1981(NI Act herein) against accused Nitai Majumder, the present petitioner.

[**2**] The Chief Judicial Magistrate of Gomati Judicial District by his judgment dated 20.08.2015 passed in case No.C.R.08 of 2015 (NI), convicted the present petitioner for having committed offence punishable under Section 138 of the NI Act and sentenced him to Simple Imprisonment(SI) for 01 year and fine of Rs.7,00,000/-(seven lakhs) payable to the complainant with default stipulation. In appeal, the learned Sessions Judge of Gomati Judicial District by his judgment and order dated 02.11.2017 passed in case No. Crl. Appeal No.47(3) of 2015 affirmed the conviction of the petitioner while reducing the sentence to fine only and directing the petitioner to pay fine of Rs.4,00,000/-(four lakhs) to the complainant and in default suffer Simple Imprisonment (SI) for a period of 6 months.

Being aggrieved and dissatisfied with the said judgment and order of the learned Sessions Judge, the convict appellant, being petitioner, has filed the present Criminal Revision Petition.

[**3**] The basic facts necessary for disposal of the petition are that the present petitioner and the respondent were

known to each other and they were on good terms. The present petitioner used to borrow money from the respondent frequently to meet his financial needs and he used to repay such loan in time. On 15.01.2014 he took a loan of Rs.3,50,000/-(Three lakhs fifty thousand)from the respondent and promised to repay the money within 30.11.2014. The money not being repaid in time, the respondent approached the petitioner on 13.12.2014 and requested him for an early repayment of the same. Pursuant to such request, the present petitioner issued Cheque no.418431 dated 13.12.2014 on Tripura Gramin Bank for an amount of Rs.3,50,000/-(Three lakhs fifty thousand) in the name of the respondent. On the same day the respondent presented the cheque for collection at Central Bank, Udaipur branch at Udaipur where he had an account and the said cheque was returned on 15.12.2014 with an endorsement "insufficient funds".

[**4**] A demand notice was then issued by the respondent to the petitioner through his lawyer demanding payment of Rs.3,50,000/-(Three lakhs fifty thousand) within 15 days and such notice was sent to his known residential address through post registered with AD. The postman entrusted with the service of the notice visited the house of the petitioner on 31.12.2014, 03.01.2015, 08.01.2015

and 12.01.2015. Every time the house inmates of the petitioner refused to receive the registered letter and told the postman that the addressee was out of station. The envelope containing the notice was returned to the respondent along with the AD card with a report that the addressee was out of station for long time.

[**5**] A complaint was then filed by the respondent in the court of the Chief Judicial Magistrate in Gomati Judicial District at Udaipur alleging offence under Section 138, NI Act and Section 420, IPC. The learned trial court took cognizance of offence punishable under Section 138, NI Act and summoned the accused. The accused appeared and pleaded not guilty. Hence, the trial proceeded.

[**6**] In the course of trial, the following issues were framed by the learned trial court:

> "***(i) Whether the accused Nitai Majumder on 15.01.2014 borrowed a sum of Rs.3,50,000/-(Rupees three lac fifty thousand) from the complainant with assurance to repay the same 30.11.2014?***
>
> ***(ii) Whether the accused on 13.12.2014 issued a cheque vide No.418431 dated 13.12.2014 in favour of the complainant for an amount of Rs. 3,50,000/-(Rupees three lac fifty thousand) to indemnify the debts?***
>
> ***(iii) Whether on 13.12.2014 while the cheque was presented to the Central Bank, Udaipur Branch it was dishonoured by the bankers of the accused due to insufficient fund in the account of the accused?***

(iv) Whether the complainant issued demand notice upon the accused in conformity to the Act giving him reasonable opportunity to repay the amount of Rs.3,50,000/-(Rupees three lac fifty thousand)?

(v) Whether the accused deliberately with a view did not receive the demand notice?"

[**7**] During trial, the respondent examined himself as PW-1 and also examined two other witnesses namely Shri Dilip Das as PW-2 and Mamud Hussain Khadim as PW-3. He also adduced documentary evidence which are Exbt.1, Exbt.2, Exbt.3 and Exbt.4. Among these documentary evidence, Exbt.1 is the impugned cheque dated 13.12.2014, Exbt.2 is the cheque deposit slip dated 13.12.2014, Exbt.3 is the cheque return memo, and Exbt.4(series) is the demand notice dated 30.12.2014 including the envelope containing the postal receipts and report of the postman. Statement of the accused was recorded under Section 313 Cr.P.C at the conclusion of the prosecution evidence. In reply, the accused petitioner claimed that the entire prosecution evidence appearing against him was false and he declined to adduce any evidence on his defence.

