

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 1117 of 2021

SUSANTA MONDAL

VS.

THE STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Sambhu Nath De, Adv.

For the O.P. : Mr. Satadru Lahiri, Adv.
Mr. Safdar Azam, Adv.
Mr. Syed Wasim Faraque, Adv.

Hearing concluded on : 25th April, 2023

Judgement on : 28th April, 2023

Siddhartha Roy Chowdhury, J.:

1. This revisional application is a manifestation of displeasure of the petitioner over the judgement and order passed by learned Judge, Bench-I, City Sessions Court, Calcutta, in Criminal Revision No. 35 of 2018 affirming the judgement and order of conviction passed by learned 3rd Court of Metropolitan Magistrate at Calcutta in Case No. C/255/2010.
2. Briefly stated, M/s SSSX Metalicks Private Limited, the opposite party no. 2 herein, filed a petition of complaint before the learned Additional Chief Metropolitan Magistrate, Calcutta under Section 138 of the Negotiable Instrument Act, 1881, alleging, *inter alia*, that the complainant is a private limited company carrying on business from 51 Vivekananda Road, Kolkata-700007 and is being represented by

Balkishan Didwania. Susanta Mondal is carrying on his business from premises no. 33/1 Orphangung Market, Garu Hata, Khidderpore, who placed orders to the complainant company for Basmati rice which was sold, supplied and delivered to the accused person. The complainant raised its invoice bearing no. SSS/F/0003/09-10 and SSS/F/0004/09-10 dated 19th June, 2009 for a sum of Rs. 7,30,000/- and Rs. 3,65,000/- respectively which were duly accepted by the accused person. The accused person in discharge of the aforesaid legal liability issued cheque no. 540397 dated 15th September, 2009 drawn on United Bank of India, Habra for a sum of Rs. 10,95,000/- in favour of the complainant company. The cheque was presented for encashment and was returned by the banker of the accused person with the remark "exceeds arrangement" vide banker's memo dated 1st February, 2010. The complainant got the said information on 2nd February, 2010, thereafter, the complainant issued a demand notice dated 5th February, 2010 under Section 138 (b) of the Negotiable Instrument Act which was delivered on 10th February, 2010 but the drawee of the cheque failed to act in terms of the said notice. Learned Trial Court after complying with the provision of Section 200 of the Code of Criminal Procedure issued process upon the accused person who in turn surrendered to the jurisdiction of the Trial Court and stood the trial pleading his innocence.

3. To bring home charges Sri Balkishan Didwania, the authorized representative of the complainant company adduced evidence as P.W.

1 and Susanta Mondal, the accused person adduced evidence as D.W.

1. Nikhil Chandra Roy, Manager of United Bank of India, Habra Branch adduced evidence as D.W. 2, Palash Mukherjee adduced evidence as D.W. 3.

4. Learned Trial Court after considering the evidence, both oral and documentary was pleased to hold the accused person guilty to the charge under Section 138 of the Negotiable Instrument Act and sentenced him to suffer imprisonment till rising of the Court and directed to pay compensation to the tune of Rs. 21,90,000/- within two months from the date in default to suffer imprisonment for 12 months. The convict made an unsuccessful attempt to reverse the order of conviction by preferring a criminal revision being Criminal Revision No. 35 of 2018. Hence this petition under consideration.

5. Mr. Sambhu Nath De, learned Counsel representing the petitioner assails the impugned judgement by adverting *inter alia* that learned Trial Court failed to appreciate the evidence on record in its proper perspective. According to Mr. De, the petitioner, who has been suffering an order of conviction, at no point of time gave any order to the opposite party no. 2 to supply rice; rather the opposite party no. 2 brought huge quantity of rice and godowned the same willfully and voluntarily at a market place without the consent of the petitioner. After lapses of three months from the date of alleged delivery of rice the petitioner came to know about the said rice in the said godown at Khidderpore. When the representative of the opposite party no. 2 claimed signed blank cheque from him as security he gave the same

with a request not to encash the same without the consent of the petitioner. It is further contended by Mr. De that on verification it was found that quality of rice was not up to the mark and the petitioner informed the opposite party no. 2 verbally and subsequently by writing a letter on 7th December, 2009 requesting him to take back the said rice. But no response came from the opposite party no. 2. It is further adverted that considering the long standing business relationship, the petitioner did not hesitate to issue the blank cheque but having found the ill intention of the opposite party no. 2, he had to instruct the banker to stop payment and the cheque presented by the petitioner was not honoured.

6. It is adverted at the bar that earlier a revisional application was filed by the petitioner which was disposed of by Hon'ble Justice Ashim Kumar Roy as His Lordship then was, granting liberty to the petitioner to agitate all points before the learned Trial Court. According to Mr. De, petitioner did not incur any liability or debt therefore, had no reason to issue the cheque in question.

