

: IN THE COURT OF THE SESSIONS JUDGE, NALBARI :

Present: Dr. M. Baruah
Session Judge,
Nalbari.

(Criminal Appeal Case No. 09/18)

(Appeal against the Judgment & order dated 29/05/2018
passed by learned Addl. CJM, Nalbari in connection with NI
Case No. 98/15 u/s- 138 of the N.I Act.)

Samrat Gupta

S/o- Samarendra Gupta

R/o- Vill- Ulubari, P.O- Lachit Nagar

P.S- Paltan Bazar,

Dist- Kamrup, AssamAppellant/ Accused.

-Versus-

Balo Ram Das

S/o- Lt. Samar Ch. Das

R/o -Vill- Nalbari Gaon,

P.O- Chowk Bazar, P.S- Nalbari,

Dist- Nalbari, AssamComplainant/ Respondent.

Advocates appeared:-

For the Appellant :- Mr. A Majid

For the Respondent :- Mr. A Talukdar

Date of argument :- 21/06/2022

Judgment delivered :- 01/09/2022

JUDGMENT

1. This is an appeal preferred by the accused/ appellant u/s-374 (3) (a) CrPC being highly aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence passed by learned Addl. CJM, Nalbari dated 29/05/2018 under NI Case No. 98/2015 u/s 138 of the N.I Act and sentenced to pay fine of Rs. 3,00,000/- (three lakhs) i.e. the cheque amount and in default of payment of the said amount to undergo SI for three months. Hence, accused preferred this appeal.

2. The fact leading to this case is that complainant Balo Ram Das filed a complaint on 25/06/2015 before learned CJM, Kamrup (M) citing that he works as a Government employee under postal department as Post Master at Belsor Post Office under Nalbari District. Accused person is working as stenographer at Addl. Director General of police CID, Ulubari, Guwahati-7 Kamrup and complainant knows the accused since 7/8 years. In the month of January 2014 accused requested complainant to lend money of Rs. 3,00,000/- (three lakhs) and accused promised to repay the said amount in the short period of time. Complainant having good faith lend money amounting to Rs. 3,00,000/- (three lakhs) to the accused on 26/01/2014. On expiry of the time complainant asked accused to return the money. So accused

called him at his house to take the aforesaid money. On 31/03/2015 complainant with his son went to the house of accused and accused issued a cheque in favour of complainant cheque bearing No. 886982 of amount of Rs. 3,00,000/- (three lakhs) dtd. 31/03/2015 of SBI, Pandu Port Adabari Tinali, Pandu, Guwahati. Accordingly complainant deposited the said cheque on 17/04/2015 at his SBI a/c Nalbari. The said cheque was returned back on the same date with the ground of insufficient fund. Complainant on informing about the dishonour of the cheque to the accused, accused again assured that he will deposit in a short period and on 25/04/2015 and 25/05/2015 complainant deposited the cheque in his bank a/c but the cheque was returned unpaid on the ground insufficient fund. On 01/06/2015 complainant sent pleaders notice asking the accused to make payment within 15 days of receiving the notice. Accused received the notice on 04/06/2015 but accused did not make any payment. On non-payment of the amount by the accused, complainant lodged the instant petition.

3. The case was filed before learned CJM, Kamrup (M) and vide order dated 21/09/2015 the case is transferred to the court of learned Addl. CJM, Nalbari for disposal. The learned trial court took cognizance of the case u/s 138 of the NI Act and issued process to the accused person Samrat Gupta. On appearance of the accused before the court

learned Addl. CJM, Nalbari furnished necessary copies and explained the substance of accusation u/s 138 of the NI Act to the accused to which accused pleaded not guilty and claimed to be tried.

4. The complainant in support of his claim adduced four witnesses and exhibited five documents. The learned trial court after closure of the evidence on record statement of the accused u/s 313 CrPC, delivered judgment convicting accused/ appellant u/s 138 of the N.I Act and sentenced to pay fine of Rs. 3,00,000/- (three lakhs) i.e. the cheque amount and in default of payment of the said amount to undergo SI for three months.

5. Being highly aggrieved and dissatisfied with the fore-said judgment and order of conviction the appellant preferred the instant appeal on the following grounds:-

i. That the Ld. Court below committed error of law as well as facts, while passing the impugned judgment dated 29/05/2018 convicting the accused person.

ii. That the Ld. Court below failed to apply its judicious mind as to the fact of the case.

iii. That, the Ld. Court below misconceived the law as well as facts, and passed the impugned judgment dated

29/05/2018 convicting the accused person violating the provisions of N. I. Act.

iv. That the regarding the point No. "a" it is to mention that no demand notice was received by the petitioner/accused. That from the deposition of PW-4 and Ext-5 it can be clearly derived that complainant had not send acknowledgment card along with demand notice to the accused. The Ext-5 has no signature and the PW-4 is not the person who can prove the Ext-5.

v. That, after appreciating the entire evidence of the records, the facts remained untouched and very much settled and admitted is that respondent / complainant cannot be able to established the fact that he had demand the cheque amount from the accused.

vi. That the accused /appellant had no malafide intention in not paying the debt of the respondent / complainant. That the accused had communicated to the informant stating his financial problem causing delay in repayment of the debt. But to the contrary the respondent without giving any demand notice filed the case just to harass and defame the accused.

vii. That as per the settlement the appellant is due for Rs. 2 lakhs to complainant, but the Trial Court directed to pay Rs.3 lakhs. The appellant is ready to pay Rs.2 lakhs.

ARGUMENT

6. The Ld. Counsel for the appellant argued that as per settlement between the parties the accused / appellant paid Rs. 1,00,000/- (One Lakhs) to the complainant but the Ld. Trial Court failed to consider the said fact and sentenced the appellant to pay another Rs.3,00,000/- (Three Lakhs).

