

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A 21 of 2022

Shri Nakul Debnath

Son of Shri Manoranjan Debnath
Resident of Maran Sur Para, Muhuripur
PO & PS: Baikhora, District: South Tripura

---Appellant(s)

Versus

1. Shri Bidhan Mitra

Son of Sri Jadugopal Mitra
Resident of Village-Kalma
PO & PS: Baikhora
District: South Tripura

2. The State of Tripura

---Respondent(s)

For Petitioner (s)	: Mr. Sayantan Talapatra, Adv.
For Respondent(s)	: Mr. Pulak Saha, Adv. Mr. Naba Kumar Das, Adv.
Date of hearing and date of judgment and order	: 31.05.2023.
Whether fit for reporting	: No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order (Oral)

This is an appeal under Section 378(4) of the Criminal Procedure Code, 1973 against the judgment and order of acquittal dated 11.08.2022 passed the learned Chief Judicial Magistrate, South Tripura, Belonia in N.I 20 of 2021.

[2] It is the case of the appellant-complainant that both the complainant and accused-respondent have a cordial relationship with each other due to the said relationship they entered into the partnership business of foreign liquor shop at Baikhora bazar named and styled as "Baikhora Bazar Foreign Liquor Shop" bearing licence no. 17/EX/S/FL/2019-20. The licence was issued in the name of accused and due to running of the business under partnership firm, the accused requested the complainant to contribute capital amount in his personal bank account instead of partnership firm account and then on good faith

on several occasion the complainant paid Rs.28,80,000/- to the accused in presence of witness namely Pandab Reang. But after smooth running of the business, the accused did not provide any profit or did not provide any statement of the said business to the complainant and on several occasion the complainant requested the accused to return back his amount but the accused always sought time to repay the same. On being repeated request, on 20.03.2021, the accused issued a cheque bearing no. 917325 for an amount of Rs.28,80,000/- to the complainant in presence of witness namely Jasudhan Das. It is further case of the complainant that on the same day i.e. on 20.03.2021, he submitted the said cheque to Tripura Gramin Bank, Baikhora Branch for encashment of the said amount but the said cheque was dishonoured due to insufficient of fund and thereafter he informed the matter to the accused verbally but inspite of that the accused did not make any payment to him. Subsequently, on 06.04.2021 he sent a legal notice to the accused person and also requested the accused person to make payment within stipulated period from the date of receipt of said notice, but in spite of having the notice duly served upon the accused person on 10.04.2021, the accused person did not take any step to liquidate his liabilities by making the payment to the complainant towards the amount covered under the said cheque.

[3] It surfaces from the record that on 12.04.2022 the accused person was examined under Section 251 of the Cr.PC to which he pleaded not guilty and claimed trial.

[4] Thereafter, the court below opined that to bring the home the guilt of the accused, the complainant had to prove beyond reasonable doubt elements of Section 138 Negotiable Instrument Act by crossing the following legal bench marks:

- a. *The cheque was drawn by the drawer on an account maintained by him with the banker for payment of any amount of money out of that account to the complainant.*

- b. The said payment was made for discharge of a legally enforceable debt or other liability in whole or in part.*
- c. The said cheque were returned unpaid by the bank.*
- d. The cheque was presented to the bank within a period of three months from the date on which it was drawn or within the period of its validity whichever is earlier.*
- e. The payee or the Holder in due course of the cheque as the case may be made a demand for the payment of the said amount of money by giving the notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.*
- f. The drawer of the cheque fails to make the payment of the said amount of money to the payee or as the case may be the Holder in due course of the cheque within 15 days of the receipt of the said notice.*

[5] In the course of the Trial, the appellant was examined and cross-examined as P.W.1, and one Pandab Reang was examined and cross-examined as P.W.-2. Some documents were also exhibited.

[6] Thereafter, by the impugned order dated 11.08.2022 the court below has held that there was no legally enforceable debt and accused has remained successful in rebutting the mandatory presumption of law in favour of the complainant. Finally, the accused person namely Bidhan Mitra was acquitted for the offence as punishable under Section 138 of NI Act, 1881.

[7] Aggrieved by the aforesaid Judgment, the appellant herein has filed this present appeal to set aside the impugned Judgment and Order dated 11.08.2022 passed in Case No. N.I. 20 of 2021.

