

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL. REV. P. NO.96 OF 2016

Sri Titu Kumar Deb,
son of Sri Upendra Kumar Deb,
resident of No.2 Fulkumari (Kunjaban),
P.S. R.K. Pur, District: Gomati Tripura

..... Petitioner

– Vs –

State of Tripura

..... Respondent

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

For the petitioner : Mr. B. Deb, Advocate

For the respondent : Mr. R.C. Debnath, Addl. P.P.

Date of hearing : **06.01.2017**

Date of judgment & order: **30.05.2017**

Whether fit for reporting : **YES**

JUDGMENT & ORDER

By means of this petition filed under Section 397(1) read with Section 401 of the Cr.P.C., the judgment and order dated 20.09.2016 delivered in Criminal Appeal No.39(3)/2014 has been challenged. By the said judgment, the judgment of conviction and

order of sentence dated 19.08.2014 delivered in G.R.349 of 2006 by the Chief Judicial Magistrate has been affirmed.

2. Based on the written complaint filed by the one Sushanta Deb on 15.08.2006 against the petitioner and another, R.K Pur P.S. Case No.349 of 2006 was registered under Section 420/471/468 of the IPC and was taken up for investigation. In the said complaint against the petitioner and the other co-accused, it had been alleged the savings bank account one Self-Help group (SHG) to which the informant was one of the authorised signatories was found missing when he returned from Agartala after having consulted the doctors about the illness of his father. On inquiry, it surfaced that on 10.08.2006, the petitioner had taken out the said savings bank account, the other relevant papers and seal of the SHG.

3. On 14.08.2006 when the informant [PW-1] was about to give the account of the SHG, he found that the account was also not available with him. Then his father told him that the petitioner and his younger brother had taken all these account books. The petitioner went to the bank and found that on 10.08.2006, a sum of Rs.20,000/-, on 12.08.2006 another sum of Rs.20,000/- and were withdrawn from the said account. It had been also revealed that for addressing the emerging the situation five withdrawal slip were signed and left by the Cashier were not found in place. The accused person took away all those signed slips. His signatures were forged

and put on those withdrawal slips. After investigation was complete the chargesheet was filed against the petitioner but the other co-accused namely Uttam Deb was discharged as there was no incriminating materials collected during the investigation. The charge was framed to which the petitioner when he pleaded innocence claimed to be tried on 08.12.2012 under Section 424/468/471 against the petitioner.

4. To substantiate the said charge, the prosecution has adduced as many as 16(sixteen) witnesses including the informant. Thereafter, the petitioner was examined under Section 313 to have his reply on the incriminating materials which surfaced in the trial, but he denied those materials as false and asserted that he was implicated malafide. Some documentary evidence including the report of the handwriting expert (Exbt.4) are admitted in the evidence.

5. Having appreciated the evidence on record, by the judgment dated 19.08.2014, the Chief Judicial Magistrate, South Tripura, Udaipur convicted the petitioner holding that from the report of the expert it appeared that the expert's opinion is in respect of Q3 meaning in respect of one of the withdrawal slips. The prosecution could not adduce the original specimen signature maintained by the bank but the withdrawal slips on the basis of which the money was withdrawn were seized by the Investigating Officer(IO). Even the

bank officials supported the case of the informant. Then it has been observed by the trial court as follows:

"In the premises I am to say that the FIR is not a substantive piece of evidence and it is used only for corroboration and contradiction of the evidence of the maker during trial of this case. Here the accused by the trend of cross examination could not raise any circumstances to disbelieve the evidence of the prosecution that the accused by forgoing the signature of the informant did not withdraw money from the bank belonging to NSHG."

Thus the trial court convicted the petitioner under Section 468 and 471 of the IPC and sentenced him to suffer rigorous imprisonment for two years with fine of Rs.10,000/- with default imprisonment and rigorous imprisonment for two years respectively. It has been directed that the sentences shall run concurrently.

6. Against the said judgment of conviction the petitioner herein preferred an appeal in the court of the Sessions Judge, Gomati Judicial District, Udaipur being Criminal Appeal No.39(3)/2014 under Section 374(2) of the Cr.P.C. By the impugned judgment dated 20.09.2016, the said appeal was dismissed holding that from perusal of the evidence on record it appeared that the opinion of the hand writing expert has been corroborated by the oral evidence of other witnesses as well as by the circumstantial evidence which cumulatively pointed towards the involvement of the convict-appellant in the offence. Thus, commission of forgery as well as use of the forged document have been proved against the convict-

appellant as per requirement of Section-468 and Section-471 of the IPC.

