IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

CRR 1910 of 2021

Shonak Agarwal

Versus

Mr. Mohan Jhangiani

For the Petitioner	:	Mr. Samrat Chowdhury, Adv.
Heard on	:	11.09.2024
Judgment on	:	07.10.2024

Ajay Kumar Gupta, J:

1. By filing this Criminal Revisional application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973, the petitioner has prayed for quashing of proceedings in connection with Complaint Case being No. CS-21353 of 2019 (Mr. Mohan

Jhangiani Vs. Mr. Shonak Agarwal) filed under Section 138 of the Negotiable Instruments Act, 1881 and as amendment thereto. The said case is pending before the Court of the Learned Metropolitan Magistrate, 16th Court at Calcutta.

2. Brief facts of the case, leading to filing of the instant Criminal Revisional application, are as follows:

2a. It is the specific allegation of the complainant that in pursuant to the request made by the present petitioner, the complainant had accommodated a short-term finance to the tune of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs) only to the petitioner/accused. It was agreed that the accused person shall be refunded the said amount along with interest @ 14% per annum.

2b. To discharge his liability, the petitioner had issued a Cheque bearing No. 705852 dated 01.04.2019 for a sum of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs) only drawn on Kotak Mahindra Bank Limited, Middleton Street Branch, Kolkata – 700 071 towards payment. After receiving the said Cheque, the complainant deposited the said cheque with his banker, HDFC Bank Ltd., Camac Street, Kolkata on 03.04.2019. But, the said cheque was dishonoured for non-payment by the bankers of the accused with remark 'Insufficient

Funds'. The intimation was received by the complainant from his banker through Return Memo dated 04.04.2019.

2c. The complainant, through his learned advocate, issued a demand notice dated 10.04.2019 under Section 138 of the Negotiable Instruments Act, 1881 and amendment thereto to the petitioner/accused intimating about the dishonour of the cheque and further demanded to pay the said amount within 15 days from the date of receipt of a demand notice. Demand notice was received by the petitioner/accused on 11.04.2019.

2d. After receiving the said notice, the petitioner/accused did not pay the said amount of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs) only within the stipulated period of time mentioned in the demand notice. Accordingly, the complainant has compelled to file a complaint under Section 138 of the Negotiable Instruments Act, 1881 and same was registered as Complaint Case being No. CS-21353 of 2019. The Learned Judge issued summons upon the petitioner/accused after taking cognizance of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2e. After receiving summon from the Court, the petitioner duly entered his appearance before the Learned Trial Court and granted bail. He pleaded not guilty and claimed to be tried. Subsequently, on

03.02.2020, the petitioner filed an application under Section 205 of the Code of Criminal Procedure, 1973 which was subsequently allowed by the Learned Court below vide order dated 24.02.2021.

2f. According to the petitioner, there is no specific overt act has been alleged or attributed against the petitioner for the commission of alleged offence. Furthermore, the complainant had actually invested the amount which was given to him into the business of the petitioner as a partner of the business. As such, it does not create any debt or liability either in whole or in part to the petitioner. Hence, continuation of this instant criminal proceeding is an abuse of process of law for which the petitioner is seriously prejudiced. There is no sufficient ingredient for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Hence, the instant Criminal Revisional application has been filed by the Petitioner seeking quashing of the proceedings as such it has come up before this Bench for its disposal.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel appearing on behalf of the petitioner/accused submitted that whatever complaint made by the complainant/opposite party, the provision of Section 138 of the Negotiable Instruments Act, 1881 is not at all attracted in the instant criminal proceeding. It is not at all maintainable in the eye of law because there was no such transaction or grant of loan or advance to the petitioner arise. He has no authority to lend or accommodate financially and advance of Rs. 25 Lakhs as short-term finance charging interest thereon @ 14% per annum. The complainant is not a money lender. He does not possess the money lending licence under the Bengal Money-Lenders Act, 1940. So, it does not constitute any prima facie offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The proceeding is not at all maintainable in the eye of law for which ultimate chances of conviction is remote and bleak. Hence, there is no useful purpose to proceed with the instant proceeding. It would be an abuse of process of law and in expedient interest of justice, the above criminal proceeding deserves to the quashed and all orders passed thereof are also liable to be set aside.