7. Refuting such contention of Mr. De, Mr. Satadru Lahiri, learned Counsel representing the opposite party no. 2 draws my attention to different documents annexed to the petition under consideration. Drawing my attention to the letter dated 7th December, 2009 which was admitted as Exhibit-D in course of trial, Mr. Lahiri submits that in this letter Exhibit-D the petitioner admitted that he received 600 bags, 15 tons Guru Brand Basmati 1121 quality Basmati rice at his godown at Khidderpore vide invoice no. SSS/F/0003/09-10 and

SSS/F/0004/09-10 dated 19th June, 2009 from M/s SSSX Metalicks Private Limited. This averment made in the letter Exhibit-D rubbishes the claim of the petitioner that though no order was given the opposite party no. 2 godowned the huge quantity of rice voluntarily.

8. The cheque was issued by the accused-petitioner on 15th December, 2009 for a sum of Rs. 10,95,000/-. The accused person in response to the notice given under Section 138 (b) of the Negotiable Instrument Act, Exhibit-5, gave a reply vide letter dated 18th February, 2010, Exhibit-G through his advocate Sambhu Nath De and in the said letter it is adverted as follows:-

“At the time of receiving from aforesaid Basmati rice my client compelled to issue and handed over a cheque of Rs. 10,95,000/- drawn on the United Bank of India, Habra as security.”

This averment negates the claim of the petitioner that he was compelled to issue a blank cheque.

9. Drawing my attention to the letter dated 7th December, 2009, it is further contended that admittedly 15 tons of Basmati rice by 600 bags were delivered to the petitioner and duly received at his godown bearing invoice no. SSS/F/0003/09-10 and SSS/F/0004/09-10 dated 19th June, 2009 and the cheque in question was issued in discharge of his liability to pay the price against the invoice raised. The petitioner issued the cheque in question on 15th September, 2009 almost after three months from the date of supply. Over the period of three months, the petitioner had ample opportunity to check and verify the quality of rice supplied to him. But for the first time he

raised the issue of low quality of the rice, after the cheque was presented and returned by the banker of the petitioner as he instructed to stop payment. It was nothing but a ploy to defeat the lawful claim of the opposite party no. 2. Mr. Lahiri further submits that when it is admitted by the drawer of the cheque that he issued the cheque for sum of Rs. 10,95,000/- there is every reason to presume that the cheque was issued voluntarily in discharge of his existing liability. The onus lies upon the drawer of the cheque to rebut such presumption by adducing evidence.

10. Section 138 of the N.I. Act reads as follows:-

“Section 138 in The Negotiable Instruments Act, 1881

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 ¹⁹ [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, ²⁰ [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.

Explanation.— For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.”

11. A plain reading of Section 138 of N.I. Act would suggest:-

(a) The cheque should be drawn by the accused on an account maintained by him with banker for payment of any amount of money to another person from out of that account.

(b) The cheque should be presented within the stipulated period of time and should be returned unpaid either because the amount of money standing to the credit of the drawer of the cheque is insufficient or it exceeds the amount arrangement to be paid from that account by the drawer of the cheque with the bank.

(c) In such situation notice is to be issued and the drawer of the cheque if fails to make payment of the amount of money within fifteen days from the receipt of such notice, the drawer of the cheque shall be deemed to have committed the offence under Section 138 of the N.I. Act.

12. Section 139 of the N.I. Act envisages that unless contrary is proved it should be presumed that the holder of the cheque received the cheque of the nature referred to Section 138 of the N.I. Act for discharge in whole or part of any debt or liability. Therefore, the initial burden that lies upon the complainant, is to be discharged by

credible evidence indicating that cheque was issued by the accused person and once the initial burden is discharged, the burden would shift upon the accused person to prove the contrary that the cheque was not issued in discharge of any liability or debt.

13. Section 139 of the N.I. Act carries with it the statutory presumption to be rebutted by the drawer of the cheque. In this regard, I would like to rely upon the judgement of Hon'ble Apex Court in the case of **BASALINGAPPA VS. MUDIBASAPPA** reported in **(2019) 5 SCC 418** wherein Hon'ble Apex Court held:-

"25. We having noticed the ratio laid down by this Court in the above cases on [Section 118\(a\)](#) and [139](#), we now summarise the principles enumerated by this Court in the following manner:

25.1. Once the execution of cheque is admitted [Section 139](#) of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2. The presumption under [Section 139](#) is a rebuttable presumption and the onus is on the accused to raise probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence. [Section 139](#) imposed an evidentiary burden and not a persuasive burden.

