

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 302 of 2020

Rajesh Singh

Vs

Paprika Electronic Pvt. Ltd. & Anr.

For the Petitioner : Mr. Sanjib Bandyopadhyay.

For the State : None.

For the Opposite Party No. 1 : Mr. Aniruddha Bhattacharyya.

Hearing Concluded on : 28.08.2023

Judgment on : 25.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against the Judgment and Order dated 29.11.2019 passed by the Learned Judge, Bench-1, City Sessions Court, Calcutta, in Criminal Revision No.153 of 2017, affirming the Judgment and order dated 20.04.2017 passed by the Learned Metropolitan Magistrate, 3rd Court, Calcutta in Case No. C/4315 of 2012, wherein the petitioner had been convicted under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to suffer imprisonment till rising of the court by way of detention inside the court room and also directed to pay compensation of Rs. 10,00,000/- (Rupees Ten Lakhs) in default to suffer simple imprisonment for 1(one) year.
2. The petitioner's case is that the opposite party filed a complaint case against the petitioner before the Chief Metropolitan Magistrate, Calcutta for commission of offence under Section 138 of the Negotiable Instruments Act, 1881, which was registered as Case No. C/4315 of 2012 and after taking cognizance the said case was transferred to the Court of the Learned Metropolitan Magistrate, 3rd Court, Calcutta (hereinafter to be referred as "the Learned Trial Court") for trial and disposal of the case.
3. The case of the opposite party/complainant in brief is that the petitioner had a business transaction with the opposite party/complainant and in the said business transaction, an A/c payee cheque was issued to the

opposite party for discharge of existing financial liabilities vide Cheque No. 042240 dated 24.11.2011 for Rs. 5,00,000/- (Five Lakhs) drawn on Bank of India, Raniganj Branch, District – Burdwan and the said cheque was duly deposited by the opposite party with his Banker, State Bank of India, Park Street Branch, Kolkata within the validity period of the said cheque for encashment but the said cheque was **dishonoured with the remarks “Drawer Signature Incomplete”**. The said intimation was received by the opposite party through cheque return memo dated 18.01.2012. The opposite party then sent a demand notice dated 01.02.2012 through his Learned Advocate on 09.02.2012 and in spite of receiving the said notice, when the petitioner did not clear the payment, the opposite party filed the instant case.

4. The opposite party in order to establish his case examined himself as a witness and also relied upon documents like Extract of Board Resolution dated 24.10.2011, Cheque bearing no. 042240, cheque return memo dated 18.01.2012, copy of demand notice dated 01.02.2012, postal receipt and A/D card. The said documents were marked as Exbt-1 to 6 respectively.
5. The petitioner on his part examined himself as witness and also relied on documents like copy of letter with postal receipt, Bank Statement of Bank of India and Bank statement of HDFC Bank.
6. The Learned Trial Court upon conclusion of trial and after hearing the parties was pleased to pass the Judgment and Order dated 20.04.2017,

wherein the petitioner has been convicted under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to suffer imprisonment till rising of the court by way of detention inside the court room and also directed to pay compensation of Rs. 10,00,000/- (Rupees Ten lakhs) in default to suffer simple imprisonment for 1(one) year.

7. Being aggrieved by and dissatisfied with the Judgment and Order dated 20.04.2017 passed by the Learned Trial Court in Case No. C/4315 of 2012, the petitioner preferred a criminal revision before the Learned City Sessions Court, Calcutta which was registered as Criminal Revision No. 153 of 2017 and the Learned Judge, Bench-I, City Sessions Court, Calcutta (hereinafter to be referred as “the Learned Judge”) by Judgment and Order dated 29.11.2019 has affirmed the Judgment and Order dated 20.04.2017 passed by the Court of the Learned Metropolitan Magistrate, 3rd Court, Calcutta in Case No. C/4315 of 2012.
8. **Mr. Sanjib Bandyopadhyay, learned counsel for the petitioner** has submitted that the impugned judgment and order has been passed mechanically without any appreciation of the materials as placed on record. There has been no application of the judicial mind and both the Learned Appellate Court Judge and the Learned Trial Court have reached at an erroneous finding of guilt and as such the said judgments and orders are liable to be set aside.
9. It is further stated the Learned Trial Court failed to consider that the opposite party in his evidence has admitted that the petitioner’s business

has been closed since February, 2011 and their company started doing business with the petitioner, in the name and style M/s New Singh Electronics, whereas the cheque in question was dated 24.10.2011, as such issuing cheque after closing of the business does not arise.