3a. Learned counsel for the petitioner/accused placed reliance of a judgment passed in the case of ***Mrs. Monica Sunit Ujjain Vs. Sanchu M. Menon and Ors.***[1] wherein the Hon'ble Bombay High Court has held that in cases of money lending business conducted without licence, a complaint case under Section 138 of Negotiable Instruments Act, 1881 are not attracted and any contract thereof is forbidden by law and same is void contract.

[1] 2023 (1) BC 573

4. On the other hand, none represented the opposite party on call. Even on earlier occasion i.e. on 05.07.2024, none represented the opposite party. No accommodation had been sought for. Accordingly, heard learned advocate appearing on behalf of the Petitioner.

DISCUSSION AND FINDINGS OF THIS COURT:

5. In the light of the submissions and arguments presented by the learned counsel appearing for the petitioner and upon perusal of the contents of the complaint as well as judgment referred by the learned counsel for the petitioner, this Court would like to refer some relevant provisions for ready reference and for proper assessment before entering into the merits of this case. Those Sections read as under:

6. Section 138 of the Act 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 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.

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

7. Sections 8 and 13 of the Bengal Money Lenders Act, 1940 and definitions of **Interest** as per section **2(8)**, **'Lender'** as per Section **2(9)**, **'Loan'** as per Section **2(12)**, **'Money Lender'** as per Section **2(13)** and **'money lending business' and 'business of Money Lending'** as per section **2(14)** which reads as under: —

Section 8. Money-lending business not to be carried on except under licence. - After such date not less than six months after the commencement of this Act as the [State] Government shall, by notification in the *Official Gazette*, appoint in this behalf, no money-lender shall carry on the business of money-lending unless he holds an effective licence.

Explanation.- An effective licence for the purposes of this Act comprises a licence issued to a person who is not disqualified for holding a licence.

13. Stay of suit when money-lender does not hold licence. -

(1) No Court shall pass a decree or order in favour of a money-lender in any suit instituted by a money-lender for the recovery of a loan advanced after the date notified under section 8, or in any suit

instituted by a money-lender for the enforcement of an agreement entered into or security taken, or for the recovery of any security given, in respect of such loan, unless the Court is satisfied that, at the time or times when the loan or any part thereof was advanced, the money-lender held an effective licence.

(2) If during the trial of a suit to which sub-section (1) applies, the Court finds that the money-lender did not hold such licence, the Court shall, before proceeding with the suit, require the money-lender to pay in the prescribed manner and within the period to be fixed by the Court such penalty as the Court thinks fit, not exceeding three times the amount of the licence fee specified in section 10.

(3) If the money-lender fails to pay the penalty within the period fixed under sub-section (2) or within such further time as the Court may allow, the Court shall dismiss the suit: if the money-lender pays the penalty within such period, the Court shall proceed with the suit.

(4) The provisions of this section shall apply to a claim for a set-off by or on behalf of a money-lender.

(5) In this section, the expression "money-lender" includes an assignee of a money-lender, if the Court is satisfied that the assignment was made for the purposes of avoiding the payment of

licence fee and penalty which may be ordered to be paid under this section.

2 (8) "interest" includes any sum by whatsoever name called, in excess of the principal paid or payable to a lender in consideration of, or otherwise in respect of, a loan whether the same is charged or sought to be recovered specifically by way of interest or otherwise, but does not include any sum lawfully charged by a lender in accordance with the provisions of this Act or any other law for the time being in force for or on account of costs, charges or expenses;

2 (9)"lender" means a person who advances a loan and includes a money lender;

2 (12) "loan" means an advance, whether of money or in kind, made on condition of repayment with interest and includes any transaction which is in substance a loan but does not include-

[* * * **]

[* * * * *]

(c) a loan taken or advanced by [by the Central Government or any State Government] or by any local authority in [West Bengal];

(d) a loan advanced before or after the commencement of this Act-

(i) by a bank; or

(ii) by a co-operative life insurance society, co-operative society, insurance company, life assurance company, [Life Insurance Corporation of India,] mutual insurance company, provident insurance society or provident society or from a provident fund;

(e) an advance made on the basis of a negotiable instrument as defined in the Negotiable Instruments Act, 1881, other than a promissory note;

[* * * * *.]

[* * * * *.]