25.5. It is not necessary for the accused to come in the witness box to support his defence."

14. Hon'ble Apex Court in **THEDI SINGH VS. NARAYAN DASS MAHANT** reported in **(2022) 6 SCC 735** held:-

"7. It is true that this is a case under [Section 138](#) of the Negotiable Instruments Act. [Section 139](#) of the N.I. Act provides that Court shall presume that the holder of a cheque received the cheque of the nature referred to in [Section 138](#) for the discharge, in whole or in part, of any debt or other liability. This presumption, however, is expressly made subject to the position being proved to the contrary. In other words, it is open to the accused to establish that there is no consideration received. It is in the context of this provision that the theory of 'probable defence' has grown. In an earlier judgment, in fact, which has also been adverted to in *Basalingappa (supra)*, this Court notes that [Section 139](#) of the N.I. Act is an example of reverse onus [see (2010) 11 SCC 441]. It is also true that this Court has found that the accused is not expected to discharge an unduly high standard of proof. It is accordingly that the principle has developed that all which the accused needs to establish is a probable defence. As to whether a probable defence has been established is a matter to be decided on the facts of each case on the conspectus of evidence and circumstances that exist."

15. In order to discharge such reverse onus the accused person, I have already indicated, adduced evidence as D.W. 1 and two other witnesses were also examined by him as D.W. 2 and D.W. 3. From the

testimony of D.W. 2, the Manager of the bank, it appears that following the instruction of the accused person, bank stopped the payment against the cheque issued by him. Exhibit-1 is the reply given by the bank to the accused Susanta Mondal with reference to his letter dated 11th February, 2010. Exhibit-I is the letter of the bank and Exhibit-H is the written instruction given by drawer of the cheque and the said document contains the reference of invoice no. SSS/F/0003/09-10 and SSS/F/0004/09-10 against those invoices. Cheque no. 540397 of Rs. 10,95,000/- was drawn by Susanta Mondal and two months after the cheque was issued he instructed the banker to stop payment.

16. It goes without saying that in a criminal proceeding an accused person does not have any obligation to prove any point beyond reasonable doubt. An accused person enjoys the liberty to propagate any narrative in defence, that may be probable or improbable even at his own peril. Here under Section 139 of the N.I. Act the reverse burden was upon the accused person. At one point of time the accused person took the plea that he never placed any order to the complainant to supply Basmati rice. Therefore, he had no obligation to pay. But Exhibit-D runs contrary to such plea taken by the accused person in paragraph 4 of the petition under consideration wherein it is adverted as follows:-

“Further the petitioner stated that he had no business transaction with the opposite party no. 2 and is not familiar with the opposite party no. 2. He has not issued any order to the opposite party no.

2 for supply of rice. Further the petitioner added that the opposite party no. 2 willfully and voluntarily godowned the rice in question in the public godown at market place without taking any consent from the petitioner herein. The petitioner further stated that after the lapse of three months from the date of alleged delivery of the said rice he had come to learn about the keeping of the said rice in the godown at Khidderpore which was open and was not safe for storage of the rice. When the representative of the opposite party no. 2 claimed signed blank cheque from him as security for the payment of the delivery of the alleged rice, as such he was compelled to put his signature on the cheque in question and handed over those cheques to the representative of the opposite party no. 2 with a request not to encash the said cheque without his consent from him.”

The Exhibit-D demonstrates that rice was delivered and received on 19th June, 2009. The cheque was given on 15th September, 2009. There is nothing to indicate that in between, the accused person raised the issue pertaining to the quality of rice he received. From the attending facts and circumstances, it is admitted that cheque was issued by the accused person and he instructed the bank not to honour the cheque.

17. Section 140 of the N.I. Act reads as follows:-

“Section 140 in The Negotiable Instruments Act, 1881

140. Defence which may not be allowed in any prosecution under section 138.—It shall not be a defence in a prosecution for an offence under section 138 that the drawer had no

reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.”

18. Hence, upon conjoint reading of Section 138 and 140 of the N.I. Act it would be clear that dishonour of the cheque by bank on the ground that the cheque was dishonoured under the instruction of the drawer of the cheque to stop payment, would be covered by phrase *the amount of money standing to the credit of the account is insufficient to honour the cheque* unless, of course it is proved that on the date of issuance of cheque and on the date of instructing the bank not to honour the cheque, the drawer of the cheque had sufficient amount to honour the cheque to the credit of that account. No such document was produced by the accused person to prove that there was sufficient money in his account to honour the cheque and because of certain other reasonable cause he instructed the bank not to honour the cheque. Therefore, I am of the view that the accused person has failed to discharge the onus of reverse burden as laid down under Section 139 of the N.I. Act. The pleas taken by the accused person at different point of time are found to be mutually contradictory and became perilous to the interest of the accused person.
19. Under such circumstances, I am of the view that the judgement impugned does not warrant any interference. The revisional application does not merit any consideration and is dismissed however, without cost. The petitioner is to comply with the direction of the learned Trial Court within 30 days from date.

20. Let a copy of this judgement be sent down to the learned Trial Court for information and necessary action.
21. Urgent certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)