7. Mr. B. Deb, learned counsel appearing for the petitioner has submitted that the finding of conviction suffers from perverse appreciation of the evidence inasmuch as the specimen signatures as obtained from the petitioner [part of Exbt.9 series] and the specimen signatures of the informant (PW-1) [part of Exbt.9 series] and the signatures on the withdrawal slips which were sent to the handwriting experts were the subject of the examination by the handwriting expert. The handwriting expert gave his opinion by the report dated 31.08.2012 [Exbt.4]. He has opined that:

"All these aforesaid differences in handwriting characteristics combined with defective line-quality in qd. Signatures are fundamental in nature, and in the absence of fundamental similarities between them, I am of the opinion that the person who wrote the blue enclosed writings and signatures stamped and marked S1 to S29 did not write the red enclosed writings and signatures similarly stamped and marked Q1, Q1/1, Q1/2, Q1/3, Q2, Q3, Q3/1, Q3/2, Q3/3 and Q4.

There is no dispute that the signatures (S1 to S 29) are the signatures of the informant and the red marked signatures are the questioned signature on the withdrawal slips. The handwriting expert has further observed that:

"The person who wrote the blue enclosed writings and signatures stamped and marked S30 to S58, S41/1, S44/1, S44/1, S46/1, S48/1 S50/1, S52/1, S54/1, S56/1 and S58/1 also

wrote the red enclosed writings and signatures similarly stamped and marked Q3."

The very important observation that has been recorded by the handwriting expert is as under:

"It has not been possible to express a definite opinion regarding the authorship of the rest of the questioned items on the basis of comparison with the materials supplied."

8. Therefore by the opinion of the handwriting expert [Exbt.4], it is not possible to find out who gave the signature Q1/1, Q1/2, Q1/3 and Q2. The handwriting expert thereafter has given his reasons for such opinion in the report which is as under:

"(1) The questioned signature and the specimen signatures belong to same general class such as movement, alignment, skill, slant, and relative size and proportion of letters.

(2) Although certain parts of questioned signature is the product of imitation, the writer unconsciously incorporate some of his individual features which are very significant from identification point of view. The following features are found to be similar in individual writing characteristics:

i) Manner of execution of letter "U" with shape of its curve, formation of an eyelet/retrace at the top of the upward stroke and abrupt finish; manner of execution of letter "h" with nature of its commencement and down-ward direction of finish; manner of execution of letter "a" with an open body part and direction of finish in word "Sushanta" vide qd. and sp. Signatures. The writer tried to imitate the letters "S", "h" and "d" where defects like hesitation, tremor of fraud, careful retouching are observed. On cumulative consideration of all the features, I have come to the conclusion as stated in para-4 of this opinion."

9. In the trial, PW-1, Sushanta Deb in the trial replicated his version of the written complaint that the petitioner without his authority had taken away the savings bank account and withdrawal slips which were signed by the Cashier but the petitioner had forged the second signature in order to and withdraw the amount of Rs 40,000/- in two instalments.

10. PW-2, namely Sukumar Deb, younger brother of PW-1 has stated that on 10.08.2006 at about 11 am the petitioner came to their house and asked him to hand over the pass book and the withdrawal slips of the SHG of his brother and on good faith. He handed over the documents to the petitioner. He has further stated that the informant forged the signature of his elder brother while withdrawing the money. In the cross-examination, he did state that he did not inquire from his brother PW-1, whether the petitioner was authorised to withdraw the said amount or not. In this regard, the statement of PW-1 may be reproduced for purpose of specific reference:

“My brother informed me that Titu Kr. Deb taken away the pass book and withdrawal forms which were signed by Pranab Kr. Dey and it is told by the accused that I have been asked him to take the said documents from my brother and thereby my brother handed those two to the accused. Thereafter, I went to my Bank on 14.08.2006 and upon enquiry from SBI, Udaipur branch came to learn that accused withdrawn on 10.08.2006 and subsequently again withdrawn Rs.20,000/- from our account on 12.08.2006. Since it was a joint account without my signature no money can be withdrawn from out account but Titu Kr. Deb forged my signature and thereby he withdrawn the said amount using my signature as genuine.”

11. PW-3, Shimul Deb has stated that his elder brother Sukumar Deb was asked by the petitioner to hand over the pass book of Netaji SHG along with the withdrawal slips. His elder brother accordingly handed over the pass book and withdrawal slips. On 14.08.2006 when informant returned home and he was told that the petitioner had come to their house and taken the pass book along with some withdrawal slips. His elder brother along with the cashier enquired about the said bank, they came to know that a huge amount was taken away from the said account of the SHG.