(h) a loan made to or by the Administrator-General and Official Trustee of [West Bengal] or the Commissioner of Wakfs or the Official Assignee or the Official Receiver of the High Court in Calcutta;

(i) a loan or debenture in respect of which dealings are listed on any Stock Exchange;

2 (13)"money-lender" means a person who carries on the business of money-lending in [West Bengal] or who has a place of such business in [West Bengal], and includes a Pawnee as defined in section 172 of the Indian Contract Act, 1872;

2 (14) "**money-lending business**" and "**business of money-lending**" mean the business of advancing loans either solely or in conjunction with any other business;

8. In view of the arguments made by the learned counsel for the Petitioner and considering the aforesaid provisions of the Bengal Money Lenders Act, 1940, I may refer to the provisions of the Bombay Money Lenders Act, 1946. Section 5 of the said Act lays down that no money lender shall carry on business of money lending except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence. Section 10 of the Act lays down that no court shall pass a decree in favour of a money-lender in any suit to which said Act applies unless the court is satisfied that at the time when the loan or any part thereof, to which the suit relates was advanced, the money-lender held a valid licence, and if the court is satisfied that the money lender did not hold a valid licence, it shall dismiss the suit. In other words, carrying on money lending business without licence debars a person from doing money lending and recovering the amount through court. As per explanation to Section 138 of the Negotiable Instruments Act “debt or other liability” means a legally enforceable debt or other liability. So, a loan advanced by a money lender who is doing business of money lending without licence is not a debt or other liability and provisions of

Section 138 of the Act will not apply to such transaction. In the light of above, the legal position is only applicable to the case, which falls under the provisions of Bombay Money Lenders Act, 1946. But, the present case falls under the provisions of Bengal Money Lenders Act, 1940 and those cases' circumstances are totally different.

9. The Bombay High Court in the ***Tinki Nagpur v. Unknown*** observed as under: —

> *"The words "No court" and "in any suit" used in the Section are wider in scope to embrace any suit or proceeding initiated by a money lender who is required to hold and prove valid license for money lending for the relevant period of the loan transaction or transactions. The trial Court was, therefore, entitled to insist upon the complainant for production of valid license for money lending and also to infer in view of Section 114(g) of the Evidence Act that the document withheld was unfavourable to the complainant who withheld it. Thus, the legal position cannot be disputed that Courts are bound to dismiss the suit by money lender for recovery of loans when such money lender was found carrying on business of money lending on the date or dates of the transaction without having valid money lending license."*

10. Similarly, the Bombay High Court in the ***Mrs. Monica Sunit Ujjain Vs. Sanchu M. Menon and Ors.*** observed therein *that in cases of money lending business without licence, proceedings could not be maintainable. Therefore, proceedings under Section 138 of Negotiable Instruments Act, 1881 are also not attracted since the money lending business was without license and the contract which is forbidden by law is void contract.*

11. However, such provisions of the Bombay Money Lenders Act, 1946 is not applicable in the present facts and circumstances of this case because the present case falls within the jurisdiction of the State of West Bengal. Therefore, money lending business and proceedings thereof, if any, comes under the provisions of Bengal Money lenders Act, 1940.

12. The Negotiable Instruments Act, 1881 was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 has inserted new Chapter XVII comprising sections 138 to 142 with effect from 01.04.1989 in the Act. Section 138 of the Act provides the penalties in case of dishonour of cheques due to insufficiency of funds etc. in the account of the drawer of the cheque. However, sections 138 to 142 of the Act were found deficient in dealing with dishonour of cheques. The Negotiable Instruments (Amendment and Miscellaneous

Provisions) Act, 2002 amended sections 138, 141 and 142 and inserted new sections 143 to 147 in the Act aimed at speedy disposal of cases relating to dishonour of cheque through their summary trial as well as making them compoundable.

13. The Hon'ble Supreme Court in the case ***Electronics Trade & Technology Development Corporation Ltd., Secunderabad v. Indian Technologists & Engineers (Electronics) (P) Ltd.***[2], observed that the object of bringing section 138 on statute appears to inculcate the faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments and 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 book and induce the payee or holder in due course to act upon it.

