

GAHC010016832024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./33/2024

JALIL AHMED
S/O LATE RANGIL ALI
R/O VILL- THUTIKATA,
P.O. NIJ TAPA, P.S. BELSOR,
DIST. NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:SRI NIKUNJA PATHAK
S/O LATE JATINDRA NATH PATHAK
R/O ISSAPURHATI
BARPETA
P.O. SANTINAGAR (BARPETA)
P.S. BARPETA
DIST. BARPETA
ASSA

Advocate for the Petitioner : MR. C S RAY,

Advocate for the Respondent : PP, ASSAM, MR. J DEKA (R-2)

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

JUDGEMENT AND ORDER (CAV)

Date : 17-09-2024

Heard learned counsel, Mr C S Ray, for the petitioner, learned Additional Public Prosecutor, Ms S Jahan, for the State of Assam/respondent No. 1 and the learned counsel, Mr J Deka, for respondent No. 2.

2. The petitioner Jalil Ahmed, has filed this application under Section 397, read with Section 401 of the Code of Criminal Procedure, 1973, (CrPC, for short)challenging the legality and propriety of the Judgment and Order dated 04.01.2024, passed by the learned Additional Sessions Judge (FTC), Barpeta, in connection with Criminal Appeal No. 29/2023, upholding the Judgment and order dated 17.07.2023, passed by the learned Judicial Magistrate First Class, Barpeta, in connection with NI Case No. 90/2017, under Section 138 of the Negotiable Instruments Act, 1881 (the NI Act, for short).

3. The genesis of the case was that the petitioner Jalil Ahmed, approached the complainant arrayed as respondent No. 2 in this case, for a loan of Rs. 8 lacs and promised to repay him the loan. Subsequently, the petitioner issued a written cheque bearing No. 104843 dated 23.08.2017, for Rs. 8 lacs drawn on the account of the petitioner being AC No. 11004739401 of the State Bank of

India, Nalbari Branch. The complainant, Sri Nikunja Pathak (hereinafter, also referred to as the respondent No. 2) deposited the cheque on 24.08.2017, in his account maintained at the State Bank of India, Barpeta Branch, but the cheque was dishonoured on 25.08.2017, on grounds of 'insufficiency of funds'.

4. The respondent No. 2 sent a legal notice dated 26.08.2017, to the petitioner, informing about the dishonour of the cheque and demanded payment of the cheque within 15 days of receipt of the notice. As per information of the postal authority, the petitioner received an e-notice on 20.08.2017 and he sent a reply through his engaged counsel and he did not pay the cheque amount. This impelled the respondent No. 2 to file a complaint under Section 138 of the NI Act. Cognizance of offence under Section 138 of the NI Act was taken and process was issued against the petitioner. On appearance of the petitioner, particulars of offence were explained under Section 138 of the NI Act and the petitioner pleaded not guilty and claimed to be tried.

5. To substantiate his stance, the respondent No. 2 adduced the evidence of two witnesses comprising of the respondent No. 2 himself and the Branch Manager of the State Bank of India, Barpeta Branch. The respondent No. 2 also exhibited certain documents. The witnesses were cross-examined and the petitioner also adduced the evidence of two witnesses, comprising of himself

and his son. On the incriminating evidence projected against the petitioner by the respondent No. 2, several questions were asked to the petitioner under Section 313 CrPC and the petitioner's plea was of total denial. The learned trial Court delineated on the following points to decide this case-

“(a) Whether the accused person issued cheque No. 104843 dated 23.08.2017, in favour of the complainant for the discharge of his legally enforceable debt or liability?”

“(b) Whether the cheque (P-1/PW-1) was dishonoured due insufficiency of funds?”

“(c) Whether the accused person received the demand notice issued by the complainant regarding the dishonour of the cheques?”

“(d) Whether the accused has committed the offence under Section 138 of the NI Act?”

6. As this is a revision against the impugned concurrent Judgments of conviction, the legality and propriety of this case has to be assessed. A cursory glance of the evidence reveals that the respondent No. 2 stated as PW-1, through his evidence on affidavit that, on 02.10.2016, at about 04:00 pm, he met the petitioner at Maa Durga Mistan Bhandar and the petitioner requested him for a loan of Rs. 8 lacs. The respondent No. 2 then helped the petitioner and lent him Rs. 8 lacs. The petitioner promised to repay the loan, but failed. In his cross-examination, the respondent No. 2 as PW-1, testified that he did not

receive any money receipt from the petitioner in lieu of the loan. He admitted that his net salary was Rs. 63,000/-, out of his gross salary of Rs. 67,000/- and he had Rs. 8 lacs in his house. He procured a loan from the Bank and he drew Rs. 2 lacs each time and he kept the money in his house, but did not deposit the same. He further admitted in his cross-examination that he did not submit his bank statement in the Court. He vehemently denied the suggestion that the petitioner did not issue any cheque in his favour. He could not recall when he had filed tax returns. He denied the suggestion that Rajen Das was known to him and he along with Rajen Das filed a case against the petitioner.

7. On the contrary, the petitioner deposed as DW-1 that the respondent No. 2, was not known to him and he never met him. He gave the cheque, Exhibit-P-1/PW-1 to his friend, Rajen Das. He admitted that he affixed his signature on the cheque. He (DW-1) gave the cheque to Rajen Das as security for the money he had borrowed from Rajen Das and he had repaid the borrowed amount to Rajen Das and asked Rajen Das to return his cheque, but Rajen Das did not return him the cheque. He (DW-1) then sent a pleader's notice to Rajen Das and also lodged a case against Rajen Das. Rajen Das assured that he would settle the matter, but he, (DW-1) suddenly received a notice from respondent No. 2 (PW-1). He replied the notice. He identified the replies as Exhibit-A, Exhibit-B

and Exhibit-3. He (DW-1) further deposed that he and the respondent No. 2/complainant were contemplating to settle this matter, but, however, they did not arrive at any settlement. He denied that he had ever taken any loan from the respondent No. 2 and he stated that on 02.10.2016, he was in Bhella.