[**8**] Having appreciated the evidence, both oral and documentary, adduced by the complainant-respondent, the learned trial court, after hearing the parties at length

and considering the submissions made on their behalf, recorded the following findings in paragraph 18 of its judgment:

> ***"18. In this case, from the trend of cross examination, I find, the accused took the plea that the accused given a blank cheque in favour of the complainant as a security of loan amount and after payment of loan money the complainant did not return the said cheque and thereafter the complainant falsely filled up the blank cheque and filed this false case. The above mentioned plea is not a legal plea but a plea of fact and required to be proved by evidence. In this case, the accused failed to adduce any evidence to prove the above mentioned plea. Hence, I find, the above plea is liable to be rejected and stands rejected. Thus, therefore, considering all this aspect, I find, the accused Sri Nitai Majumder on 13.12.2014 issued a cheque vide No.418431 in favour of complainant for an amount of Rs.3,50,000'00 (Rupees three lac fifty thousand) to indemnify the debts and on 15.12.2014 the said cheque was dishonoured due to INSUFFICIENT FUND in the account of the accused and the accused deliberately did not receive the demand notice and the notice is deemed to be received by the accused. Accordingly, Point No.(i),(ii),(iii),(iv)&(v) are decided in affirmative and in favour of the complainant but against the accused."***

[**9**] Having recorded the findings aforesaid, the learned trial court convicted the petitioner under Section 138, NI Act and after recording reasons as to why the benefit of probation would not be given to him, sentenced the convict as aforesaid.

[**10**] The learned Sessions Judge, in appeal, affirmed the conviction but modified the sentence to fine only. In

HIGH COURT OF TRIPURA
सत्यमेव जयते

paragraph 6 of his judgment, the learned Sessions Judge, has recorded his findings as under:

> ***"6. The appellant during cross examination of the complainant gave one suggestion that a blank cheque was issued by him as security of loan amount, which means he was admitting the execution of the cheque. The words 'as security of loan amount' also signifies that he was admitting that he had taken some loan from the complainant. Now, onus shifts on him to show that he had repaid the loan amount, but he couldnot or even didnot attempt to discharge such onus. In Goaplast (P) Ltd. v. Chico Ursula D'Souza, (2003) 3 SCC 232, at page 237, Hon'ble Supreme Court at para 6 held that once a cheque is issued by a drawer, a presumption under Section 139 must follow and merely because the drawer issued notice to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138 of the Act by the drawee or the holder of the cheque in due course."***

[**11**] Finally, the learned Sessions Judge passed the following order:

> ***"In the result, the appeal is dismissed. The conviction as returned by Ld. Chief Judicial Magistrate, Gomati, Udaipur to the appellant in said C.R. 08 (N.I.) of 2015 is hereby affirmed. However, the sentence passed therein is modified. The appellant shall now pay a fine of Rs.4,00,000/- (Four lakhs only) and in default to pay the fine, shall suffer simple imprisonment for 6 (six) months. The fine money, if realized or paid, shall be disbursed to the respondent no.1, Sri Tanmoy Krishna Das. With these observations the appeal is disposed of on contest."***

[**12**] I have heard Mr. S.Lodh, learned counsel appearing for the petitioner as well as Mr. Samar Das, learned counsel appearing for private respondent no.01 and Mr. S.Debnath, learned Addl. PP appearing for the state respondent.

[**13**] It has been mainly canvassed on behalf of the petitioner that the learned trial court failed to appreciate the evidence as well as the grounds of objection raised by the accused petitioner and erroneously found the petitioner guilty. It is submitted on behalf of the petitioner that the learned trial court did not appreciate that the complainant-respondent could not prove any debt or liability against the accused petitioner. According to learned counsel for the petitioner, the courts below did not also consider the submission of the accused that the cheque in question was never issued by the accused petitioner in discharge of any debt or liability, but only a blank cheque was issued by the petitioner as a security for the loan which was borrowed by him from the complainant and after the loan was repaid, the complainant, instead of returning the cheque to the accused, misutilized it against him. Further submission on behalf of the accused petitioner is that the learned courts below also failed to appreciate the fact that the service of

HIGH COURT OF TRIPURA

statutory notice on the accused petitioner after dishonor of the cheque from the bank was not also proved. Even the postal staff who allegedly visited the house of the accused petitioner for service of notice was not examined. Learned counsel, therefore, urges the court to set aside the judgments of the courts below after considering the aforesaid objections raised by him.

