

In The Court of The Addl Sessions Judge (FTC), Bongaigaon
CA 36(4)/11

Polash Raj Deb.

- vs - Appellant.

1. State of Assam

2. Sahadev Sarkar.

--- Respondents.

Present -

Smti R Kam.
Addl Sessions Judge (FTC)
BONGAIGAON.

Appearance - Smti H. Das.

--- Ld Advocate for the appellant

Smti K. Sarkar.

--- Ld Advocate for Respondent
no. 2.

Date of Hearing - 28-5-13.

Date of Judgment - 29-6-13.

JUDGEMENT

1. This appeal is directed against judgement and order dt 23-9-11 passed by ld chief judicial magistrate in NICR NO. 17/10, convicting the a/cd. Polash Raj Deb u/s 138 NI Act and sentencing him to pay a fine of Rs 1,30,000/- and 2 years S.D.

2. Brief fact of the case leading to this appeal is that the complainant

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had a friendly relation with the aced and the aced one day approached the complainant for financial help of Rs 1,00,000 with an assurance that he will repay the same in time. Accordingly the complainant gave the said amount on 25-1-10. Thereafter on several request the aced person issued a cheque of Rs 1,00,000 vide cheque no. 511757 dt. 26-2-10 in favour of the complainant. The complainant on 6-5-10 presented the said cheque with his banker and on the same day the bank informed him through return memo that due to insufficiency of fund in the A/c of the aced person same could not be honoured. Thereafter the complainant served lawyer's notice upon the aced by registered post on 31-5-10 requesting him to make payment of the cheque amount but the same could not be served upon him. Thereafter the complainant lodged complaint before the court.

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3. Ld court below held the trial of the aced u/s 138 N.I. Act and after conclusion of prosecution evidence obtained statement of the aced u/s 313 CrPC. Defence has adopted the plea that notice u/s 138(b) of the N.I. Act was not posted and not served upon him. Defence has examined more.

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4. After conclusion of trial ld chief Judicial Magistrate, convicted the a/cd u/s 138 N.I Act. Against the said Judgement this appeal has been preferred on various grounds as stated in the memo of appeal.

5. Ld counsel for the appellant has contended that the ld court below has convicted the a/cd without applying his Judicial mind and without going through the provisions of the law

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in sec- 269SS of the Income Tax Act. It is contended that as per said provision of the income Tax Act any amount more than Rs 20,000/- should be paid by A/c payee cheque but the complainant has not followed it.

6. Now this point has been agitated for the first time in the appeal. This fact was neither raised in course of cross-examination of PR-1 or in the argument stage before the trial court. and as such this contention is not tenable at law.

7. It is also contended that the complainant never asked the a/cd about

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