14. The Hon'ble Supreme Court again in the case ***Goa Plast (P) Ltd. v. Chico Ursula D'Souza***[3] while dealing with the objects and ingredients of Sections 138 and 139 of the Act observed as under: —

> *"The object and the ingredients under the provisions, in particular, Sections 138 and 139 of the Act cannot be ignored. Proper and smooth functioning of all business*

[2] **(1996) 2 SCC 739**
[3] **(2004) 2 SCC 235**

transactions, particularly, of cheques as instruments, primarily depends upon the integrity and honesty of the parties. In our country, in a large number of commercial transactions, it was noted that the cheques were issued even merely as a device not only to stall but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions was eroded to a large extent. Undoubtedly, dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. Parliament, in order to restore the credibility of cheques as a trustworthy substitute for cash payment enacted the aforesaid provisions. The remedy available in a civil court is a long-drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee."

15. The Hon'ble Supreme Court in the case ***Indian Bank Association v. Union of India (UOI), Writ Petition (Civil) No. 18 of 2013 decided on 21.04.2014*** also observed that

"Sections 138 to 142 of the Act were found to be deficient in dealing with the dishonoured cheques. The legislature inserted new Sections 143 to 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 and earlier to this the Negotiable

> *Instruments Act, 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 whereby a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque to encourage the culture of use of cheques and enhancing the credibility of the instrument."*

16. The Hon'ble Supreme Court further in the case ***Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.***[4], laid down the following ingredients for taking cognizance under section 138 of the Act: —

> *"(i) A person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability*
>
> *(ii) That cheque has been presented to the bank within a period of six months from the date on which it is drawn of within the period of its validity, whichever is earlier*

[4] **(2000) 2 SCC 745**

(iii) That cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank

(iv) The payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid

(v) The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course within 15 days of the receipt of the said notice

(vi) The complaint is to be filed within one month from the date of expiry of the 15 days from the receipt of the notice."

17. In the light of above discussion, it emerges before this Court the issue which requires a judicial consideration in the context of present application and argument advanced by the parties as under:

(i) whether a person can be debarred from filing and prosecuting complaint under section 138 of the Act even if he is doing business of money lending without holding a valid licence and whether there is apparent conflict between provisions of the Bengal Money Lenders Act, 1940 and section 138 of the Act ?

18. Every statute is enacted for specific purpose and intent and should be read as a whole. The legislature enacts statutes and legislation and takes appropriate precautions at time of drafting and enacting different legal provisions but sometimes conflicts appear in interpretation of different statutory provisions. In this eventuality Doctrine of Harmonious Construction needs to be adopted. The legal provisions contained in one particular statute cannot be read to defeat legal provisions contained in another statute and both legal provisions contained in different statute should be given maximum effect in their operation and applicability.

19. The Bengal Money Lenders Act, 1940 and Chapter XVII of the Negotiable Instruments Act, 1881 which was incorporated by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 for providing penalties in case of dishonour of cheques with an objective to encourage the culture of use of cheques and enhancing the credibility of the instrument. Both statutory provisions were enacted with different objectives and intent and are operational in independent and separate legal spheres.

20. There is no apparent conflict between provisions of the Bengal Money Lenders Act, 1940 which is not apparently bars civil remedy for a money lender who is not having valid licence or certificate for doing business of money lending and Chapter XVII of the Act which provides criminal remedies and penalties in case of dishonour of a cheque due to reasons as mentioned in section 138 of the Act.

21. The legal issue that if a complainant who is not having valid licence or certificate for money lending can institute and prosecute complaint under section 138 of the Act came for consideration before different High Courts besides other related issues.

22. The Hon'ble Delhi High Court in ***Dhanjit Singh Nanda v. State, Crl.M.C.209/2009 decided on 09.02.2009*** rejected the argument that the complainant is debarred from recovering loan amount as he is not a registered money lender. It was observed as under: —

> *"The next argument addressed by the petitioner that the respondent was debarred from recovering the loan*

amount being not a registered money lender does not lie in the mouth of the petitioner for two reasons: The petitioner took the loan from the respondent voluntarily and even executed an agreement in this regard whereby he agreed to repay the same after ninety days with interest. At the same time, he also issued the cheque in question for the repayment of the loan but became dishonest when the cheque was presented for encashment. The second reason to reject the argument of the petitioner is that the proceedings under Section 138 of NI Act are not recovery proceeding but are proceedings to punish a person who after issuing a cheque fails to honour the same and also commits a default in paying the said amount on receipt of the notice."

