

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

C.R.R. 3661 of 2018

With

IA No: CRAN 2 of 2021

Pramod Kumar Gupta

Vs.

State of West Bengal & Anr.

For the Petitioner

:Mr. Pawan Kumr Gupta, Adv.

Mr. Awadesh Kr. Rai, Adv.

Ms. Sofia Nesar, Adv.

Mr. Santanu Seth, Adv.

For the opposite party No.2

:Mr. Amit Sharma, Adv.

Mr. Bhupendra Gupta, Adv.

Mr. S. Mitra, Adv.

Mr. H Haque, Adv.

Heard on

:June 27, 2023

Judgment on

:June 30, 2023

Bibhas Ranjan De, J.

1. The judgement and order dated 18.09.2018 passed by Ld. Additional Sessions Judge, Bench II, City Sessions Court, Calcutta in Criminal Revision no. 306 of 2017 arose out of judgement and order dated 01.09.2017 passed by Ld. Metropolitan Magistrate 17th Court, Calcutta in complaint case no. C-439 of 2013, is challenged by this application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as CrPC).
2. Complaint case no. C-439 of 2013 was initiated on a complaint under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as N.I Act) alleging *inter alia* that the complainant company and the accused, namely Pramod Kumar Gupta, had business relation for a long time and in discharge of existing liability accused issued two account payee cheques bearing no 902036 & 902037 dated 17.04.2013 to the tune of Rs. 1,50,000/- and 1,29,972/- respectively in favour of the complainant company, drawn on I.C.I.C.I Bank, Burrabazar Branch. Both the cheques were presented within the valid period to its drawee bank, but those

cheques were dishonored on 19.04.2013 on account of insufficient funds. The complainant company sent a demand notice dated 27.04.2013 and the accused, on receipt of that notice, sent a reply to that notice.

3. Ld. Metropolitan Magistrate, 17th Court, ordered conviction and directed the convict Pramod Kumar Gupta to pay compensation of Rs. 3,00,000/- in default to suffer simple imprisonment for two months. Ld. Metropolitan Magistrate observed that accused failed to produce any document in support of plea of issuing of blank cheques or request for return back the those cheques. Ld. Magistrate took it for granted that cheques were issued by the accused in discharge of legally enforceable debt with the help of Section 139 of the NI Act and came to his final order of conviction.

4. Assailing the judgement passed by the Ld. Magistrate accused preferred a revision application before the Ld. Sessions Judge, City Sessions Court, Calcutta and that revision application was taken up by the Additional Session Judge, Bench II, City Sessions Court, Calcutta.

5. Ld. Additional Sessions Judge observed as follows:-

“ Perused the evidence on record and impugned judgment. I find that two cheques are involved in this case which are termed as security cheque by the accused and as the cheque in discharge of legal liability by the complainant. Complainant by his evidence would be able to establish the circumstances for which those cheques were issued and that was admitted by the accused that there was business terms. From the demand notice I find that the accused denied the claim of the complainant on the ground as if the complainant supplied demand notice I find that the accused denied the claim of the complainant on the ground as if the complainant supplied damaged goods. But rightly it has been observed by Ld. Trial Judge that just after such incident no correspondence was made by the accused denying the claim of the complainant as to cost of delivered goods. So, such plea taken in reply of demand notice seems to me a preplanned activity to deny the claim of the complainant. It has also not been established by the accused when and regarding what transaction those two security cheques were issued. So, which was the duty of the accused to establish has not been brought. On the other hand, the complainant would be able to establish their terms of business and the plausible cause of issuance of those cheques. Otherwise, the statutory formalities are rightly followed by the complainant and thus I think there is no need to interfere the judgment of the Ld. Trial Court. Moreover, it is not

out of place to observe that these order is appealable one and thus the revision does not stand.

Hence, it its,

Ordered

That judgement and order dated 01.09.2017 passed by Ld. M.M., 17th Court, Calcutta in connection with complaint Case No. C-439/2013 is affirmed.