- 10.** That the Learned Trial Court failed to appreciate that before closing of the petitioner's business, the petitioner has cleared all the dues (Exbt-B and C) as such liability of the petitioner towards opposite party does not arise, but on the other hand the Learned Trial Court failed to observe that the opposite party could not produce a single document from which it could be established that the petitioner has liability to the opposite party and without considering and observing such aspects both the Learned Courts mechanically passed the impugned Judgment and Order.
- 11.** That both the Learned Courts failed to consider that the impugned cheque was issued by petitioner without mentioning any date, as security long before closing of the business and clearing the dues and the same has been withheld by the opposite party as security as the petitioner was continuing business with the opposite party in the name and style of New Singh Electronics and the same was not returned to the petitioner even after repeated requests. Instead the opposite party with ulterior motive presented it to the bank which was subsequently dishonoured.
- 12.** The petitioner submits that the petitioner has clearly established that the petitioner has cleared all dues of the opposite party (Exbt – B and C) and as such the presumption under Section 139 of the N.I. Act has been

rebutted by the petitioner and it was upon the opposite party to show that there was a due for which the said cheque was issued. However the Learned Trial Court as well as the Learned Session Judge without appreciating such aspects mechanically and erroneously passed the impugned Judgments and Orders and as such the impugned Judgment and Order being bad and illegal are liable to be set aside and/or quashed.

13. Mr. Aniruddha Bhattacharyya, learned counsel for the opposite party no. 1 has submitted that the petitioner has admitted that he issued the cheque towards discharge of his liability and the trial Court and the Appellate Court rightly passed their judgment, which requires no interference.

14. From the materials on record, it appears that:-

i) Para 8 of the written complaint is as follows:-

“That the said cheque came back being dishonored with remarks ‘Drawer’s Signature Incomplete’ vide return memo bearing the signature of the officials of the Bank of India, Raniganj Branch, Anand Bhawan, M.G. Road, Dist. Burdwan- 713 347 dated 18.01.2012. This is the said cheque return memo and your honour would be pleased to mark the said return memo as Exhibits.”

- ii) Copy of the memo at page 33 supports the same.
- iii) As directed by the High Court, the petitioner deposited Rs. 5,00,000/- before the Trial Court.
- iv) The contention of the petitioner/accused/convict is that all dues had been cleared prior to the company in whose name the

cheque has been issued, had closed down in March, 2011 and started functioning as new company in the name and style as M/s New Singh Electronics.

- v) The cheque issued on behalf of the previous company is admittedly dated 24.10.2011, which is 8 months after it had closed down.
- vi) Supplementary affidavit has been filed in support of the contention that all payments were made as seen from the statement of account till 31.03.2011.
- vii) Contention of the petitioner is that the cheque was given as security but was misused by the complainant even after the company had closed down.
- viii) In reply the complainant has stated that such a document, which is unsigned has been produced after 11 long years, and the same is fabricated.
- ix) The Trial Court and the Appellate Court held that the cheque was lawfully dishonored with the endorsement "Drawer's Signature Incomplete".

15. Section 138 of the N.I. Act, lays down:-

"138 Dishonour of cheque for insufficiency, etc., of funds in the account. — Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds

the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to [two] years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.”

16. In *Vinod Tanna & Anr. vs Zaheer Siddiqui & Ors.*, (2002) 7 SCC

541, 17 September, 2001, the Supreme Court held:-

*“5. Mr. Bobde, learned Senior Counsel appearing for the appellants, contends that the High Court has failed to appreciate the ratio of the judgment of this Court in Modi Cements case (supra) inasmuch as in paragraph 11 of the said judgment, the Court had recorded a conclusion that it is in complete agreement with the legal proposition enunciated in *Electronics Trade and Technology Development Corpn. Ltd. v. Indian Technologists and Engineers (Electronics) (P) Ltd.* (1996-2) 113 P.L.R. 332 (S.C.), as well as *K.K. Sidharthan v. T.P. Praveena Chandran*, (1997-1) 115 P.L.R. 233 (S.C.)fs. In these two cases, the cheque in question had been dishonoured because of insufficiency of funds or the amount exceeded the*

arrangement made with the Bank and in Electronics Trade and Technology Development Corpn. Ltd (supra), the cheque had not been honoured because of the direction from the drawer regarding stop payment. **In fact, a plain reading of Section 138 of the Act makes it crystal clear that unless the conditions precedent mentioned therein are satisfied, the said penal provision cannot be attracted.** In this view of the matter and on the admitted facts, as referred to in paragraph 5 of the impugned judgment, we have no hesitation in coming to the conclusion that the High Court committed error in relying upon the judgment of this Court in Modi Cements (supra) and refusing to quash the criminal proceeding. We, accordingly, set aside the impugned judgment of the High Court, quash the criminal proceeding and allow the criminal appeal.”

