**IN THE HIGH COURT AT CALCUTTA**

**(Criminal Appellate Jurisdiction)**

**Appellate Side**

Present:

**The Hon'ble Justice Bibhas Ranjan De**

**C.R.R. 3671 of 2015**

**Tanmoy Ghorai**

**Vs.**

**Sibaprasad Jana**

For the Petitioner :Mr. Amal Krishna Samanta, Adv.

For the State :Mr. Arindam Jana, Adv.
Mr. Partha Pratim Sinha, Adv.

Heard on : June 19, 2023

Judgment on : June 22, 2023

**Bibhas Ranjan De, J.**

**1.** In this revision application the judgement and order dated 20.08.2015 passed by Learned Additional Sessions Judge, Fast Tract Second Court, Tamluk, Purbar Medinipur has assailed. By the impugned judgement in Criminal Appeal no. 05 of 2016 affirmed the judgment and order dated 29.04.2015 whereby Ld. Judicial Magistrate, 2nd Court acquitted the opposite party/accused in connection with CR case 358 of 2009.

**2.** According to complainant / petitioner accused/opposite party took loan of Rs. 2,00,000/- owing to good relation between the parties, on condition to repay the loan amount as and when demanded. Subsequently, accused / opposite party issued three cheques dated 15.06.2009 drawn on Punjab National Bank, to satisfy the entire loan amount. Thereafter, petitioner/ complainant presented those cheques for enchasment on 04.07.2009 to his bank. All three checks were dishonoured by the bank for insufficient fund. Complainant/petitioner communicated legal notice demanding the money on 13.07.2009 but the accused/ opposite party did not make any payment in spite of receiving notice. In effect one application under Section 138 of the Negotiable Instruments Act, 1981(hereinafter referred to as NI Act) was filed.

**3.** Learned Judicial Magistrate, Second Court, Tamluk, Purba Medinipur disposed of the application by passing the judgement of acquittal holding *inter alia* that complainant/petitioner could not produce any document whatsoever. Moreso, Lakshan Maity (DW2) denied any such loan transaction between the parties in spite of his presence affirmed by PW 1 (complainant / petitioner) at the time of loan transaction. That is why, Ld. Magistrate did not pry into the track of rebuttable presumption under Section 139 of the NI Act and passed and order of acquittal under Section 252(1) of CrPC.

**4.** Aforesaid judgement passed by Ld. Magistrate was affirmed by the impugned judgement passed by learned Additional Sessions Judge, Fast Track, Second Court, Tamluk, Purba Medinipur holding *inter alia*, that complainant petitioner failed to prove the fact of advance of loan of Rs. 2,00,000/- either by producing any document or by adducing any oral evidence. Consequently, accused/ opposite party has succeeded to rebut the presumption under Section 139 read with Section 118(a) of the N.I Act.

**5.** Before going into the issue raised in this revision application it would be profitable to reproduce the provision of Section 138 of the N.I Act as follows:-

*"[18] [ 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.]"*

**6.** According to complainant /petitioner, opposite party/accused issued three cheques to satisfy the loan amount of Rs. 2,00,000/- and thereafter complainant/ petitioner presented those cheques to his bank but those cheques were dishonoured due to insufficient of fund. Complainant/ petitioner sent legal notice demanding the amount but opposite party/ accused did not pay any heed to his notice in spite of receipt thereof.

**7.** Date of deposit of cheque, and communication of legal notice demanding the disputed amount clearly show the complainant/petitioner complied with the proviso (a) (b) (c) to section 138 of the NI Act.

**8.** Only issue raised in this revision application is that whether those three cheques were issued to satisfy any legally enforceable debt within the meaning of explanation to Section 138 of the N.I Act.

**9.** According to complainant/ petitioner, accused/opposite party took **loan** of Rs. 2,00,000/- on certain date in presence of Jagadish Bakshi, advocate Samir Ghorai, Ajoy Maity and Lakshan Chandra Maity. Unfortunately, complainant/ petitioner did not produce any documents in support of loan. Not only that, complainant/ petitioner did not any of the persons alleged to have been present at the time of transaction of loan. Rather on behalf of accused/opposite party Lakshan

Maity was examined as DW2 who did not support any such transaction of loan between the parties.

**10.** It is true, that conglomeration of two provisions i.e 118(a) and 139 of the NI Act a rebuttable presumption can be drawn from the fact of issuance of cheques only.

**11.** Ld. Advocate, Mr. Amal Krishna Samanta, appearing on behalf of the petitioner/complainant has contended that issuance of cheque only leads to presumption of enforceable debt within the meaning of Section 139 of the NI Act and no further proof is required.

**12.** Mr. Samanta, in support of his contention, has relied on the following cases:-

- ***Kishan Rao Vs. Shankargouda*** reported in ***(2018) 8 Supreme court Cases 165,***
- ***T.P. Murugan (Dead) Through Legal Representatives Vs Bojan and Posa Nandhi Represented Through power-of-Attroney Vs Bojan*** reported in ***(2018) 8 Supreme Court Cases 469,***
- ***Bhupesh Rathod Vs Dayashankar Prasad Chaurasia and another*** reported in ***(2022) 2 Supreme Court Cases 355,***

- ***Triyambak S. Hegde Vs. Sripad*** reported in ***(2022) 1 Supreme Court Cases 742,***
- ***Redhi Singh Vs Narayan Dass Mahant*** reported in ***(2022) 6 Supreme Court Cases 735***

**13.** Per contra, Learned Advocate Mr. Arindam Jana, appearing on behalf of the opposite party/accused has argued that Section 139 of the NI Act made it clear that issuance of cheque can lead to a rebuttable presumption in support of issuance of cheque in discharge of **legally enforceable debt**. In support of his contention he relied on following cases:-

- ***Ramdas S/0 Khelu Naik Vs Krishnanand S/0 Vishnu Naik*** reported in ***(2014) 12 Supreme Court Cases 625,***
- ***K. Subramani Vs K. Damodara Naidu*** reported in ***(2015) 1 Supreme Court Cases 99,***
- ***Krishna Janardhan Bhat Vs. Dattatraya G. Hegde*** reported in ***(2008) 4 Supreme Court cases 54.***

**14.** The ratio of the cases cited on behalf of petitioner/complainant is that in case of failure on the part of the accused to rebut presumption under Section 139 of the N.I Act, cheques deem to have been issued in discharge of legally enforceable debt.

**15.** On the other hand, the ratio of the cases relied on behalf of the opposite party/accused is that in case of failure on the part of the petitioner/complainant to prove the issuance of cheque in discharge of legally enforceable debt can lead to an order of acquittal.

**16.** I have already discussed that the complainant/ petitioner could not prove any transaction of loan between the parties and that was further ratified by a person namely Laksman Maity (DW2) who was reported to have been present at the time of transaction of loan.

**17.** To attract an offence under Section 138 of NI Act first parameter is issuance of cheque in discharge of legally enforceable debt. But in this case, complainant/petitioner could not satisfy the said parameter. Consequently, I am not inclined to interfere with the judgment passed by the Learned Additional Sessions Judge Fast Track Tamluk Purba Medinipur in Criminal Appeal no. 05 of 2015 affirming the judgement of acquittal passed by learned Judicial Magistrate, Second Court, Tamluk in connection with CR Case 358 of 2009.

**18.** In the aforesaid view of the matter the instant revision application stands failed. Revision application being C.R.R No. 3671 of 2015 stands disposed of accordingly.

**19.** 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.]**