

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

CRL. REV. P. 89 of 2005

Smt. Sova Saha Roy,
W/O Sri Subrata Saha,
Resident of Subhashnagar, Pratapgarh,
P.S.- East Agartala, District- West Tripura.

.... **Petitioner**

Versus

- 1. Sri Nandesh Das,**
Proprietor of M/s Auto Mechano,
54, H.G.B. Road, P.S.- West Agartala,
District- West Tripura.
- 2. The State of Tripura,**
(to be represented by the Public Prosecutor)
Ld. Sessions Court, West Tripura, Agartala.

.... **Respondent**

B E F O R E **THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA**

For the petitioner : Mr.S. Bhattacharji, Advocate
For the respondent : Mr. A. Ghosh, PP
Date of hearing and delivery of judgment. : **28.02.2014.**

Whether fit for reporting: **YES / NO**

JUDGMENT & ORDER(ORAL)

On 25.02.2014 when this matter was taken up none had appeared for the petitioner and, therefore, when the matter was adjourned for today it was clearly mentioned that if none appears for the petitioner today, the matter shall be decided on the basis of the record.

- 2.** Briefly stated, the facts of the case, are that the complainant (respondent herein) is the proprietor of M/s Auto Mechno at Agartala.

The petitioner Smt. Sova Saha Roy is the proprietor of business styled as M/s Badal Paper Product at Subashnagar, Pratapgarh. According to the complainant, the petitioner purchased stationery from the complainant of the value of Rs. 2,90,740/-. She paid Rs. 50,000/- in cash and issued 11 (eleven) cheques for the balance of Rs. 2,40,740/-. These cheques were of different amounts but the total sum was Rs. 2,40,740/-. The complainant presented the eleven cheques to his banker, State Bank of India, Agartala on 20th July, 2001 and on 25th July, 2001 the complainant was informed by his banker that all the cheques were dishonoured for insufficient funds in the account of the present petitioner. Thereafter, the complainant issued notice upon the accused petitioner on 06.08.2001 requesting the petitioner accused to pay the entire amount within a period of 15 days from the date of receipt of the notice. The petitioner accused received the notice on 06.08.2001 but still did not pay the amount and, therefore, the complaint under Section 138 of the Negotiable Instrument Act, was filed.

3. Notice was issued to the petitioner accused who pleaded not guilty and claimed trial. After trial the learned Additional Chief Judicial Magistrate, West Tripura, Agartala, held the petitioner guilty of having committed an offence punishable under Section 138 of the Negotiable Instrument Act. She was accordingly sentenced to suffer simple imprisonment for a period of 1 (one) year and also to pay a fine of Rs. 2,50,000/- and in default to suffer further simple imprisonment for a period of 6 (six) months by the judgment dated 12.04.2004.

4. Aggrieved by the said judgment, the petitioner filed an appeal before the learned Sessions Judge, West Tripura, Agartala. The main point raised was that no offence under Section 138 of the Negotiable Instrument Act, had been committed since the claimant had failed to prove that the cheques were issued to discharge the liability which the accused owed to the complainant. This appeal has been rejected and hence the present petition.

4. None has appeared before me and I have gone through the record. From the record it is apparent that the cheques were issued by the petitioner. This fact is also not denied by the petitioner and the only ground raised is that the complainant has failed to prove what was the consideration for the issuance of the cheques. In her statement under Section 313 Cr.P.C.. the petitioner accused had admitted that she issued the cheques. The petitioner has not denied her signature on the cheques but had deposed that she put the signature on the cheques on being asked by her husband to do so. She therefore virtually admits that the cheques had been issued by her.

5. Section 139 of the Negotiable Instruments Act read as follows :

"139. Presumption in favour of holder— 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."

A bare perusal of this section clearly shows that unless the contrary is proved there shall be a presumption in favour of the holder of the cheque that the cheque was issued for the discharge in whole or in part of any debt or other liability. It is, therefore, not for the holder of

the cheque to prove the consideration but while the cheque is issued and the person issuing the cheque denies that the same was for consideration. The burden shifts on the said person who asserts that the cheque was issued without any consideration to prove the fact that the cheque has been issued without any consideration. Therefore, a presumption is raised under Section 139 of the Negotiable Instrument Act that every cheque is issued for valuable consideration.

6. No doubt this is a rebuttable presumption but this presumption shall have to be rebutted by the accused by adducing evidence. No evidence has been led in this case and, therefore, both the courts below were absolutely justified in holding that the accused petitioner had issued the cheques. I, therefore, find no merit in the petition.

7. In view of the above discussion, the present Criminal Revision petition is dismissed.

Send down the LCRs forthwith.

CHIEF JUSTICE