
(2018) 01 GAU CK 0125
In the Gauhati High Court
Case No : 177 of 2017

SRI BIKASH MANDAL

APPELLANT

Vs

THE STATE OF ASSAM & ANR

RESPONDENT

Date of Decision : 30-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 378\(4\)](#) - Appeal in case of acquittal

Citation : (2018) 01 GAU CK 0125

Hon'ble Judges : Hitesh Kumar Sarma

Bench : Single Bench

Advocate : AK Purkayastha, PS Lahkar, A Choudhury

Final Decision : Dismissed

Judgement

1. This is an appeal, under Section 378(4) of the Cr.P.C., against the judgment and order of acquittal, dated 22-03-2016, passed by the learned

Additional Chief Judicial Magistrate, Barpeta in NI Case No. 11/2014.

2. I have perused the appeal memo, the impugned judgment as well as the record of learned trial Court.

3. I have heard Mr. AK Purkayastha, learned counsel for complainant-appellant and Mr. PS Lahkar, learned Additional Public Prosecutor,

Assam, appearing on behalf of respondent No. 1. I have also heard Mr. A Choudhury, learned counsel representing the respondent No. 2.

4. The case of the appellant is that he filed the complaint case aforesaid, as complainant against the respondent No. 2, as accused, under Section

138 of the Negotiable Instrument Act, 1981. He claimed that the accused-respondent No. 2 had taken an amount of Rs.8 Lakhs from him on 06-

12-2011 with an assurance to return the same within 2 years. He issued a

cheque bearing No. 585551, dated 06-12-2013 in discharge of his debts. The said cheque was deposited with the State Bank of India, Barpeta for encashment, which was dishonoured due to insufficiency of fund in the account of the accused-respondent No. 2.

5. The learned trial Court, in the judgment referred to above, has specifically reflected at paragraph-10 of the judgment that the complainant/PW1 has not exhibited the disputed cheque to substantiate his plea. In the instant case, the cheque, in question, is in issue, upon proof of which depends the final finding of this Court.

6. On perusal of the original record of the learned trial Court it is found that although the cheque is marked as Ext.1 yet the same is not proved as

required by proving the signature of the person, who signed the cheque involved in the case. That apart, the cheque has been exhibited in cross-

examination of the PW1 (complainant in aforesaid complaint case) which was required to be produced and proved by the complainant-appellant.

That being so, the cheque involved in the case has not been proved by the complainant/appellant. Therefore, the finding recorded by the learned

trial Court is not perverse to the evidence on record.

7. This Court, sitting in appeal against the judgment of acquittal, can reverse the finding only when the same is perverse on the evidence on record,

but in the instant case, as stated above, in the absence of proof of the cheque, involved in the case, the finding recorded by the learned trial Court

that the cheque has not been proved, is definitely not perverse. Therefore, no interference with the judgment of acquittal rendered by the learned

trial Court is called for.

8. Accordingly the appeal is dismissed.

9. Send down the LCR along with a copy of this judgment and order.