[**14**] Mr. Samar Das, learned counsel appearing for private respondent no.1 on the other hand submits that there is no infirmity in the judgment of the learned Sessions Judge and as such the judgment does not call for any interference. With regard to the objection raised by the respondent regarding service of notice on the accused petitioner, it is contended by Mr. Das, learned counsel for the respondent that law has been settled that in a case under NI Act, once the notice is dispatched to the correct address of the accused, the onus on the part of the complainant is discharged and the rest depends on the accused. In support of his contention Mr.Das, learned counsel has referred to the following decisions of this High Court:

(i) ***Keshab Banik vs. Shekhar Banik*** reported in ***(2013) 1 TLR 528***

(ii) ***Jayanta Banik vs. Ritish Sarkar and Anr.*** reported in ***(2016) 2 TLR 778***

[**15**] It is further submitted on behalf of the respondent that the presumption under Section 139 read with the Rule of Evidence as provided under Section 118, NI Act with regard to the existence of debt or liability is not a discretionary presumption, it is a statutory presumption which is obligatory on the part of the court. Therefore, a heavy burden is cast on the accused to rebut such presumption by adducing convincing evidence. Such presumption cannot be rebutted by merely offering an explanation. In support of his contention, Mr.Das, learned counsel for the respondent has relied on the following decisions of the Apex Court as well as of this High Court:

(i) ***Hiten P. Dalal vs. Bratindranath Bannerjee*** reported in ***(2001) 6 SCC 16***

(ii) ***Mallavarapu Kasiviswеswara Rao vs. Thavikonda Ramulu Firm and Ors.*** reported in ***(2008) 7 SCC 655***.

(iii) ***Kishan Rao vs. Shankargouda*** reported in ***(2018) 8 SCC 165***

(iv) ***Benu Roy vs. Rajib Ghosh*** reported in ***(2018) 2 TLR 463***

[**16**] It is submitted by Mr.S.Das, learned counsel for the respondent that apart from making mere denial of the existence of debt or liability, the accused did not lead any evidence to prove that he had no debt or legal liability to be discharged and as such the learned courts below had drawn the statutory presumptions against him. As a

result, the learned courts below did not commit any error in finding him guilty for the offence under Section 138 NI Act. It is, therefore, submitted by learned counsel that the judgments of the courts below do not call for any interference in this criminal revision petition.

[**17**] To reiterate the facts, the complainant respondent in the course of trial examined himself as PW-1 and he stated that the accused borrowed a loan of Rs.3,50,000/- from him on 15.01.2014 and promised to repay the loan within 30.11.2014 in presence of PW-2 & PW-3. When he failed to repay the loan within the stipulated time, the complainant respondent approached him on 13.12.2014 to get back his money. On the same day the accused petitioner issued cheque no. 418431 dated 13.12.2014, Exbt.1 on Tripura Gramin Bank where the accused had an account. It is further stated by PW-1 that he then presented the cheque for encashment at the Central Bank of India vide deposit slip, Exbt.2, dated 13.12.2014 wherefrom the cheque was dishonoured and it was returned to him for insufficient fund with a certificate dated 15.12.2014, Exbt.3 of Tripura Gramin Bank. It was also stated by the complainant, PW-1, that he then issued demand notice dated 30.12.2014 to the accused by post registered with AD demanding payment of the cheque

amount within 15 days. The postal receipt dated 30.12.2014 of the said demand notice, the demand notice dated 30.12.2014, the AD Card as well as the envelope containing the report of the postman were taken by the complainant, PW-1, into evidence and marked as Exbt.4(series). It has been deposed by the complainant, PW-1, that the postman visited the house of the addressee on 31.12.2014, 03.01.2015, 08.01.2015 and 12.01.2015 for service of the notice and every time the postman was told that the accused was out of station. The envelope, Exbt.4(series) contains the endorsement dated 31.12.2014, 03.01.2015, 08.01.2015 and 12.01.2015 of the postman in this regard.

[**18**] In his cross examination PW-1 told the trial court that he did not specifically mention in his complaint that he gave the money to the accused in cash. During his cross examination, it was suggested to him on behalf of the accused that after borrowing the loan from him, the accused gave a blank cheque to the complainant and after repaying the loan he did not take back the blank cheque from the complainant and as a result the complainant filled in the cheque and presented in bank. The complainant categorically denied the suggestion.