23. The Hon'ble Delhi High Court in the case ***Virender Singh v. Deepak Bhatia, Crl.L.P. 491/2011 decided on 08.04.2011*** observed that the instant cases relate to an advance made by the petitioner to the respondents on the basis of the cheques which admittedly are negotiable instrument and as such any bar in the provisions of the Bengal Money Lenders Act, 1940 is not attracted to a loan given on the basis of a negotiable instrument and/ or request of the borrower.

24. The Hon'ble Delhi High Court in the case of ***Kajal v. Vikas Marwah, Crl.A. 870/2013 decided on 27.03.2014*** considered issue whether if the complainant is not holder of money lending licence can he be debarred from filing complaint under section 138 of the Act. It was observed as under: —

> *"In my view, even if the appellant/complainant was engaged in lending money, that would not debar her from filing a complaint under Section 138 of the Negotiable Instruments Act, if a cheque issued to her towards repayment of the loan advanced by her is dishonoured by the bank for want of funds and the drawer of the cheques fails to make payment within the prescribed time, after receipt of legal notice from the lender. Section 3 of the Punjab Registration of Money Lenders' Act, 1938, which applies to Delhi, to the extent it is relevant provides that notwithstanding anything contained in any other enactment for the time being in force, a suit by a money lender for the recovery of a loan shall, after the commencement of the Act, be dismissed*

> *unless the money lender at the time of institution of the suit is registered and holds a valid license or holds a certificate from the Commissioner granted under Section 11 of the Act, specifying the loan in respect of which the suit is instituted or if he is not already a registered or licensed money lender, he satisfies the court that he has applied for such registration or license but the application is pending. The aforesaid provision does not debar a money lender from instituting a complaint under Section 138 of the Negotiable Instruments Act, 1881, which is a remedy enforceable before a criminal court, and totally independent of a civil suit. The criminal liability is incurred only in case a cheque is issued in discharge of a debt or other liability, the said cheque is dishonoured for want of funds and the borrower fails to make payment of the amount of the cheque even after receipt of a notice from the lender."*

25. The complainant, in the complaint, alleges that amounts were advanced as financial assistance to the petitioner in pursuant to his request, the complainant had lent an advance a sum of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs) only to the petitioner/accused by way of short-term unsecured loan for the purpose of business. It was agreed that the Petitioner/accused shall pay the said loan amount along with interest @ 14% per annum. The Petitioner had issued a cheque in discharge of his liability. Accordingly, amount advanced to the petitioner is covered within the term of 'loan'.

26. The proceedings should not be quashed at a pre-trial stage without any leading evidence by the parties. With regard to issue that can be decided without evidence being led to show that the petitioner was a money lender or he does not have licence or the Bengal Money Lenders Act, 1940 is bar for initiating the complaint under Section 138 of the N.I. Act. This Court would like to rely upon the following judgments ***Samarendra Nath Das v. Supriyo Maitra***[5] and ***Jupiter Brokerage Services Ltd. v. Ektara Exports Pvt. Ltd.***[6] decided by the Calcutta High Court, ***Dhanjit Singh Nanda v. State***[7], decided by the Hon'ble Delhi High Court and ***Ravinder Paul v. Ashwani Kumar***[8], decided by the Hon'ble Punjab & Haryana High Court.

27. The provisions of the Bengal Money Lenders Act, 1940 do not bar for a complaint case filed under the Negotiable Instruments Act, 1881. To ascertain the view on this issue, this court would like to

[5] **2005 SCC OnLine Cal 628**
[6] **2015 SCC OnLine Cal 10514**
[7] **2009 SCC OnLine Del 261**
[8] **2020 SCC OnLine P&H 4606**

look into the proposition as laid down by the Hon'ble High Courts in the aforesaid judgements.

28. The Punjab & Haryana High Court in ***Ravinder Paul v. Ashwani Kumar, CRA-S-2319-SB-2012 (O&M) decided on 04.02.2020*** observed as under: —

> *"The trial Court had dismissed the complaint mainly for the reason that the complainant was a money lender, lending money without licence. The Magistrate had not gone into the merits of the case as to whether the necessary ingredients of Section 138 of the Act were established or not. Therefore, the impugned judgment dismissing the complaint for the reason of complainant having been found to be a professional money lender practicing money lending without licence is not sustainable".*