12. PW-4, Pranab Kr. Das has stated that he was told by the informant that in their absence the petitioner took away the pass book along with some withdrawal slips which were signed by him in advance. Subsequently by forging the signature of Susanta Deb, the informant the petitioner had withdrawn Rs.40,000/- from the account of the SHG.

13. PW-5, Rajib Debbarma was working as a Messenger and in his presence the questioned withdrawal slips of Netaji SHG were seized from the chamber of the Branch Manager of SBI, Udaipur branch. He identified his signature on the seizure list.

14. PW-6, Surajit Sen did not disclose any material fact.

15. PW-7, Balaram Sen did not disclose any fact of material consequence.

16. PW-8, Bijan Kr. Deb Roy is another seizure witness of the questioned withdrawal slips on 17.11.2006. He identified his signature. In the cross-examination, he has stated that he could not recollect whether he had verified the signatures of Pranab Kr. Deb or not.

17. PW-9, Tapan Das has stated that he alongwith the informant went to Agartala and on return he came to learn that in absence of his son, the informant, the petitioner took away the pass book of SHG from their house and withdrew an aggregate sum of Rs.40,000/- on two occasions.

18. PW-10, Sadhan Das turned hostile and he did not support the prosecution case.

19. PW-11, Rajib Debnath was the Officer-in-Charge of the Maharani outpost and he has stated in the trial that he endorsed the case to Sri Bipin Debbarma for investigation. Thereafter, one S.I, Rana Chatterjee was entrusted to investigate. He identified their handwritings. Subsequently he took up the investigation and filed the chargesheet and as there was no evidence against Uttam Deb as stated he prayed for discharging him from the criminal liability.

20. PW-12, Tapan Ch. Saha has stated nothing of material importance.

21. The statement of the handwriting expert Amal Chandra Kalika [PW-13] has been referred, it may not be replicated further.

22. PW-14, Bipin Debbarma was the first Investigation Officer. He has stated how he examined the witnesses after he was endorsed with the case. He did visit the P.O. and prepared the hand sketch map. In the context of the seizure, he prepared the seizure list [Exbt.2] observing the due process. He could not apprehend the petitioner thereafter he handed over the case to Rana Chatterjee as stated. He has categorically stated that he did not seize the specimens signatures of the account holders from the account-records, which is maintained by the bank.

23. PW-15, Shri Rana Chatterjee was not examined by the prosecution.

24. PW-16, Shri Jatindra Das also participated in the investigation. He collected the handwriting of the petitioner on 10 specimen of withdrawal slip those are marked as Exbt.7 series. Signatures are marked as Exbt.8 series.

PW-16 has claimed to have taken the signature of the informant. Those are marked admitted the evidence as Exbt-10 series. From the records, the following documentary evidence are available:

"Ext. 1 series –	Signatures of PW1 in the ejahar
Ext. 2 series –	Withdrawal Forms

Ext. 2/1	-	Signature of P.W.4 on the withdrawal forms
Ext. 1/1	-	Written ejahar
Ext. 1/2	-	Signature of P.W. 12 on the written ejahar
Ext. 1/3	-	Endorsement and signature of P.W.14
Ext.3	-	Signature of P.W. 5 on the seizure list
Ext. 3/1	-	Signature of P.W. 8 on the seizure list
Ext. 3/2	-	Seizure list
Ext. 3/3	-	Signature of P.W.14 on the seizure list
Ext.4	-	Report of Expert dated 31.8.12
Ext.5	-	FIR
Ext.7 series	-	Specimen signature and hand writing of the informant
Ext.8 series	-	Withdrawals forms
Ext.9 series	-	Specimen signature and hand writing of the accused"

25. Mr. R. C. Debnath, learned Addl. P.P. appearing for the respondent has submitted that the prosecution has substantively proved the charge beyond reasonable doubt by adequate evidence and further submitted that there are some minor discrepancies here and there and those may be ignored for the overwhelming presence of evidence that on the relevant day of withdrawal, the withdrawal slips and the savings account of the said SHG was in the custody of the petitioner and on two occasions during the said custody, the money was withdrawn from the bank.

26. Mr. Debnath, learned Addl. P.P. appearing for the respondent has submitted further that there cannot be any amount of doubt that Q1 documents meaning Exbt.2 series were the challans (the withdrawal slips) by which on two occasions the petitioner have allegedly withdrawn a sum of Rs.40,000/- in aggregate. The handwriting expert in his opinion could not say whether those Q1 documents were written by the petitioner whose specimen signatures were collected and compared. The result is available in the para-4 of

the said report. Nobody has stated to have seen the petitioner forging the signature on the Q1 series documents.