HIGH COURT OF TRIPURA

[**19**] PW-2, Dilip Das and PW-3, Md.Mamun Hussain Khadim also gave evidence with regard to the payment of loan of Rs.3,50,000/- to the accused. As stated by them the complainant, in their presence on 15.01.2014 gave loan of Rs.3,50,000/- to the accused on condition that the loan would be repaid within 30.11.2014.

In their cross examination, both of the PWs stated that complainant gave the loan money to the accused in cash in their presence. It was suggested to both of them on behalf of the accused that they favoured the complainant as the complainant was their neighbour. Both of the PWs denied such suggestion.

[**20**] Section 138, NI Act requires proof of the essential ingredients viz.,(i) there is a legally enforceable debt; (ii) a cheque is drawn on an account maintained by the accused with his banker for payment of any amount to another person from his account in discharge in whole or in part of the debt or liability; and (iii) the cheque is returned by the bank unpaid, either because of insufficient fund in the account of the accused to honour the cheque or that the cheque amount exceeds the amount arranged to be paid from that account by an agreement made with the bank.

HIGH COURT OF TRIPURA
सत्यमेव जयते

[**21**] As far as the petitioner's defence was concerned, he did not deny the fact that he borrowed loan of Rs.3,50,000/- from the complainant respondent. He did not also deny the execution of the cheque in question which is Exbt.1. He tried to defend his case merely by offering an explanation by throwing suggestion to the PWs in their cross examination that he gave a blank signed cheque to the complainant as a security for loan taken by him and since he did not take back the cheque after repaying the loan, the complainant respondent misused the cheque against him.

[**22**] The question which falls for consideration is whether such explanation offered by the petitioner is enough to disprove the statutory presumptions under Sections 138 and 139, NI Act. In the case of ***Hiten P. Dalal*** (supra) it has been held by the Apex Court that the presumptions to be drawn by the court under Sections 138 and 139, NI Act are presumptions of law which cast evidential burden on the accused to disprove the presumptions. The relevant passages of the judgment are as under:

> ***"21. The appellant's submission that the cheques were not drawn for the 'discharge in whole or in part of any debt or other liability' is answered by the third presumption available to***

the Bank under Section 139 of the Negotiable Instruments Act. This section provides that :

"139. It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.

"The effect of these presumptions is to place the evidential burden on the appellant of proving that the cheque was not received by the Bank towards the discharge of any liability.

22. Because both Sections 138 and 139 require that the Court "shall presume" the liability of the drawer of the cheques for the amounts for which the cheques are drawn, as noted in State of Madras vs. A. Vaidyanatha Iyer, AIR 1958 SC 61, it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. "It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused" (ibid at p 65, para 14). Such a presumption is a presumption of law, as distinguished from a presumption of fact which describes provisions by which the court "may presume" a certain state of affairs. Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter, all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.

23. In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the Court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when,

HIGH COURT OF KERALA

> ***"after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists" .***
>
> ***Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence that the Court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the 'prudent man'."***

[**23**] Similarly, in the case of ***Mallavarapu Kasivisweswara Rao*** (supra) it has been held by the Apex Court that it is a settled position that the initial burden lies on the accused to prove the non existence of consideration. The relevant passage from the judgment may be gainfully reproduced which is as under:

> ***"17. Under Section 118(a) of the Negotiable Instruments Act, the court is obliged to presume, until the contrary is proved, that the promissory note was made for consideration. It is also a settled position that the initial burden in this regard lies on the defendant to prove the non-existence of consideration by bringing on record such facts and circumstances which would lead the Court to believe the non-existence of the consideration either by direct evidence or by preponderance of probabilities showing that the existence of consideration was improbable, doubtful or illegal....."***

[**24**] In the instant case, apparently the accused petitioner did not lead any evidence in rebuttal of such statutory presumptions. He has also failed to bring on record such facts and circumstances which would lead the

courts below to believe that the liability, attributed to the accused petitioner was improbable or doubtful.

