

IN THE COURT OF THE SESSIONS JUDGE :: :: TINSUKIA

District: Tinsukia

Present: **Sri P.J. Saikia,**

Sessions Judge,

Tinsukia

Criminal Appeal Case No. 05 (1) of 2019

Sri Prabir Rajkhowa,

S/o- Lt. Sadananda Rajkhowa

R/o- No.1. Makum Pathar

P.S- Margherita

Dist.- Tinsukia (Assam) Appellant

-Versus -

Subha Lakhi Bonded Warehouse Pvt. Ltd.,

Makum Road,

P.S.- Tinsukia

District- Tinsukia, Assam Respondent

Appearance:

Sr. Adv. R. K. Borthakur & K. Borthakur,

Advocates For the Appellant

Bhaskar Dutta & Bikash Agarwal,

Advocates For the Respondent

Date of Argument: 06/08/2019 & 07/08/2019

Date of Judgment: 22/08/2019

J U D G M E N T

1. This appeal is directed against the judgment dated 15/02/2019, passed by the Ld. Additional Chief Judicial Magistrate, Tinsukia in N.I. Case No. 74/2015. The Ld. trial court convicted the appellant u/s 138 of the N.I Act and awarded punishment.

CASE AGAINST THE APPELLANT

2. The appellant being the proprietor of M/s AHA WINE, used to purchase Indian made foreign liquor from the respondent on credit basis and an amount of Rs. 7,57,445/- became outstanding to be paid by the appellant to the respondent. In order to discharge his liabilities, the appellant issued three numbers of cheques being Cheque No. 861603 dated 06/10/2014 for Rs. 2,43,229/-, Cheque No. 861605 dated 20/10/2014 of Rs. 1,99,793/- and the Cheque No. 861608 dated 04/11/2014 for Rs. 2,24,999/-. The respondent presented the

cheques in the Bank for encasement, but the three cheques were dishonoured by the Bank, on account of insufficient of fund in the account of the appellant. The cheques were returned to the respondent on 05/11/2014. Therefore, the respondent asked the appellant to pay the cheque amount and the balance outstanding amount of Rs. 89,424/-. The appellant did not pay the money.

3. On 02/12/2014, the respondent through its lawyer sent a notice to the appellant, asking him to pay the cheque amount as well as the outstanding amount of Rs. 89,424/- within the next 15 days of receipt of the notice. The notice was duly served upon the appellant on 03/12/2014. But, the appellant failed to pay the money. Therefore, the respondent filed the case against the appellant.

4. During the trial of the case, the respondent adduced evidence. While being examined u/s 313 of Cr.PC, the appellant has stated that he had purchased India made foreign liquor worth Rs. 7,57,445/- by paying cash. The appellant also stated that the three numbers of cheque, which he had issued to the respondent were meant to be kept as security. After completion of trial, the Ld. trial court passed the impugned judgment.

POINT FOR DETERMINATION

5. The only point for determination in this appeal, is as to whether the Ld. trial court had erred, while passing the impugned judgment?

DECISION AND REASONS THEREOF

6. In this case, while placing his argument, Ld. Senior Counsel Sri R.K. Borthakur, appearing for the appellant has

submitted that the appellant was not allowed to cross-examine the witness of the respondent. Ld. Counsel Mr. Bhaskar Dutta, who appeared for the respondent has submitted that if the trial court did not allow the appellant to cross-examine the witness of the respondent, the appellant should have moved the Court of Sessions by filing a revision petition. Mr. Dutta has submitted that the aforesaid matter has already reached the finality and at the stage of the appeal hearing, that matter cannot be raised.

7. I have gone through the record of the Ld. court below. I find that on 11/08/2016, the case was posted for cross-examination of the witness of the respondent and on that day, the Ld. counsel for the appellant did not cross-examine the witness, on the ground that he did not have any instructions from his client and that is the reason why the Ld. trial court closed the cross examination of the witness of the respondent. I find that the court below did nothing wrong, while passing the order dated 11/08/2016.

8. The memorandum of appeal has no other ground other than that. The appellant has submitted that the order dated 11/08/2016 was a biased order. Here at this stage, I would remind myself the submission of the Ld. counsel Mr. Bhaskar Dutta that if the appellant was aggrieved by the order 11/08/2016, he should have filed a revision petition, challenging that order. But, the appellant did not do so. I have already stated that the appeal memo does not contain any other grounds, on which the appeal has been challenged. Therefore, I find that the Ld. trial court judgment does not require any interference.

ORDER

9. In the result, the appeal is found to be devoid of any merit and is accordingly dismissed. Send down a copy of this judgment along with the LCR.

Given under my hand and seal of this Court on this 22nd day of August, 2019.

(P.J. Saikia)

Sessions Judge

Tinsukia

Dictated & corrected by me.

Sessions Judge

Tinsukia