

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL.A No.6 of 2018

Sri Pankaj Bihari Saha,

son of late Anil Chandra Saha, proprietor
of Udaipur Bonded Ware House, New
Town Road, Udaipur, P.S. R.K. Pur,
District- Gomati, Tripura

..... **Appellant**

- V e r s u s -

1. **Sri Ramkrishna Deb,**

son of Sri Nripendra Deb, resident of
Dhwajanagar, Madhyapara [in front of
Netaji Subhas Mahavidyalaya], Ward
No.9, Udaipur, P.O. Gokulpur-799141,
P.S. R.K. Pur, District- Gomati, Tripura

2. **The State of Tripura,**

represented by the Secretary, Home
Department, Government of Tripura

..... **Respondents**

For the Appellant (s)	:	Mr. P.K. Biswas, Sr. Adv. Mr. P. Majumder, Adv.
For the Respondent (s)	:	Mr. K.N. Bhattacharjee, Sr. Adv. Mr. S. Pandit, Adv. Mr. S. Ghosh, Addl. PP
Date of hearing	:	13.01.2020
Date of delivery of Judgment & order	:	31.07.2020

Whether fit for reporting	:	<table border="1"><thead><tr><th>YES</th><th>NO</th></tr></thead><tbody><tr><td></td><td>√</td></tr></tbody></table>	YES	NO		√
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HON'BLE MR. JUSTICE S. TALAPATRA

JUDGMENT & ORDER

This is an appeal under Section 378(4) of the Cr.P.C.
against the judgment dated 25.01.2018 delivered in case
No.CR(NI) 48 of 2016 acquitting the accused from the accusation
of dishonour of cheque punishable under Section 138 of the

Negotiable Instruments Act, 1981, the NI Act in short, by the Judicial Magistrate, First Class, Gomati Judicial District, Udaipur.

[2] The appellant lodged the complaint under Section 138 of the NI Act when the cheque bearing No.868625 on the account No.21210210000526, maintained in the UCO Bank Udaipur Branch, for an amount of Rs.10,72,583/- [Rupees Ten lakhs Seventy Two thousand Five hundred Eighty Three] was dishonoured for insufficiency of fund and the amount was not paid by the respondent No.1 [the accused] even after the notice dated 17.05.2016 demanding payment of the cheque amount was received by the accused on 25.05.2016. The trial Judge has observed that the appellant has failed to prove the account of liability or the credit due to the accused. According to the complainant, total amount fell outstanding was Rs.10,72,583/- which stood contradictory to the pleaded and deposed credit of Rs.15,00,000/- [Rs.20,00,00-5,00,000/-]. On the contrary, the accused by filing a copy of another bearing No.868624 dated 10.05.2016 [Exbt.E] has claimed to have paid a sum of Rs.5,54,978/-. In the ledger maintained by the complainant the said amount is not posted. That apart, prior to filing of the complaint being case No.CR(NI) 48 of 2016, another complaint being CR(NI) 47 of 2016 was filed by the complainant where it had

been stated at Para-4 that the amount of credit on and from April, 2013 to March, 2016 was about Rs.20,00,000/-. The accused person paid about Rs.5,00,000/- by cash but the rest of the amount had not been paid. In Para-6 of the previous complaint it had been further stated that by the cheque No.868624, the accused had sought to pay a sum of Rs.5,54,978/- on his account but finally the said complaint was withdrawn and the present complaint under reference was perused. But in the present complaint, according to the judgment of acquittal, the complainant has failed to give any explanation how the outstanding of Rs.15,00,000/- came down Rs.10,72,583/-. It has been also asserted that the complainant did not accede that the blank cheque was given by the accused to him with instruction to deposit the said cheque for encashment when the accused would so instruct. Thus, it has been observed as follows:

"... in this case, I find the plea and evidence adduced by the complainant is not cogent, corroborative and convincing and the accused is entitled to get benefit of doubt. In my view from the plea and evidence adduced by the complainant a doubt has been arisen and thus, it can be said that the accused is raised a reasonable doubt and presumption in favour of the cheque is rebutted."

Having observed thus, the respondent No.1 [the accused] has been acquitted.

Being aggrieved, this appeal against the judgment and order of acquittal has been preferred.

