

Form J(2)

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

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

C.R.A. 648 of 2018

**M/s. Hindustan Sanitary Stores
Vs.
The State of West Bengal & Anr.**

**For the Appellant : Mr. Tarique Quasimuddin
Mr. Ram Narain Rajak**

Heard on : 09.03.2022

Judgment on : 09.03.2022

Bibek Chaudhuri, J.

Though the respondent No.2 entered appearance in the instant appeal through her learned counsel, on the date of hearing of the appeal she remains unrepresented. Therefore, I have no other alternative but to dispose of the instant appeal on merit on the basis of submission made by the learned advocate for the appellant.

M/s. Hindustan Sanitary Stores is a partnership concern being represented by one of its partner, namely, Hira Lal Gupta. He was

authorized by other partner to file a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter described as N.I. Act for short) against the respondent No.2, Proprietress of M/s. Sangeeta Construction.

The case of the complainant is that M/s. Hindustan Sanitary Stores supplied some goods and materials to the respondent No.2 in course of their business transaction. In order to discharge her lawful debt and liability, the respondent No.2 issued three cheques, all dated 1st February, 2009 amounting to Rs.1,45,781/-, Rs.1,00,000/- and Rs.1,00,000/- respectively, total being Rs.3,45,781/-. The said cheques were drawn on Central Bank of India, Belgachia Branch. The cheque of Rs.1,45,781/- was issued in the name of M/s. Hindustan Sanitary Stores and other two cheques were issued in the name of Hira Lal Gupta, one of the partners of said partnership business. The complainant deposited the said cheques with his banker for encashment but all the said three cheques were dishonoured on the ground that the respondent had closed the account on which the cheques were issued. Subsequently, within the statutory period of time, demand notice was issued by the complainant requiring the respondent No.2 to make payment of the said sum within the statutory period of notice. On the accused's failure, the complainant filed a complaint under Section 138 of the N.I. Act which was

registered as Case No.C49763 of 2009 in the 5th Court of the learned Metropolitan Magistrate, Calcutta. In support of his case the complainant deposed in the trial Court as P.W.1. The accused was examined under Section 313 of the Code of Criminal Procedure where she pleaded that she had no liability to pay any amount to the complainant, partnership firm or its partner. It is also stated by her that she had already paid that amount and, therefore, she closed the account from where the cheques were issued.

The learned Magistrate dismissed the petition of complaint and acquitted the accused /respondent No.2 under Section 255(1) of the Code of Criminal Procedure by a very cryptic judgement holding, inter alia, that the respondent No.2 issued the cheques in question as a security deposit. Secondly, the complainant failed to prove that respondent No.2 had a subsisting debt or liability with the complainant, partnership firm.

On perusal of the lower Court record it is found that the complainant produced the challans and invoices issued in the name of M/s. Sangeeta Construction which were marked as exhibit-2 collectively. On perusal of the cross-examination of the complainant who deposed during trial as P.W.1. It is found that no suggestion was even put to the P.W.1 to the effect that the cheques in question were issued by the respondent No.2 as security deposit. On the contrary, it

is specifically asked on behalf of the defence to P.W.1 through his cross-examination as to whether he had documents in support of his claim that Rs.3,45,781/- was issued from the accused. The witness replied to the said question in the affirmative.

Learned Magistrate did not even consider that Section 139 of the N.I. Act enacts that unless contrary is proved, the Court shall presume that the holder of the cheque received the cheque in discharge, in the whole or in part, by any debt or other liability. The presumption under Section 139 of the N.I. Act is a presumption of law. In terms of Section 4 of the Evidence Act, the expression "shall presume" cannot be held to be synonymous with conclusive proof. However, when the statute directs that the Court shall presume a fact which shall consider the fact as proved unless or until it is disproved. Therefore, legal presumption contained in Section 139 of the N.I. Act discharges the burden of the complainant to prove by affirmative evidence that the cheques were issued in discharge of any existing debt or liability. The onus shifts upon the respondent No.2 to disprove the fact that she had no liability to the holder of the cheques. In the case in hand, the learned Magistrate did not consider the provision of Section 139 of the N.I. Act at all. On the contrary, it was held by the concerned Magistrate that "the prosecution has been found to be very casual and careless as to giving deposition against

the exhibit-2.” The challans and bills which were marked as exhibit-2 collectively, were exhibited on the basis of affirmative evidence adduced by the complainant on affidavit under Section 145 of the N.I. Act. During cross-examination the authenticity of exhibit-2 collectively was not even challenged by the respondent.

The learned Magistrate also did not consider the legality, validity, sufficiency and service of demand notice issued by the complainant before the filing of the case.

For the reasons stated above, this Court is of the view that the learned Magistrate failed to consider the basic tenets of control of cases under the Negotiable Instruments Act. Therefore, this Court is of the view that the learned Magistrate should undergo a training in the State Judicial Academy on the “control of cases under Negotiable Instruments Act”.

A copy of this judgment be placed before the learned Registrar General who is also the learned Director of the West Bengal Judicial Academy requesting her to arrange for a training on the “control of cases under Negotiable Instruments Act” of the Metropolitan Magistrates and Judicial Magistrates, First Class and the learned Metropolitan Magistrate, 5th Court, Calcutta be included as a trainee officer in the Academy.

For the reasons stated above and in view of the fact that the learned Magistrate did not discuss the validity and service of demand notice in the impugned judgment, while setting aside the judgment, this Court is of the view that the complaint case should be remitted back to the trial Court for delivery of judgment in view of the observation made hereinabove within one month from the date of receipt of the lower Court record and communication of the judgment passed by this Court.

The instant appeal is, accordingly, **allowed** and the impugned judgment and order dated 17th March, 2018 passed by Smt. Nita Sarkar, Metropolitan Magistrate, 5th Court, Calcutta in Complaint Case No.49763 of 2009 is set aside.

Let a copy of this judgment be sent down to the Court along with the lower Court record immediately.

Learned Magistrate is directed to hear out the argument and judgment after serving notice to the accused/respondent No.2.

(Bibek Chaudhuri, J.)