[8] Mr. Sayantan Talapatra, learned counsel appearing for the appellant has submitted before this court that the court below failed to consider that the respondent No.1 had taken two contradictory pleas and therefore those pleas are wrongly appreciated by the court below. The respondent No.1 during the trial took the plea that the cheque was issued by him as security cheque and simultaneously took another plea that the cheque was lost and in this regard respondent No.1 also made a GD entry but extract of the said GD entry was not produced during the trial. It is further contended by the counsel for the appellant that the court below has failed to appreciate that the respondent No.1 issued the

cheque from his own account and therefore Section 141 of the Negotiable Instrument Act, 1881 has no application in the instant case.

[9] Mr. Pulak Saha, learned counsel appearing for the respondents has drawn the attention of this court to the statement of DW-1 Bidhan Mitra where it has been stated by DW-1 that the appellant herein using his personal capacity and position has taken foreign liquor on credit for amounting to Rs.24,00,000/- (Twenty four lakhs) which are paying by Bidhan Mitra. The complainant opened a 'CC' account in Tripura Gramin Bank, Baikhora Branch and in that 'CC' account and respondent No.1 is the guarantor. Counsel for the accused-respondent has drawn the attention of this court to the fact that the cheque was issued for profit to the complainant as a profit but later on it was not honoured by the bank. But regarding the profit and loss, the complaint has not submitted any document regarding how many business transaction was made between the complainant and the accused and how much profit was accrued from the said business.

[10] Mr. Saha, learned counsel also contended that the PW1 in his cross examination also mentioned that he did not submit any original copy of ITR before the court below during the trial. On the same point, Mr. Saha, learned counsel relied on a judgment of the apex court in **Basalingappa vs Mudibasapa** reported in **(2019) 5 SCC 418** where the apex court has held as inter-alia.

"28. We are of the view that when evidence was led before the Court to indicate that apart from loan of Rs.6 lakhs given to the accused, within 02 years, amount of Rs.18 lakhs have been given out by the complainant and his financial capacity being questioned, it was incumbent on the complainant to have explained his financial capacity. Court cannot insist on a person to lead negative evidence. The observation of the High Court that trial court's finding that the complainant failed to prove his financial capacity of lending money is perverse cannot be supported. We fail to see that how the trial court's findings can be termed as perverse by the High Court when it was based on consideration of the evidence, which was led on behalf of the defence. This Court had occasion to consider the expression "perverse" in Gamini Bala Koteswara Rao and others Vs. State of Andhra Pradesh through Secretary, (2009) 10 SCC 636, this Court held that although High Court can reappraise the evidence and conclusions drawn by the trial court but judgment of acquittal can be interfered with only judgment is against the weight of evidence. In Paragraph No.14 following has been held:-

"14. We have considered the arguments advanced and heard the matter at great length. It is true, as contended by Mr

Rao, that interference in an appeal against an acquittal recorded by the trial court should be rare and in exceptional circumstances. It is, however, well settled by now that it is open to the High Court to reappraise the evidence and conclusions drawn by the trial court but only in a case when the judgment of the trial court is stated to be perverse. The word "perverse" in terms as understood in law has been defined to mean "against the weight of evidence". We have to see accordingly as to whether the judgment of the trial court which has been found perverse by the High Court was in fact so."

After a fair reading of the said judgment, it appears to this court the said judgment is not relevant to the case in hand.

[11] Mr. Talapatra, learned counsel for the appellant has contended before this court that the appellant-complainant paid Rs.28,80,000/- to the personal bank account of the accused and not in the partnership bank account. According to him, the accused is not denying the occurrence of the said transaction and the learned court below has failed appreciate the same and for this act the respondent No.1 is liable to punished for committing an offence under Section 138 of the Negotiable Act, 1881.

[12] Heard Mr. Sayantan Talapatra, learned counsel appearing for the appellant as well as Mr. Pulak Saha, learned counsel appearing for the respondents.

[13] After perused the entire records and having considered the submission as advanced by the learned counsel for the parties, it appears to this court that the court below shall make an endeavour for dealing with the said transaction between the appellant herein and the respondent No.1. Since the transaction has not been denied by respondent No.1, this Court prima facie feels that in order to meet the ends of justice, it would be appropriate to remand the matter back to the Trial Court for re-appreciating the evidence and to pass a reasoned order.

[14] Accordingly, this present matter is remanded back to the learned Court below to re-appreciate the evidence and then pass a reasoned order after

hearing both sides. Both parties are at liberty to file any additional evidence and adduce the same before the Court below, if so advised.

[15] With the above observation and direction, this present appeal stands disposed of setting aside the impugned order dated 11.08.2022 passed by the Chief Judicial Magistrate in NI 20 of 22021. Stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE



DIPAK DAS

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