The revisionist is directed to appeal before Ld. Trial Court within 15 days from the date of this order for compliance in default ld. Trial Court is at liberty to execute the sentence in accordance with law.

Let a copy of this judgement along with L.C.R. be sent to the Ld. Court below for necessary information.”

- 6.** Ld. advocate Mr. Pawan Kumar Gupta, appearing on behalf of the petitioner, centered his argument around the plea of issuing blank cheques as security due to business relation between the parties. In support of his argument Mr. Gupta has relied on the evidence of DW1 and reply to the legal demand notice (exhibit A) and contended that immediately after receiving legal notice accused sent a reply taking plea of issuance of security cheque and also plea of supply of damage goods by the opposite party/ complainant. Those facts,

according to Mr. Gupta, have duly been corroborated by the accused himself in his evidence as DW1. Therefore, according to Mr. Gupta, complainant cannot be said to be a holder of the cheques in due course under Section 9 of the NI Act.

7. Mr. Gupta has further referred to the cheques (exhibit 2 & 2/1) and contended that except the signature of the accused/petitioner other portion of the cheques were written by different inks. However, with regard to argument advanced on behalf of Mr. Gupta, no different ink is found on the two cheques save and except dates.

8. Ld. Advocate, Mr. Amit Sharma appearing on behalf of the Complainant/ opposite party has contended that all pleas of issuance of blank cheque and supply of damaged goods were not proved by any credible evidence at the behest of the accused/petitioner. Mr. Sharma further argued that issuance of two cheques in favour of the complainant /opposite party lead to a rebuttable presumption under Section 139 of the NI Act while signature of the cheques was not disputed by the accused/petitioner in course of trial.

9. Referring to Para 13 and 14 of the revision application Mr. Sharma has contended that accused/petitioner took a plea of

obtaining cheques illegally by the complainant/ opposite party and also took a plea of stolen cheques.

10. In support of his argument Mr. Sharma relied on following judgements of Hon'ble Apex Court:-

- ***T.P. Murugan (dead) Through Legal Representatives Vs. Bojan & Posa Nandhi Prepresented Through*** reported in ***(2018) 8 Supreme Court Cases 469***
- ***Uttam Ram Vs. Devinder Singh Hudan and another*** reported in ***(2019) 10 Supreme Court Cases 287***
- ***Shree Daneshwari Traders Vs. Sanjay Jain and another*** reported in ***(2019) 16 Supreme Court Cases 83***
- ***Kalamani Tex and another Vs. P. Balasubramanian*** reported in ***(2021) 5 Supreme Court Cases 283***

11. In ***Kalamani Tex*** (supra) Hon'ble Apex Court laid down the following observation:-

17. Even if we take the arguments raised by the appellants at face value that only a blank cheque and signed blank stamp papers were given to the respondent, yet the statutory presumption cannot be obliterated. It is useful to cite Bir Singh v. Mukesh Kumar [Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197, para 36 : (2019) 2 SCC (Civ) 309 : (2019) 2 SCC (Cri) 40] , where this Court held that : (SCC p. 209, para 36) “36. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent

evidence to show that the cheque was not issued in discharge of a debt.”

18. *Considering the fact that there has been an admitted business relationship between the parties, we are of the opinion that the defence raised by the appellants does not inspire confidence or meet the standard of “preponderance of probability”. In the absence of any other relevant material, it appears to us that the High Court did not err in discarding the appellants' defence and upholding the onus imposed upon them in terms of Section 118 and Section 139 of NIA.”*

- 12.** In our case also there is admitted business relationship between the parties. Moreso, in our case a plea taken by the accused petitioner is that damage goods were supplied by the complainant/opposite party to the petitioner/accused and therefore it can reasonably be presumed that cheques were issued in lieu of supply of goods. It is pertinent to mention here that accused/petitioner absolutely failed to adduce any credible evidence in support of supply of damage goods. In this circumstances, keeping an eye to the ratio of the aforesaid decision, I find no other option but to hold that issuance of blank cheques signed by the accused/petitioner in lieu of supply of goods, would attract the presumption under Section 139 of the NI Act.