8. However, in his cross-examination (DW-1) admitted that the Exhibit-1, i.e., the cheque belongs to him and Exhibit-1(1) and Exhibit-1(2) are his signatures. He admitted that at the time when the cheque was deposited, he did not have Rs. 8 lacs in his account. He did not lodge any case against the complainant (respondent No. 2). He (DW-1) also admitted in his cross-examination that on 26.03.2018, he filed a Petition No. 2282 of 2018 in the Court, stating that he had settled the case with the complainant/respondent No. 2 for Rs. 11 lacs and the amount would be deposited in installments. He identified Exhibit-10 as the petition and he admitted that Exhibit- 10(1) and Exhibit- 10(2) are his signatures.

9. It has thus been correctly held by the learned trial Court that the petitioner admitted through his evidence that Exhibit-P-1/PW-1 was a cheque issued by him and he affixed his signature on the cheque, and, thereafter, he also admitted that he had filed a Petition No. 2282 of 2018 in the Court on 26.03.2018, to settle the dispute with the respondent No. 2, for an amount of

Rs. 11 lacs. On the basis of the admission of the petitioner, it was held by the learned trial Court that the cheque was issued to the respondent No. 2. It is contended that the petitioner was convicted only on the ground of compromise and on the petition for compromise filed by the petitioner.

10. Learned counsel for the respondent No. 2 laid stress in his argument that the concurrent findings of the Trial Court and the Appellate Court cannot be reverted except on very limited grounds, i.e., only on patent defect or gross irregularity or on error of jurisdiction of the Court. Learned counsel for the respondent No. 2 has relied on the decision of the Hon'ble Supreme Court in *Amit Kapoor vs. Ramesh Chander and another reported in (2012) 9 SCC 460* wherein it has been observed that : -

“18. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this Court under [Article 136](#) of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a

sufficient ground for interference in such cases.”

11. In the instant case, it is true that according to the reply of pleader's notice, Exhibit-6 and according to the depositions of PW-1 and DW-1, it has surfaced that the respondent is not known to the petitioner but at the same time, the petition filed by the petitioner being petition No. 2282/2018 dated 26.03.2018 to settle the dispute for an amount of Rs.11 lacs cannot be ignored. The petitioner thus vacillated from his pleadings and evidence. Petitioner's petition No. 2282/2018 is marked as Exhibit-10. The petition No. 2282/2018 was filed by the petitioner/accused Jalil Ahmed and it was signed by him. The petition is reflected herein below :-

“1. That the aforesaid case has been fixed today for cross-examination.

2. That the petitioner states that the accused Jalil Ahmed has compromised the case with the complainant and agreed to pay the Compromise amount of Rs.11,00,000/- on instalment basis as agreed by the complainant today, hence this petition.

3. That in view of the facts and circumstances stated above necessary order/orders may be passed to adjourn the case for today.

4. That this petition has been filed bonafide and for the ends of justice.

It is therefore prayed that your Honour may be kind enough to pass necessary order/orders to adjourn the case for today and/or pass such further or other order/orders as your Honour may deem fit and proper.”

12. This petition negates the entire defence of the petitioner.

13. The evidence of PW-1 depicts that the petitioner promised to pay the borrowed amount within 8 (Eight) months but when the petitioner failed to pay, the respondent No. 2 requested the petitioner, who eventually on 23.12.2017 at about 9:00 A.M. came to his house and handed over Exhibit-P-1 cheque No. 104843 dated 23.08.2017 drawn on his bank at SBI, Nalbari Branch vide account No. 11004739401. PW-1 denied acquaintance with any Rajen Das. It is not disputed that the cheque was returned due to insufficiency of funds (Exhibit-P/3) which has been substantiated by the evidence of Deputy Branch Manager, PW-2 Ismail Ali.

14. Although the petitioner denied issuing the cheque to the respondent No. 2, yet, he has acknowledged the same through his petition No. 2282/2018 dated 26.03.2018 when he expressed his desire to settle the dispute for Rs.11 lacs.

15. DW-1/petitioner also proved the pleader's notice issued to Rajen Das as Exhibit-A and Exhibit-C as his reply to pleader's notice. However, this defence of DW-1 remained unsubstantiated as he expressed his willingness to settle his dispute with the respondent No. 2. The defence of DW-1 was also not substantiated even on the touchstone of preponderance of probability as not a

scintilla of evidence was adduced to substantiate DW-1's claim that he had issued the cheque to Rajen Das and not to respondent No. 2. As the petitioner did not deny execution of Exhibit-P/1 i.e. the cheque, the presumption under Sections 118 and 139 of the NI Act operates against him. It has already been held in my foregoing discussions that the petitioner has failed to rebut the presumption against him through any evidence either documentary or oral.

16. This Court is thereby hesitant to interfere with the concurrent findings of the learned Trial Court and the learned Appellate Court.

17. In view of my foregoing discussions, this revision petition is hereby dismissed as no manifest defect or flagrant miscarriage of justice was discernible through the concurrent decisions of the learned Trial Court vide order dated 17.07.2023 in NI Case No. 90/2017 was passed and vide order dated 04.01.2024 in Criminal Appeal No. 29/2023 was passed.

18. Petition is dismissed as the same is devoid of merits.

19. Send back the Trial Court Records.

JUDGE

Comparing Assistant