[**25**] In the case of ***Kishan Rao (supra)*** which has been relied upon by learned counsel appearing for the respondent, the Apex Court has succinctly held that mere denial of existence of debt shall not serve any purpose in a proceeding under Section 138, NI Act. Something which is provable has to be brought on record for getting the burden of proof shifted to the complainant. Observation of the Apex Court in this regard in paragraph 20 of the judgment is as under:

> ***"20. This Court held that the accused may adduce evidence to rebut the presumption, but mere denial regarding existence of debt shall not serve any purpose. Following was held in paragraph 20:***
>
> > ***"20....The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-***

> ***existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist…"***

[**26**] The learned counsel of the accused petitioner has also placed reliance on the decision of this High Court in the case of **Benu Roy** (supra) in which this High Court following the law laid down by the Apex Court in Hiten P.Dalal(supra) held that unless the explanation offered by the accused with regard to non existence of debt is supported by proof, the statutory presumptions under the NI Act as to the debt cannot be said to have been rebutted. In this regard the following observation was made by this High Court in the case of **Benu Roy:**

> ***"55. That is how the Apex Court in Hiten P. Dalal (supra) has distinguished between two situations. It is not general presumption under Section 114 of the Evidence Act, it is a presumption under Section 139 read with rule of evidence as provided under Section 118 of the NI Act. The presumption has to be very direct and of such nature that the fact that has been laid has to be trusted by a prudent person. It must be supported by reliable materials. A reasonable man would act on the supposition that it exists. Unless, the explanation in order to rebut is supported by proof the presumption created by the statute cannot be said to have rebutted."***

[**27**] As discussed, stand of the accused petitioner on his defence is that there was no existing debt to be discharged by him because he already repaid the entire loan amount which he borrowed from the complainant

respondent and he did not issue the cheque in question [Exbt.1] in discharge of any debt or liability, but, only as a security and that after repayment of the entire loan he did not take back the cheque from the complainant respondent which was later misused by the complainant against him. The accused projected this defence story by way of throwing suggestions to the witnesses of the complainant during their cross examination. The law discussed above, contemplates that the initial burden to rebut the statutory presumptions under the NI Act as to the existence of debt or liability lies on the accused and this is a heavy burden which can be discharged only by an explanation founded on proof. Obviously, the accused petitioner has not adduced any evidence in support of his said explanation. Rather, he admitted that he borrowed loan of the said amount from the complainant and the execution of the cheque in question was also admitted by him. The complainant on the other hand by adducing consistent evidence has established the fact that the loan taken by the accused petitioner created an existing liability and in discharge of the liability the accused issued the cheque in question [Exbt.1] in favour of the complainant which was dishonored by the bank on its

HIGH COURT OF TRIPURA
सत्यमेव जयते

presentation for insufficient fund and when the complainant issued demand notice to the accused petitioner demanding the money and conveying the fact that his cheque was dishonored, the accused petitioner avoided the service of the notice.

[**28**] After scrutinizing the entire transaction, it would surface that apparently there is no reason to disbelieve the case of the complainant. The explanation offered by the accused petitioner on the other hand is not founded on proof and it does not stand to reason. The object of statutory notice is to protect an honest drawer of the cheque by providing him a chance to make the fund sufficient in his bank account and correct his mistake. The accused petitioner could have availed this opportunity by accepting the demand notice instead of repeatedly avoiding its service. He could have accepted the notice and projected his case that he already made the repayment of the loan, had this case of him been true. Therefore, it can be safely held that the prosecution successfully discharged its burden in proving the case against the petitioner with the help of the statutory presumptions under the NI Act, and the accused has

HIGH COURT OF TRIPURA

failed to rebut those presumptions and prove the contrary by offering provable explanation founded on proof.

[**29**] With regard to the objection raised by the accused petitioner regarding the service of the statutory demand notice, learned counsel of the complainant has relied on the decision of this High Court in the case of **Keshab Banik**(supra) wherein this High Court has held that the notice, duly directed, shall serve the purpose of law.

[**30**] In the case of ***Jayanta Banik***(supra) which has also been relied upon by learned counsel for the respondent, this High Court with reference to the earlier decision of ***Keshab Banik***(supra) has laid down the same principle that once the notice is dispatched, part of the payee is over and, the next depends on what the sendee does. Observation of the High Court in this regard is as follows:

> ***"15. That apart, this High Court in Keshab Banik Vs. Sekhar Banik, reported in (2013) 1 TLR 528, has held that Section 138(D) of the N.I. Act is only the mode for making the demand. A payee can send the notice for doing his part for his giving the notice. Once it is despatched, his part is over and, the next depends on what the sendee does. For this purpose, the decision of the apex court in V. Raja Kumari Vs. P. Subbarama Naidu and Another, may be referred and the relevant part thereof may profitably be reproduced:***
>
> ***8. On the part of the payee he has to make a demand by "giving a notice" in writing. If that***

was the only requirement to complete the offence on the failure of the drawer to pay the cheque amount within 15 days from the date of such "giving", the travails of the prosecution would have been very much lessened. But the legislature says that failure on the part of the drawer to pay the amount should be within 15 days "of the receipt" of the said notice. It is, therefore, clear that "giving notice" in the context is not the same as receipt of notice. Giving is a process of which receipt is the accomplishment. It is for the payee to perform the former process by sending the notice to the drawer at the correct address.