17. In *M/s. Laxmi Dychem vs State of Gujarat & Ors., Criminal Appeal Nos. 1870-1909 of 2012, 27 November, 2012*, the Supreme

Court held:-

“6. Chapter XVII comprising Sections 138 to 142 of the Negotiable Instruments Act was introduced in the statute by Act 66 of 1988. The object underlying the provision contained in the said Chapter was aimed at inculcating faith in the efficacy of banking operations and giving credibility to negotiable instruments in business and day to day transactions by making dishonour of such instruments an offence. A negotiable instrument whether the same is in the form of a promissory note or a cheque is by its very nature a solemn document that carries with it not only a representation to the holder in due course of any such instrument but also a promise that the same shall be honoured for payment. To that end Section 139 of the Act raises a statutory presumption that the cheque is issued in discharge of a lawfully recoverable debt or other liability. This presumption is no doubt rebuttable at trial but there is no gainsaying that the same favours the complainant and shifts the burden to the drawer of the instrument (in case the same is dishonoured) to prove that the instrument was without any lawful consideration. It is also noteworthy

that Section 138 while making dishonour of a cheque an offence punishable with imprisonment and fine also provides for safeguards to protect drawers of such instruments where dishonour may take place for reasons other than those arising out of dishonest intentions. It envisages service of a notice upon the drawer of the instrument calling upon him to make the payment covered by the cheque and permits prosecution only after the expiry of the statutory period and upon failure of the drawer to make the payment within the said period.

7. *The question that falls for our determination is whether dishonour of a cheque would constitute an offence only in one of the two contingencies envisaged under Section 138 of the Act, which to the extent the same is relevant for our purposes reads as under :*

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment of a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both.”

8. *From the above, it is manifest that a dishonour would constitute an offence only if the cheque is returned by the bank ‘unpaid’ either because the amount of money standing to the credit of the drawer’s account is insufficient to honour the cheque or that the amount exceeds the amount arranged to be paid from that account by an agreement with that bank. The High Court was of the view and so was the submission made on behalf of the respondent before us that the dishonour would constitute an offence only in the two contingencies referred to in Section 138 and none else. The contention was that Section 138 being a penal provision has to be construed strictly. When so construed, the dishonour*

must necessarily be for one of the two reasons stipulated under Section 138 & none else. The argument no doubt sounds attractive on the first blush but does not survive closer scrutiny. At any rate, there is nothing new or ingenious about the submission, for the same has been noticed in several cases and repelled in numerous decisions delivered by this Court over the past more than a decade. We need not burden this judgment by referring to all those pronouncements. Reference to only some of the said decisions should, in our opinion, suffice.

9. *In NEPC Micon Ltd. v. Magma Leasing Ltd. (1999) 4 SCC 253, the cheques issued by the appellant-company in discharge of its liability were retuned by the company with the comments 'account closed'. The question was whether a dishonour on that ground for that reason was culpable under Section 138 of the Negotiable Instruments Act. The contention of the company that issued the cheque was that Section 138 being a penal provision ought to be strictly construed and when so interpreted, dishonour of a cheque on ground that the account was closed was not punishable as the same did not fall in any of the two contingencies referred to in Section 138. This Court noticed the prevalent cleavage in the judicial opinion, expressed by different High Courts in the country and rejected the contention that Section 138 must be interpreted strictly or in disregard of the object sought to be achieved by the statute. Relying upon the decision of this Court in Kanwar Singh v. Delhi Administration (AIR 1965 SC 871), and Swantraj v. State of Maharashtra (1975) 3 SCC 322 this Court held that a narrow interpretation of Section 138 as suggested by the drawer of the cheque would defeat the legislative intent underlying the provision. Relying upon the decision in State of Tamil Nadu v. M.K. Kandaswami (1975) 4 SCC 745, this Court declared that while interpreting a penal provision which is also remedial in nature a construction that would defeat its purpose or have the effect of obliterating it from the statute book should be eschewed and that if more than one constructions are possible the Court ought to choose a construction that would preserve the workability and efficacy of the statute rather than an interpretation that would render the law otiose or sterile. The Court relied upon the much quoted passage from the Seaford Court Estates Ltd. v. Asher (1949 2 All E.R. 155) wherein Lord Denning, L.J. observed:*

“The English language is not an instrument of mathematical precision. Our literature would be much poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give ‘force and life’ to the intention of the legislature. ... A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do so as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases.”