13. *Shree Daneshwari Traders* (supra) also ruled with regard to presumption under Section 139 of the NI Act as follows:-

“ 19. It is for the respondent-accused to adduce evidence to prove that the cheques were not supported by consideration and that there was no debt or liability to be discharged by him. The receipts-Ex.-22/C (colly) relied upon by the respondent-accused do not create doubt about the purchases made on credit and the existence of a legally enforceable debt for which the cheques were issued. The courts below erred in saying that by the receipts-Ex.22/C (colly), the respondent-accused has rebutted the statutory presumption raised under [Section 139](#) of the Negotiable Instruments Act. The oral and the documentary evidence adduced by the complainant are sufficient to prove that it was a legally enforceable debt and that the cheques were issued to discharge the legally enforceable debt. With the evidence adduced by the complainant, the courts below ought to have raised the presumption under [Section 139](#) of the Act. The evidence adduced by the respondent-accused is not sufficient to rebut the presumption raised under [Section 139](#) of the Act. The defence of the respondent that though he made payment for the commodities/rice bags, the blank cheques were not returned by the appellant-complainant is quite unbelievable and unacceptable. The impugned judgment of the High Court cannot be sustained and is liable to be set aside. The respondent-accused is convicted under [Section 138](#) of the Negotiable Instruments Act in both the complaints; however, considering that the cheque transaction was of the year 2003, at this distant point of time, we do not deem it appropriate to impose any sentence of imprisonment on the accused.”

14. In our case accused/petitioner failed to adduce any evidence to substantiate the plea/story of damage goods or

issuance of cheques as security to rebut the presumption under Section 139 of the N I Act.

15. In ***Uttam Ram*** (supra) Hon'ble Apex Court observed as follows:-

“26. In view of the judgments reported to above, we find that the respondent has not rebutted the presumption of consideration in issuing the cheque on 2.10.2011 inter alia for the following reasons:

1. Statement of the CW3, that he was not an agent of the respondent, has not been challenged by the respondent in the cross examination.

2. The statement of the appellant as CW2 that the cheque was handed over by the respondent personally remains unchallenged.

3. The respondent has not denied even in his statement that the cheque was not issued by him. The cross examination of the witnesses produced by the appellant also does not show that the signatures on the cheque by him have not been disputed.

4. The respondent relies upon entry recorded with the police on 09.09.2011 that the cheque book was lost. However, the respondent has not lodged any FIR in respect of loss of cheque, even after the notice of dishonour of cheque was received by him on 27.10.2011. The mere entry is not proof of loss of cheque as is found by the learned Trial Court itself as it is self-serving report to create evidence to avoid payment of cheque amount.

5. The respondent has not appeared as witness to prove the fact that the cheque book was lost or that cheque was not issued in discharge of any debt or liability.

6. The statement of accused under Section 313 of the Code is only to the effect that the cheque has been misused. There is no stand in the statement that the cheque book was stolen.

7. The statement of accused under [Section 313](#) is not a substantive evidence of defence of the accused but only an opportunity to the accused to explain the incriminating circumstances appearing in the prosecution case of accused. Therefore, there is no evidence to rebut the presumption that the cheque was issued for consideration.

27. Once the agent of the respondent has admitted the settlement of due amount and in absence of any other evidence the Trial Court or the High Court could not dismiss the complaint only on account of discrepancies in the determination of the amount due or oral evidence in the amount due when the written document crystalizes the amount due for which the cheque was issued.

28. The accused has failed to lead any evidence to rebut the statutory presumption, a finding returned by both the Trial Court and the High Court. Both Courts not only erred in law but also committed perversity when the due amount is said to be disputed only on account of discrepancy in the cartons, packing material or the rate to determine the total liability as if the appellant was proving his debt before the Civil Court. Therefore, it is presumed that the cheques in question were drawn for consideration and the holder of the cheques i.e., the appellant received the same in discharge of an existing debt. The onus, thereafter, shifts on the accused- appellant to establish a probable defence so as to rebut such a presumption, which onus has not been discharged by the respondent.”

