

Form J(2)

**IN THE HIGH COURT AT CALCUTTA  
Criminal Appellate Jurisdiction  
Appellate Side**

**Present :  
The Hon'ble Justice Bibek Chaudhuri**

**IA No.:CRAN/1/2021, CRAN/3/2021, CRAN/5/2022,  
CRAN/7/2022  
in  
CRR 464 of 2021**

**Subhendu Karan  
Vs.  
The State of West Bengal & Anr.**

**For the petitioner : Sk. Jakir Hossain, Adv.**

**For the State : Mr. Imran Ali, Adv.,  
Ms. Manisha Sharma, Adv.**

**For the opposite  
Party no. 2 : Mr. Sayantan Rakshit, Adv.**

**Heard &  
Judgement on : 21.06.2022.**

**Bibek Chaudhuri, J.**

Affidavit-of-service filed in Court today be kept with the record.

This is an application under Section 401 read with Section 482 of the Code of Criminal Procedure filed by the accused of G. R. Case No. 181/2020 under Section 138 of the Negotiable Instrument Act for quashing of the said proceeding.

It is the case of the petitioner that the petitioner issued three cheques in favour of the opposite party no. 2 as collateral security for running an integrated business. Subsequently, the said cheques were deposited to Bank by the opposite party no. 2 for encashment. The said cheques were dishonoured. A demand notice was issued to the petitioner. The petitioner gave reply to the said demand notice requesting the opposite party no. 2 to deposit the said cheques further for encashment. As per the instruction of the petitioner the said cheques were deposited but subsequently also those were dishonoured on the ground of insufficient fund. The opposite party no. 2 issued second demand notice to the petitioner within the statutory period of time for payment of the amount involved in the cheques. As he failed to pay such amount in spite of receipt of the notice, the petitioner has filed the above-mentioned case under Section 138 of the Negotiable Instrument Act.

It is contended by the Learned Advocate for the petitioner that the cheques in question were issued as security against integrated business to be carried out by the petitioner and the opposite party no. 2 jointly. There was no existing debt or liability in favour of the opposite party no. 2 and the petitioner had no occasion to issue the cheques in discharge of debt or liability.

The Learned Advocate for the opposite party no. 2 has filed an affidavit-in-reply against affidavit-in-opposition filed by the Learned Advocate for the petitioner against the petition filed by the opposite party no. 2 for vacating the interim order of stay. In the said affidavit-in-reply, the Learned Advocate for the opposite party no. 2 has annexed a very recent decision of the Hon'ble Supreme Court in ***Rathish Babu Unnikrishnan –Vs.- The State (Govt. of NCT of Delhi) & Anr. (Criminal Appeal Nos. 694-695 of 2022 arising out of SLP (Crl.) Nos. 5781 –5782 of 2020 dated 26<sup>th</sup> April, 2022).***

The above-mentioned criminal appeal also arises out of an application for quashing a proceeding under Section 138 of the Negotiable Instrument Act. The Hon'ble Supreme Court in paragraph 16 of the said report held:-

*“16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of*

*an unimpeachable quality, so as to altogether disprove the allegations made in the complaint”.*

Section 139 of the Negotiable Instrument Act speaks about a presumption in favour of holder of the cheque in due course that the said cheques were issued in discharge of existing debt or liability. This rebuttable presumption can only be rebutted by the accused by adducing evidence during trial of the case. In the instant revision pleading a case that the said cheques were issued for the purpose of security cannot be said to be a sufficient ground for quashing a proceeding under Section 138 of the Negotiable Instrument Act.

In view of the above discussion, I have no other alternative but to hold that the instant revision is misconceived and liable to be dismissed. Accordingly the instant revision is **dismissed** on contest.

All interim orders be vacated.

However, the petitioner is at liberty to prove his case during trial to rebut the presumption under Section 139 of the Negotiable Instrument Act. The instant criminal revision is, thus, **disposed of** on contest, however, without cost.

**(Bibek Chaudhuri, J.)**

**Srimanta, A.R.(Ct.)**