Ld. Counsel for the respondent submitted that the Post Master of Nalbari Post Office deposed as PW-4 and he has confirmed that the registered letter was delivered at the address of the accused on 4/6/2015. So there cannot be doubt that the accused did not receive the demand notice. He further submitted that the accused had accepted his liability and he paid Rs.1,00,000/- to the complainant during trial of the case but the accused failed to repay the balance amount of Rs.2,00,000/-.

7. Point for determination:

Whether the impugned Judgment & order dated 29/05/2018 passed by learned Addl C J M Nalbari in N. I. Act Case No. 98/2015 u/s- 138 of the N.I Act. is sustainable in law or requires any interference by this court?

8. Decision, Discussion and Reasons Thereof:

On perusal of the appeal memo, I found that the appellant have challenged the Judgment of Ld. Trial Court

basically on two issues. Firstly, the appellant stated that he did not receive the demand notice from the complainant and the court failed to consider the said fact. Secondly the appellant stated that as per compromise arrived at, he paid Rs.1,00,000/- to the complainant during trial and the Ld. Trial Court failed to consider the said fact and sentenced the accused / appellant to pay another amount of Rs.3,00,000/-.

9. Regarding the dispute of not receiving demand notice, Ld. Trial Court have discussed it as Point No. i. The Ld. Trial Court have considered Ext-3 (copy of the demand letter), Ext-4 (Registered postal receipt), Ext-4A (Track consignment report of the Postal Department) and Ext-5 (article delivery slip) and arrived at a finding that the demand notice was issued at the address of the accused through registered post on 02/06/2015 and the registered post was delivered to the accused on 04/06/2015.

I perused the evidence of PW-1(Complainant) who stated that he presented the cheque in his account in State Bank Of India, Nalbari Branch on 17/04/2015, 25/04/2015 and 25/05/2015 and the cheque was returned by the Bank on each day for "Insufficient of fund". Ext-2, 2A and 2B are the return memos of Bank. Thereafter he sent a legal notice to the accused through his counsel dated 01/06/2015 and the said notice was issued to the accused through registered post with A/D in proper address of the accused. Ext-3 is the

demand Notice and Ext-4 is the postal receipt. The said demand notice was delivered to the accused on 04/06/2015 as per the information given by the Postal department. Ext-4A is the delivery report. The accused did not pay the cheque amount even after receive of the demand notice.

PW-4 Sri Mahendra Talukdar is the Post Master of Nalbari Head Post Office and he stated that the registered letter was booked on 02/06/2015 in the address of Samrat Gupta, Ulubari, Ghy vide registered letter No. ES 695199651 IN dated 2/6/15. The said letter was delivered at the given address on 04/06/2015. Ext-5 is the Post Man delivery slip. The Ext-5 is found to be a photo copy which was attested by Post Master Ulubari Post Office Ghy-7.

On perusal of Ext-4 it is seen that the registered Post was issued in the Office address of accused given on the complaint petition. The Ext-4A is a computer generated copy of Postal Department and it shows that the registered letter was delivered at the address of the accused. More over the accused appeared and contested the case upon receiving summon sent to his official address. As such there cannot be any doubt that the accused did not receive the demand notice. I found that the Ld. Trial Court had correctly decided this Point and it requires no intervention.

10. Regarding the sentence of payment of Rs.3,00,000/- to the complainant by accused without deducting the amount of

Rs.1,00,000/- paid by the accused to complainant, I have perused the case record of N.I.Case No. 98/15. I found that the order dated 27/02/2018 shows that the accused vide petition No. 854/18 deposited Rs.1,00,000/- (one Lakh) in the Court as a talk of compromise was on with the complainant. The complainant received the said amount by making an endorsement of acknowledgement on the order sheet. So it is clear that the accused paid an amount of Rs.1,00,000/- to complainant out of Rs.3,00,000/-, but the Ld. Trial Court did not consider the said fact while delivering judgment and sentenced the accused to pay another amount of Rs.3,00,000/- to complainant. The Ld. Trial Court did not mention about the receipt of Rs.1,00,000/- by complainant from accused during the trial. As such I found that an interference is required on the sentencing part of the judgment of Trial Court.

11. I found that the accused never denied issuing the cheque to the complainant for the liability. As such judgment of the Ld. Trial Court convicting the accused U/s 138 of N.I.Act 1881 is upheld and needs no interference. But I found necessary to interfere on the sentencing part of the Ld. Trial Court. Since the accused paid Rs.1,00,000/- to the complainant during trial, so the said Rs.1,00,000/- need not be paid to the complainant. Therefore the sentencing of accused is modified. The accused is sentenced to pay fine of

Rs.2,00,000/- (Two Lakhs) and in default of payment of fine amount, the accused shall undergo simple imprisonment for three months. The fine amount if recovered shall be paid to the complainant Sri Balo Ram Das as compensation.

12. **ORDER**

The conviction of the accused / appellant by Ld. Trial Court is upheld. The appeal is partly allowed with a modification on the sentencing part of the Trial Court Judgment. The appellant / accused is sentenced to pay fine of Rs.2,00,000/- (Two Lakhs) and in default of payment of fine amount, the accused shall undergo simple imprisonment for three months. The fine amount if recovered shall be paid to the complainant Sri Balo Ram Das as compensation.

13. Send back the LCR to the Court of Ld. Addl. CJM, Nalbari.

14. Set my hand and seal of this case on the 1st day of September, 2022.

(Dr. M. Baruah)

Sessions Judge, Nalbari

Dictated & corrected by me:

(Dr. M. Baruah)

Sessions Judge, Nalbari

Transcribed by- Anzima Brahma, Stenographer.