16. In **T.P. Murugan (supra)** Hon’ble Supreme Court also observed as follows:-

“21. We have heard Senior Counsel for both parties, and perused the record. Under [Section 139](#) of the N.I. Act, once a cheque has been signed and issued in favour of the holder, there is statutory presumption that it is issued in discharge of a legally enforceable debt or liability¹. This presumption is a rebuttable one, if the issuer of the cheque is able to discharge the burden that it was issued for some other purpose like security for a loan.

22. In the present case, the respondent has failed to produce any credible evidence to rebut the statutory presumption. This would be evident from the following circumstances:-

22.1. The respondent-accused issued a Pronote for the amount covered by the cheques, which clearly states that it was being issued for a loan;

22.2. The defence of the respondent that he had allegedly issued 10 blank cheques in 1995 for repayment of a loan, has been disbelieved both by the Trial Court and Sessions Court, on the ground that the respondent did not ask for return of the cheques for a period of seven years from 1995. This defence was obviously a cover-up, and lacked credibility, and hence was rightly discarded.

22.3. The letter dated 09.11.2002 was addressed by the respondent after he had issued two 1 Refer to K.N. Beena Vs. Muniyappan and Another [(2001) 8 SCC 458; para 6] and Rangappa vs. Shrimohan [(2010) 11 SCC 441; para 26] cheques on 07.08.2002 for Rs.37,00,000/- and Rs.14,00,000/- knowing fully well that he did not have sufficient funds in his account. The letter dated 09.11.2002 was an after-thought, and was written to evade liability. This defence also lacked credibility, as the appellants had never asked for return of the alleged cheques for seven years.

22.4. The defence of the respondent that the Pronote dated 07.08.2002 signed by him, was allegedly filled by one Mahesh-DW.2, an employee of N.R.R. Finances, was rejected as being false. DW.2 himself admitted in his cross-examination, that he did not file any document to prove that he was employed in N.R.R. Finances. On the contrary, the appellants - complainants produced PW.2 and PW.4, Directors of N.R.R. Finances Investment Pvt. Ltd., and PW.3, a Member of N.R.R. Chit funds, who deposed that DW.2 was never employed in N.R.R. Finances.

23. The appellants have proved their case by overwhelming evidence to establish that the two cheques were issued towards the discharge of an existing liability and legally enforceable debt. The respondent having admitted that the cheques and Pronote were signed by him, the presumption under S.139 would operate. The respondent failed to rebut the presumption by adducing any cogent or credible evidence. Hence, his defence is rejected.

24. In view of the aforesaid facts and circumstances, the impugned order dated 27.09.2013 passed in Criminal

Revision Petition Nos. 1657 and 1658 of 2008 is hereby set aside, and the order of Conviction and Fine passed by the Trial Court is restored.

25. The Appeals are allowed accordingly.”

17. Considering the entire material on record including the contents of the revision application as well as keeping the ratios of the aforementioned decisions in mind, I find that petitioner/accused failed to rebut the presumption arose out of issuing two cheques on 17.04.2013 on the following reasons:-

19.1. Admittedly, there was business relationship between the petitioner/accused and the opposite party/complainant.

19.2. Cheques signed by the accused/ petitioner were issued in response to supply of goods.

19.3. Plea of supply of damage goods has not been ratified by any single evidence.

19.4 Accused/petitioner took different pleas of issuance of blank cheque, obtained cheques by the opposite party/complainant illegally and stolen cheques. But, none of those pleas was substantiated by any reliable evidence.

19.5 Complainant/opposite party complied with all statutory requirements of Section 138 of the NI Act.

- 18.** Therefore, conclusion drawn either by Ld. Metropolitan Magistrate, 17th Court, or by Ld. Additional Sessions Judge, Bench II, City Sessions Court, is not liable to be interfered with.
- 19.** With the aforesaid observation the instant revisions application under Section 482 CrpC being No. CRR 3661 of 2018 stands disposed of.
- 20.** Interim order if there be any stands vacated. All Pending applications, if there be any, stand disposed of as well.
- 21.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]