

**IN THE CIRCUIT COURT HELD IN ACCRA ON THE 29TH DAY OF NOVEMBER,
2022 BY HIS HONOUR SAMUEL BRIGHT ACQUAH CIRCUIT COURT JUDGE.**

SUIT NO. D6/52/2022

THE REPUBLIC

VERSUS

ALEXANDER ASIEDU

COUNSEL FOR ACCUSED – RICHMOND NUMOO SAKA ESQ

PROSECUTOR – CHIEF INSPECTOR ISAAC BABAYIE

RULING ON SUBMISSION OF NO CASE TO ANSWER

Accused person was brought before this court on twenty eight (28) counts of ISSUANCE FALSE CHEQUE CONTRARY TO SECTION 313(A) OF ACT 29/60 which reads;

313(A) Any person who – (c) with intent to defraud stops or countermands any cheque previously issued by him; shall be guilty of an offence and liable on first offence-----

Counsel for accused person is coming under SECTION (173) of ACT 30/60 which states that;

Where at the close of evidence in support of the charge, it appears to the court that a case is not made out against the accused sufficiently to require him to make determination, the court shall, as to that particular charge acquit him.

Simply put, if at the end of prosecution's case, a prima facie evidence is not led to prove all the elements in the charges leveled against accused person, the court shall discharge him. This by extension means prosecution bears all the burden of proof, Accused has

nothing to disprove, he only needs to create a reasonable doubt in the mind of the court
- COP V AKOTO(1964) GLR 231.

The submission of no case will be upheld by the court per the principle laid down in the case of **THE STATE V ALI KASSENA (1962) 1 GLR 144 @148** that;

When there has been no evidence to prove an essential element in the alleged offence

When the evidence adduced by the prosecution has been so discredited as a result of cross examination it is so manifestly unreliable that no reasonable tribunal could safely convict upon it – if however a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence issued that reasonable tribunal might convict on evidence so far laid before the court, there's a case to answer.

e. The law states that if any person with intent to defraud stops or countermands. As usual with any criminal law, it has two legs to constitute a crime, that is, stops or countermands with intention to defraud.

If at the end of prosecution's case the court requires further evidence before it can decide on the issues raised in the case for prosecution, the irresistible inference is that the prosecution has failed and accused should be discharged - **MALI V THE STATE (1965) GLR 710 SC** and also in **ALIKU V THE REPUBLIC (2017- 2018) SCGLR 444 at 445** that all reasonable doubts should inure to the benefit of the accused person, so if there's any lingering doubts at the close of prosecution's case on either to convict or to discharge, Accused should then be discharged.

The criminal jurisprudence has two legs; ----- that is the act itself and the intention behind the act – that is, to stop or countermand with intention to

defraud. Prosecution has to prove both of them before accused person will be called to answer a case. The intention to defraud -----

Section 16 of Act 29/60 as follows;

For the purpose of any provision of this code by which any forgery, falsification, or other unlawful act is punishable if used or done with the intent to defraud, by means of such forgery, falsification, or other unlawful act, any gain capable of being measured in money, or the possibility of any such gain, to any person at the expense or to the loss of any other person.

From the evidence adduced in court, especially by prosecution witness 1, it is clear that the Sethi Brothers Ghana limited through the complainant breached the terms of off Taker agreement it enters into with special steel and the accused, and this breach resulted in Special Steel being unable to finance the remaining 50% shares to purchase from Sethi Brothers.

Evidence on record also shows that accused person as far as the terms of share purchased agreement applicant entered into with the parties, issued 48 postdated cheques prior to the breach of the off taker agreement by complainant and the cheques were presented by complainant were honored. Indeed the evidence in court shows that at all material times the accused person in his dealings with the complainant acted in good faith without any intention to defraud complainant. Accused therefore subsequently had cause to stop the cheques from being honored by the bank since complainant through Sethi Brothers Ghana Ltd , had breached the off taker agreement that Atlantic Steel Ltd through accused person had no option than to stop those cheques and even before stopping those cheques complainant was notified by accused, which complainant confirmed same. There was no evidence to show that there was no sufficient funds in accused account, same confirmed by PW II

Prosecution therefore failed to prove that accused person stopped or countermanded the cheques that some benefits he derived, but due to the breach of the off taker Agreement that compelled accused to act in that manner.

To the extent that Attorney General advised to the police not to prosecute the case because the evidence available makes their case very weak.

The first leg of the crime, Actus Reus was easily proven, that is, it is very clear which was not denied by the accused person himself was that accused stopped or countermanded the cheques which complainant was informed before he presented those cheques to the bank, but when it comes to the Mens Rea, that is the intention to defraud, (a requirement of the law), prosecution woefully failed in that direction.

The submission for NO CASE TO ANSWER per section 173 of Act 30/60 is thereby upheld, accused acquitted together with all his sureties.

(SGD)

**H/H. SAMUEL BRIGHT ACQUAH
CIRCUIT COURT JUDGE**