

GAHC010009202012



2024:GAU-AS:11796

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

Case No. : Crl.Rev.P./507/2012

DILIP KR. DAS
S/O LT. H C DAS R/O NALCHAR, P.S. MELEGHAR, AGARTALA, TRIPURA.

VERSUS

STATE OF ASSAM and ANR.

2:SRI GOPAL ROY
S/O LT. K C ROY C/O NEW DEEPJYOTI MECOS
P.P. ROAD
REHABARI
GHY-8
UNDER PALTANBAZAR P.S

Advocate for the Petitioner : MR.D K BAGCHI, MR.P KATAKI

Advocate for the Respondent : MS.I KRISHNATRAIYA, MR.M K DAS,PP, ASSAM,MS.P
PATHAK,MR.A K BHUYAN,MS.B BHUYAN

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT

Date : 28-11-2024

1. Heard Mr. P Kataki, learned counsel for the petitioner and B Sarma, learned Addl. PP, appearing for the respondent No.1, State

of Assam. Also heard Mr. A.K. Bhuyan, learned counsel for the respondent No.2.

2. By way of the present application under section 397/401 Cr.P.C., the petitioner has challenged the judgment and order dated 24.09.2012 passed by the learned Addl. District & Sessions Judge (FTC), No.2, Kamrup at Guwahati in Criminal Appeal No. 15/2012, whereby and whereunder, the judgment and order dated 21.01.2012 passed by learned JMFC, Kamrup, Guwahati in CR Case No.2750^C/2004, convicting the petitioner for offence under section 138 of the Negotiable Instruments Act, 1881 and sentencing him to suffer Simple Imprisonment for three months and to pay a fine of Rs.3,10,000/- was upheld.

3. The brief facts which are necessary for determination of the present */is* is recorded herein below:

I. On 18.09.2004, the respondent No.2 filed CR Case No.2750^C/2004 under section 138 of the NI Act, 1881, inter alia alleging that on 18.02.2004, the accused petitioner took a loan of Rs.2,70,000/- from the respondent No.2 complainant for a period of five months and issued three numbers of cheques of different amounts on 18.02.2004, drawn on United Bank of India, Ulubari Branch Guwahati.

II. According to the complainant, on the loan not being paid the cheques were deposited on 26.07.2004 for clearance, which were dishonored for insufficiency of fund.

III. On 06.08.2024, the complainant issued a demand notice under section 138 NI Act demanding payment of the alleged outstanding due within 15 days from the date of receipt of the notice. It was also stated that notices were duly received by the wife of the accused, namely, Rajashree Das in the Guwahati address of the accused. The CR case was tried by learned JMFC, Kamrup.

IV. During the course of trial, the complainant examined himself as PW-1 and a bank official as PW-2. The accused examined himself as DW-1 and his mother in law as DW-2 and also one advocate as DW-3.

4. After meticulous examination of the materials available on record including the deposition of the witnesses, the learned Magistrate concluded:

I. The accused had taken a loan amount of Rs.2,70,000 from the complainant and issued three cheques to the complainant and signatures in the cheques were not disputed.

II. The evidence on record does not support the plea of defence that accused had repaid the money availed from the complainant either before presentation of cheque for clearance or after the three cheques were dishonored.

III. Accordingly, the petitioner has committed an

offence under section 138 of the NI Act, more particularly on the background fact that the accused had taken the money from the complainant.

IV. It was established that cheques were issued in discharge of debt or liability towards the complainant and having failed to liquidate the loan due prior to presentation of the cheque after five months of the return of money as promised, the complainant was entitled to liquidate the same by presentation of the said three cheques.

5. Such decision of the learned magistrate was taken to appeal in Crl. A 15/2012 by the petitioner and after re-appreciation of the evidence, the learned appellate court by its judgment dated 24.09.2012 concluded that the learned trial court has not committed any error or illegality while passing the impugned judgment.