27. On scrutiny of the records, this court finds that there is no material to prove that the petitioner forged the document Q1 series [Exbt.2 series] in the record of evidence. When the signature of other persons is forged only the expert and the circumstantial evidence can determinatively indicate say that the forgery has been committed by the person whose handwriting has been compared. As stated by the apex court in **Fakhruddin vs. State of Madhya Pradesh** reported in **AIR 1967 SC 1326** that it would be risksome to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court shall always try to see whether it is corroborated by the other evidence, direct or substantial.

28. Section 468 of the IPC demands certain elements are proved. The elements are delineated by Section 463 of the IPC. Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery. Thus making of a false document is *sine qua non* of forgery and that basic ingredient

has to be proved. It has been proved substantially that PW-1, the authorised signatory, did not sign on the withdrawal slips whereas PW-4, the other authorised co-signatory had signed on the blank withdrawal slips for meeting emergency and those were kept in the house of PW-1. There is sufficient evidence to found that the petitioner took out those blank withdrawal slips signed by PW-4. But since there is no reliable evidence that it is the petitioner who forged the signature of PW-1, this court is of the view that conviction under Section 468 cannot be sustained. As it is found that the petitioner failed to explain as to the taking out of the withdrawal slips, which were used for withdrawing a sum of Rs.40,000/- on two different occasions by the petitioner even though a strong circumstantial evidence has surfaced and based thereon he might be convicted. The withdrawals took place when the savings bank account and the withdrawal slips were in the custody of the petitioner. According to PW-1, the withdrawal slips were not returned by the petitioner till the day of withdrawal. The petitioner, as it has surfaced in the evidence returned the savings account book to the father of PW-1 subsequently through the petitioner's younger brother on 12.08.2006. The petitioner simply denied the charge but did not give any other evidence when the testimonies of PW-1, PW-2, PW-3 and PW-4 are quite consistent and corroborative. The petitioner did not have any say to weed out such strong circumstantial evidence against him which he could have done under Section 106 of the

Evidence Act. The circumstantial evidence is entirely against him and pointing to his guilt. Even though he is liable to be acquitted from the charge of Section 468 of the IPC, but he cannot be acquitted in view of such strong clinching circumstantial evidence from the charge under Section 471 of the IPC. As it has been established that the withdrawal slips were forged, those were deposited and the money was withdrawn from the bank and at the relevant point of time when it has been established beyond reasonable doubt those withdrawal slips were in the custody of the petitioner, the petitioner cannot avoid the finding of conviction under Section 471 of the IPC. It has been proved by PW-1 and PW-4 that the petitioner had no business to meddle with the banking transaction, despite that he took out those withdrawal slips from the custody without authority and as such, it can be held that the petitioner had reason to believe that the withdrawal slips were not authorised and those were forged. Thus it is deducible from various circumstances, even though such circumstances may not necessarily be capable of absolute conviction or inference, but they are sufficient to create trustworthiness by chain of probable reasoning leading to the conclusion or inference about the nature of things. In this regard, a decision of the apex court in **A.S. Krishnan and others vs. State of Kerala** reported in **(2004) 11 SCC 576** may be referred where the apex court has observed as under:

9. Under IPC, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. Section 26 IPC explains the meaning of the words "reason to believe" thus:

"26 - 'Reason to believe'- A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise."

10. In substance what it means is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements i.e. "knowledge" and "reason to believe" have to be deduced from various circumstances in the case. (See Joti Parshad v. State of Haryana [1993 Supp (2) SCC 497]."

29. Having observed thus, the conviction under Section 471 of the IPC is maintained however in view of the earlier observation, the conviction under Section 468 of the IPC is interfered with and set aside. So far the sentence under Section 471 is concerned, it is reduced to rigorous imprisonment for one year with fine of Rs.5000/- , in default to suffer 6(six) month's simple imprisonment. Thus, this revision petition stands partly allowed to the extent as indicated above.

The petitioner is directed to surrender in the court of the Chief Judicial Magistrate to serve out the sentence within 30(thirty) days from today. In the event of his failure to surrender before the court of the Chief Judicial Magistrate, Gomati Judicial District, Udaipur, the said court shall take all measures to compel the petitioner serve the sentence.

Send down the LCRs forthwith.

JUDGE

Moumita