[3] Mr. P.K. Biswas, learned senior counsel and Mr. P. Majumder, learned counsel appearing for the appellant has submitted that the said finding is perverse and outcome of misreading of the evidence as led by the appellant. The complainant [PW-1] has proved that the accused, the proprietor of Ompi Foreign Liquor Shop [under license] had the business relation with the complainant. The accused used to lift the foreign liquors from Udaipur Bonded Ware House, owned by the complainant. According to the complainant there was outstanding balance of Rs.20,00,000/- on the account for the period from April, 2013 to March, 2016. Out of that, an amount of Rs.5,00,000/- was paid in cash by reducing the outstanding to Rs.15,00,000/-. It has been stated in the trial by the complainant that on 03.05.2016 the accused issued the said cheque No.868625 [Exbt.1] in favour of the complainant, but when the said cheque sought to be encashed through the Union Bank of India, the cheque got dishonoured with reason as communicated by the UCO Bank due to 'insufficient fund'. The communication was received on 04.05.2016 and on 17.05.2016, the demand notice was sent to the accused person demanding immediate payment of the cheque amount. Even though the said notice was received on 25.05.2016, but the accused person did not pay any amount. PW-2, Biswajit Choudhury

has testified as shown by Mr. Biswas, learned senior counsel that the transaction used to happen both by cash and cheque. Even though PW-2 was the Manager of Udaipur Bonded Ware House but he has not stated anything about the account. PW-2 has only stated that the said cheque was dishonoured due to the insufficient fund. PW-1 [wrongly typed as PW-2 at the time of his re-examination] however admitted the related documents, such as the original cheque dated 03.05.2016 and the returned memo as signed by the bank [Exbt.3]. The acknowledgment cards [Exbt.6] showing the date of receipt of the demand notice on 25.05.2016 has been admitted in the evidence. He has also introduced the copies of the supply order [Exbts.8A to 8D] and challans [Exbts.9A to 9F]. Even the ledger account of the accused for the period from 01.04.2014 to 31.03.2015 was submitted by PW-2 [Exbt.12]. It may be mentioned that according to the complainant, outstanding fell due during period from April, 2013 to March, 2016 but the ledger account [Exbt.12] was for the period from 01.04.2014 to 31.03.2014. PW-2 has denied that at any point of time he has received any blank cheque from the accused. PW-4, Sajal Rakshit, the cashier of the said Bonded House has testified in the trial that the transaction continued between the Bonded Ware House and the accused for the period from 2013 till 04.07.2016 and the

complainant had the balance of Rs.10,72,583/-. But in the cross-examination, he has stated that on 05.04.2015 the accused paid Rs.5,00,000/- in cash to him. Mr. Biswas, learned senior counsel has contended that from a reading of the ledger it will be evident that on 31.03.2015 the closing balance was Rs.11,22,583/-. Thus, the observation of the trial Judge is absolutely perverse. But no explanation how the said outstanding was registered, keeping in mind the complainant has categorically stated that the outstanding was Rs.15,00,000/-. Mr. Biswas, learned senior counsel has submitted that from the documentary evidence [the return memo] it has been proved that the cheque was dishonoured for insufficient fund and despite the demand notice was received on 25.05.2016, the cheque amount was not paid within 15 days as required by the NI Act. On 18.06.2016 the complaint was filed. When the liability has been clearly proved by the complainant, there had been no other alternative but to convict the accused under Section 138 of the NI Act.

[4] From the other side, Mr. K.N. Bhattacharjee, learned senior counsel assisted by Mr. S. Pandit, learned counsel has appeared for the accused and drawn attention of this court the certified copy of the other complaint [Exbt.B] filed by the complainant where for the same period the outstanding was shown

Rs.20,00,000/- and it has been stated that out of that outstanding Rs.5,00,000/- was only paid by cash. The said complaint was also filed on 18.06.2016 on dishonor of cheque bearing No.868624 dated 10.05.2016, the said complaint was withdrawn with leave of the court. Whether that sum of Rs.5,54,978/- as reflected in the cheque No.868624 [Exbt.E] was encashed or not, in the subsequent complaint there is no reflection. But on the body of the cheque, there is one endorsement 'cleared'. The accused has examined himself as DW-2 and stated that he had surrendered his license for retail vend of foreign liquor in the year 2015, meaning after 31.03.2015, he had no business with the complainant. He has categorically stated that the complainant had obtained the cheque from him under No.86860-868613, 868615 to 868627 as the security for making payment of the money for the foreign liquor purchased by him from the complainant. Under his instruction, the said bonded house, used to fill up the cheque and encash the same. DW-2 has categorically stated that he used to pay also in cash. On termination of the business, he demanded the unused cheques from Udaipur Bonded Ware House, but those were not returned. In the year 2016 he received one blank envelop from Mr. Sekhar Deb, Advocate. The said envelop [Exbt.A] has been placed

in the evidence by DW-2. Thereafter, he has categorically stated as follows:

"Complainant Sri Pankaj Behari Saha also filed another case against me vide No. CR(NI) 47 of 2016. This is the certified copy of the said complaint petition which is marked as Exbt. B.I. I have also submitted certified copy of the counter part of the deposit slip filed in that case by complainant. This is the certified copy of the said counter part of deposit slip which is marked as Exbt.C. I have also submitted the certified copy of the returned memo filed in the said case by complainant. This is the certified copy of returned memo which is marked as Exbt.D. I have also submitted certified copy of cheque filed in the said case by complainant. This is the certified copy of the said cheque which is marked as Exbt.E. in two sheets. The complainant submitted balance sheet in this case only in respect of the payment made by me through cheque but the complaint did not submit any balance sheet or statement of the payment made by me in cash. On 01.11.2014 I have paid Rs.1,00,000/- to Bonded Ware House. On 26.12.2014 I have paid Rs.1,00,000/- to Bonded ware house. On 16.02.2015 I have paid Rs.1,00,000/- to Bonded ware house. On 15.04.2015 I have paid Rs.5,00,000/- to Bonded ware house. On 15.05.2015 I have paid Rs.2,22,000/- to Bonded ware house. On 04.07.2015 I have paid Rs.50,000/- to Bonded ware house. The complainant is not entitled to any money from me but he filed this false case against me."

He has categorically stated that the cheque No.868625 [Exbt.1] was issued by him on 04.07.2014 as security in favour of Udaipur Bonded Ware House. In the cross-examination, he has admitted that he did not produce the receipt before the trial court to show the fact that he had paid the money in cash to the said Bonded Ware House. In the ledger book, payment of Rs.5,00,000/- is reflected. But he denied that his statement was incorrect or false. He has also admitted that he had not shown in his income tax return that the money was paid by him in cash to the said bonded house. DW-1, Sri Abhijit Debbarma has testified that the license for retail vend for foreign liquors was surrendered by the accused

and as such, the said shop was not functioning after 31.03.2015. Even the series of challans will show that no challan was issued after 19.03.2014. PW-3, Riman Das claimed to have witnessed the payment of Rs.5,00,000/- made to the complainant on 15.04.2015. According to him, the money was paid by four bundles of currency of denomination of Rs.1000 and two bundles of currency of denomination of Rs.500./-. The Bonded House asked the accused person to collect the money receipt later on. In the cross-examination, he has failed to say to whom the money was paid.

[5] From the scrutiny of the evidence, what appears pertinent to decide in this appeal is that whether the trial Judge has read the evidence led by the complainant perversely when he had held that the account as produced by the complainant was showing the correct position of outstanding balance, but the said balance has not been properly explained. Further, whether the complainant has been clearly proved that the cheque was issued by the accused person to discharge the legally enforceable debt or liability either in whole or in part. In this regard, the statements of PWs-1,2 and 4 are vital. PW-1, the complainant has categorically stated that on March, 2016 the outstanding against the accused was Rs.20,00,000/- and thereafter, the accused had paid Rs.5,00,000/- and that amount of Rs.5,00,000/- had been credited

in the account of the accused, but the rest of the amount was not paid by the accused. Thus, if this piece of evidence is believed, the total outstanding as on 31.03.2015 or for that matter of fact as on 31.03.2016 would be Rs.15,00,000/-. As stated earlier, PW-2 did not make any statement in respect of the outstanding. During the re-examination PW-1 adduced the ledger of the accused [Exbt.12] and in the cross-examination, he has denied two facts that the cheque as dishonoured was not a security cheque and he had received a sum of Rs.15,000/- in cash on 04.07.2015 but he has denied that he had ever received the sum of Rs.5,00,000/- in cash from the accused person whereas he has himself in the examination in chief stated that he had received Rs.5,00,000/- in cash. PW-4 who claimed to be the cashier had made an unique statement that till 04.07.2016 the accused had outstanding of Rs.10,72,583/- which statement is diametrically opposite to the claim of PW-1 [the complainant]. The ledger as produced by the accused person before the court starts from 02.06.2014 and ends on 31.03.2015 showing an outstanding balance of Rs.11,22,583/-. But the ledger filed by the complainant is for the period from 01.04.2014 to 31.05.2015 and from an additional ledger for the period of 01.03.2015 to 01.04.2016. The ledger from 01.04.2015 to 01.01.2016 shows that on 04.07.2015 the accused paid a sum of

Rs.50,000/- but the complainant did not admit that amount. As observed by the trial Judge, having reference to the previous complaint that by the cheque No.868624, the accused paid a sum of Rs.5,54,978/- on 10.05.2016 [see Exbt.E], but the complainant, though had withdrawn the complaint, did not make any statement whether the money was paid or not. Thus, the account remains ambiguous and highly disputed inasmuch as it is gathered that some amounts, save and except the sum of Rs.5,00,000/-, were also paid by the accused in cash. As there is no explanation whether the cheque No.868624 dated 10.05.2016 had been encashed or not, creates further fudging of the account. That position would only benefit the accused person. Thus, it has to be held that the complainant has failed to prove the extent of legally enforceable debt or liability. Hence, in the considered view of this court, in such circumstances the trial Judge has correctly extended the benefit to the respondent No.1 [the accused].

Having observed thus, this appeal stands dismissed.

Send down the LCRs forthwith.

JUDGE