6. Mr. P Kataki, learned counsel has forcefully urged that the decisions are apparently perverse decision inasmuch as the complainant in his evidence in no unambiguous terms admitted that the cheques issued were security cheques and were not issued against liability and therefore, in the aforesaid backdrop the decision impugned are liable to be interfered with at the hands of this court inasmuch as, such perverse decision had also resulted in miscarriage of justice.

7. In support of his contention Mr. Kataki places reliance on the decision of the Hon'ble Apex Court in ***Sripati Singh Vs. State of Jharkhand*** reported in **2022 18 SCC 614**. Mr. Kataki further contends

that as the cheque was admittedly issued as security towards the repayment of the loan, it ensures that such cheque cannot be presented for repayment inasmuch as the borrower would always have an option of repaying the loan amount.

8. Per contra, Mr. A.K. Bhuyan, learned counsel contends that admission of the complainant that the cheques issued were only security cheque and not against the liability, cannot be the sole ground for interfering with the judgment. According to him, it is established beyond reasonable doubt by the complainant that the loan was taken for a period of five months and cheques were issued as security cheques and such security cheques were presented for clearance only after expiry of the stipulated period of repayment of the loan and on failure of the accused to repay the loan within the stipulated period.

9. I have given anxious considerations to the arguments advanced by the learned counsel for the parties and as a question of perversity is raised, this court has also gone through the deposition of witnesses as well as the complaint itself.

10. In the complaint petition at paragraph No. 3, a specific stand was taken that loan was taken on 18.02.2004 and the three cheques were also issued on 18.02.2004 and that a promise was made to repay the loan within a period of 5 months i.e., within 18.07.2004 and the cheques were presented on 26.07.2004. The PW-1 also testified such fact and also had specifically stated that the loan was supposed to be returned within a period of five months which was not paid and admitted in his cross that the cheques were

given only as security and not against the liability. The defence had even failed to lay any foundation that loan was either repaid before stipulated period or before presentation of the cheque.

11. The Hon'ble Apex Court in ***Sripati Singh*** (supra) laid down the following propositions:

I. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance.

II. "Security" in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment.

III. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specific time frame and issues a cheque as security to secure the repayment and if the loan amount is not repaid in any other form before due date or if there is no other understanding between the parties to defer the payment amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same; and

IV. On presentation in the aforesaid circumstances, if the cheque is dishonored, the consequences contemplated under section 138 and other provision of NI Act shall be applicable.

12. As discussed hereinabove, the complainant has been able to establish that the loan was taken on 18.02.2004 and was to be

returned by 18.07.2004 and that such amount was not repaid within such stipulated period and accordingly, the cheques were presented on 26.07.2004. That being the position, in view of the settled propositions of law as discussed hereinabove, this court is of the opinion that the cheques in questions matured for presentation on 18.07.2004 in absence of any material or defence that there was an agreement between the parties to defer the payment of amount or that the amount was paid within five months. Therefore, even if the same was a security cheque, after expiry of the period stipulated for payment of loan cannot be a ground to hold that no case under section 138 was maintainable. The complainant therefore proved beyond reasonable doubt that the petitioner took the loan and had the option of repaying the loan amount, within the agreed period and the accused failed to repay the same within the stipulated period. That being the position, the defence of the accused that the security cheque could not have been presented lacks merit inasmuch as the accused had even failed to lay any foundation to that effect.

13. That being the position, this court is of the unhesitant opinion that there is no patent defect or any error of jurisdiction or of law in the impugned judgments and orders.

14. This court for the reasons recorded herein above is also of the view that the finding recorded by both the courts below are based on admissible evidence and neither any material evidence, were ignored nor any irrelevant materials were relied on by both the learned courts below. This is not a case which can therefore be said to be based on any perverse findings for the reasons recorded herein

above.

15. Accordingly, the instant revision petition stands dismissed.

JUDGE

Comparing Assistant