9. XXXXX XXXXX XXXXX

10. If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape from the legal consequences of Section 138 of the Act. It must be borne in mind that the court should not adopt an interpretation which helps a dishonest evader, and clips an honest payee as that would defeat the very legislative measure.

11. In Maxwell's Interpretation of Statutes, the learned author has emphasised that "provisions relating, to giving of notice often receive liberal interpretation" (vide p. 99 of 12th Edn.). The context envisaged in Section 138 of the Act invites a liberal interpretation for the person who has the statutory obligation to give notice because he is presumed to be the loser in the transaction and it is for his interest the very provision is made by the legislature. The words in clause (b) of the proviso to Section 138 of the Act show that the payee has the statutory obligation to "make a demand" by giving notice. The thrust in the clause is on the need to "make a demand". It is only the mode for making such demand which the legislature has prescribed. A payee can send the notice for doing his part for

HIGH COURT OF TRIPURA

giving the notice. Once it is dispatched his part is over and the next depends on what the sendee does.

12. It is well settled that a notice refused to be accepted by the addressee can be presumed to have been served on him (vide Harcharan Singh Vs. Smt. Shivrani and Others, and Jagdish Singh Vs. Natthu Singh, .

13. Here the notice is returned as addressee being not found and not as refused. Will there be any significant difference between the two so far as the presumption of service is concerned? In this connection a reference to Section 27 of the General Clauses Act, 1897 will be useful. The section reads thus:

> ***"27. Meaning of service by post.-Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression 'serve' or either of the expression 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."***

14. No doubt Section 138 of the Act does not require that the notice should be given only by "post". Nonetheless the principle incorporated in Section 27 (quoted above) can profitably be imported in a case where the sender has dispatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sender unless he proves that it was not really served and that he was not responsible for such non-service. Any other interpretation can lead to a very tenuous position as the drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice.

15. XXXXX XXXXX XXXXX

> ***16. The object of notice is to give a chance to the drawer of the cheque to rectify his omission and also to protect an honest drawer. Service of notice of demand in clause (b) of the proviso to Section 138 is a condition precedent for filing a complaint under Section 138 of the Act. In the present appeal there is no dispute that notice was in writing and this was sent within fifteen days of receipt of information by the appellant Bank regarding return of cheques as unpaid. Therefore, the only question to be examined is whether in the notice there was a demand for payment. (See Central Bank of India and Another Vs. M/s Saxons Farms and Others, (1999) 8 SCC 221 [emphasis supplied].***

[**31**] The complainant has led convincing evidence to prove that the postman visited the house of the accused at the known address on 4 dates. Every time the postman was told by the house inmates that he was out of station. The fact is proved by the report [Exbt.4 series] given by the postman. From the overall conduct of the accused, it is clear that he wanted to avoid the service of the notice. In view of the law decided by the Apex Court, the objection raised by the accused petitioner in this regard is not acceptable. Therefore, it cannot be said that the demand notice was not served on him.

[**32**] For the foregoing reasons, this court is of the considered view that the impugned judgment dated 02.11.2017 passed by the learned Sessions Judge of Gomati Judicial District at Udaipur in Criminal Appeal

No.47(3) of 2015 whereby he affirmed the conviction of the accused petitioner and modified the sentence passed by the learned trial court does not call for any interference.

[**33**] In consequence, the conviction and sentence of the accused petitioner is upheld. He is directed to deposit the fine of Rs.4,00,000/-(four lakhs)only in the court of the learned Sessions Judge in Gomati Judicial District at Udaipur in terms of the modified sentence within a period of 02(two) months for disbursement to the complainant respondent namely Shri Tanmoy Krishna Das, failing which the accused petitioner will suffer the default sentence in terms of the said judgment and order of the learned Sessions Judge.

[**34**] Resultantly, the instant Criminal Revision Petition stands dismissed and disposed of.

HIGH COURT OF TRIPURA
सत्यमेव जयते

The LC Records be sent back immediately along with a copy of this order.

JUDGE

Saikat Sarma, P.A