10. *Relying upon a three-Judge Bench decision of this Court in Modi Cements Ltd. v. Kuchil Kumar Nandi (1998) 3 SCC 249, this Court held that the expression “the amount of money is insufficient to honour the cheque” is a genus of which the expression ‘account being closed’ is a specie.*

11. *In Modi Cements Ltd. (supra) a similar question had arisen for the consideration of this Court. The question was whether dishonour of a cheque on the ground that the drawer had stopped payment was a dishonour punishable under Section 138 of the Act. Relying upon two earlier decisions of this Court in Electronics Trade & Technology Development Corporation Ltd. v. Indian Technologists and Engineers (Electronics) (P) Ltd. (1996) 2 SCC 739 and K.K. Sidharthan v. T.P. Praveena Chandran (1996) 6 SCC 369, it was contended by the drawer of the cheque that if the payment was stopped by the drawer, the dishonour of the cheque could not constitute an offence under Section 138 of the Act. That*

contention was specifically rejected by this Court. Not only that, the decision in Electronics Trade & Technology Development Corporation Ltd. (supra) to the extent the same held that dishonour of the cheque by the bank after the drawer had issued a notice to the holder not to present the same would not constitute an offence, was overruled. This Court observed:

“18. The aforesaid propositions in both these reported judgments, in our considered view, with great respect are contrary to the spirit and object of Sections 138 and 139 of the Act. If we are to accept this proposition it will make Section 138 a dead letter, for, by giving instructions to the bank to stop payment immediately after issuing a cheque against a debt or liability the drawer can easily get rid of the penal consequences notwithstanding the fact that a deemed offence was committed. Further the following observations in para 6 in Electronics Trade & Technology Development Corpn. Ltd. “Section 138 intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induce the payee or holder in due course to act upon it. Section 138 draws presumption that one commits the offence if he issues the cheque dishonestly” (emphasis supplied) in our opinion, do not also lay down the law correctly.

20. On a careful reading of Section 138 of the Act, we are unable to subscribe to the view that Section 138 of the Act draws presumption of dishonesty against drawer of the cheque if he without sufficient funds to his credit in his bank account to honour the cheque issues the same and, therefore, this amounts to an offence under Section 138 of the Act. For the reasons stated hereinabove, we are unable to share the views expressed by this Court in the above two cases and we respectfully differ with the same regarding interpretation of Section 138 of the Act to the limited extent as indicated above.”

- 18.** In present case the petitioner by an advocates letter dated 21.02.2012 replied to the complainant's Advocates notice dated 01.02.2012 and

denied his debt and liability towards the complainant. The petitioners reply further noted that at the time of closure of the original business, in which name the disputed cheque stands, there were no outstanding dues.

- 19. The Company closed down in March, 2011.**
- 20. And the Cheque is dated 24.10.2011.**
- 21. This prima facie supports the case of the petitioner that the cheque issued was undated and given as a security. The Signature on the cheque is also incomplete.**
- 22. As such on the date of presentation of the cheque, the company which allegedly issued the cheque was no more existence.**
- 23.** It is thus clear that the mandatory provision of section 138 N.I. Act is not present in the present case. **The presumption as to the debt and/or liability has also been rebutted** by proving that the cheque with incomplete signature was subsequently dated and submitted 8 months after the company which allegedly issued it had closed down, with no outstanding dues **(M/s. Laxmi Dyechem vs State of Gujarat & Ors. (Supra)).**
- 24. CRR 302 of 2020 is allowed.**
- 25.** The Judgment and Order dated 29.11.2019 passed by the Learned Judge, Bench-1, City Sessions Court, Calcutta, in Criminal Revision No.153 of 2017, affirming the Judgment and order dated 20.04.2017 passed by the Learned Metropolitan Magistrate, 3rd Court, Calcutta in

Case No. C/4315 of 2012, wherein the petitioner had been convicted under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to suffer imprisonment till rising of the court by way of detention inside the court room and also directed to pay compensation of Rs. 10,00,000/- (Rupees Ten Lakhs) in default to suffer simple imprisonment for 1(one) year **is hereby set aside and the petitioner Rajesh Singh is accordingly acquitted and discharged from his bail bond.**

- 26.** The petitioner is permitted to withdraw the amount of Rs. 5,00,000 deposited by the petitioner on 15.02.2022 before the trial court as per direction of the High Court dated 08.02.2022.
- 27.** All connected applications, if any, stands disposed of.
- 28.** Interim order, if any, stands vacated.
- 29.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 30.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)