29. The High Court of Judicature at Calcutta in ***Samarendra Nath Das v. Supriyo Maitra, C.R.R. No. 175/05 and application being C.R.A.N. No. 598/05 decided on 16.12.2005*** observed that alleged violation of provisions of Money Lenders Act does not bar continuation of proceedings under Section 138 of the Act. It was held as under: —

"11. The submissions made by Mr. Ukil not at all applicable in the present matter. Had it been a money suit instituted by the money lender for the recovery of the loan advanced by him together with interest and for accounting all these submissions would have been relevant. In a criminal proceeding u/s 138 of the NI Act these are not relevant at all. In the instant matter a Magistrate is to consider whether the offence as alleged was committed or not and whether evidence is sufficient to prove complainant's case. Legality or illegality of the contract and existence and non-existence of money lending business by the complainant is not a ground to throw the complainant's case out of Court. If it was a money suit for recovery of the money the accused petitioner would have been definitely in a better position and was entitled to the advantage of violation of Sections 23 and 24 of the Contract Act as well as non-existence of money lending business of the money lender. The accused petitioner has only remedy in the trial to rebut the presumption u/s 139 of the NI Act, and to establish his case by leading evidence when he would be asked to enter into defence after his

examination u/s 313 of the Code would be over. When all the prima facie materials of offence u/s 138 of the NI Act is present sufficient to issue process this, Court would not interfere into the order of the learned Magistrate and would not quash the criminal proceeding or set aside the order of the learned Magistrate. The accused petitioner has remedy only to lead evidence by examining witnesses and producing documents to prove that there was no transaction with complainant or that he did not issue any cheque in favour of the complainant and that there was no existing debt or liability at the time of his entering into defence and leading his evidence.

12. The point for consideration before the learned Magistrate would be whether act or omission of the accused petitioner completed offence u/s 138 of the NI Act. It would not be a matter for consideration before the learned Magistrate whether the complainant had money lending licence or not. This is not a suit or proceeding under Money Lenders Act and accordingly provisions of Money Lenders Act are not at all relevant for consideration in the trial before the learned Magistrate".

30. The High Court of Judicature at Calcutta in ***Jupiter Brokerage Services Ltd. v. Ektara Exports Pvt. Ltd., C.R.A. No. 936 of 2013 (Appellate Side) decided on 13.10.2015***, considered defence of the respondents/accused that the transactions in question were simple lending of money for which the appellant/complainant had no valid licence and hence the provisions of Section 138 or 139 of the Act are not attracted in the case and this argument was accepted by the trial court and the trial court dismissed the appellant/complainant's case on such ground only. It was observed that money lending without licence is not totally barred or prohibited by the Bengal Money-Lender's Act, 1940 which is basically a Regulatory Act and regulates the business of money lending. It was held as under: —

> *"There cannot be any dispute to the fact that the presumptions both in Section 138 and 139 of the N.I. Act are rebuttable presumptions. In the present case the only point for rebuttable of such presumptions for the respondents/accused is that the transactions in question are illegal transactions as the appellant/complainant has no money-lending licence. As held earlier, lending money without having a money-lending licence itself is not prohibited under the Bengal*

> *Money-Lender's Act, 1940. So, the presumptions in favour of the appellant/complainant stand unrebutted. The respondents/accused cannot, therefore, escape from the liability under Section 138 of the N.I. Act, especially when there is no denial of the fact that the respondents/accused issued the cheques in question which were dishonoured due to insufficient fund in the account of the respondents/accused."*

31. It is acceptable proposition of law that provisions of the Bengal Money Lenders Act, 1940 does not limit operation of section 138 of the Act and both are independent and mutually exclusive to each other. If a person advances a loan even without having a valid money lending licence or certificate, he can institute and prosecute complaint under section 138 of the Act on basis of cheques and he has to satisfy only the mandatory requirements of section 138 of the Act.

32. It is reflecting that the Opposite party being complainant filed complaint under section 138 of the Act against the Petitioner as detailed herein above primarily on allegations that he had given money to the Petitioner. The complainant led pre-summoning evidence and thereafter cognizance for offence punishable under section 138 of the Act was taken against the petitioner/accused. The Petitioner was ordered to be summoned for offence under section 138 of the Act. Notice under section 251 Cr. P.C. was given to the Petitioner to which he pleaded not guilty and claimed trial.

33. The Learned counsel for the petitioner placed reliance on decision delivered by the Bombay High Court was misplaced under given facts and circumstances of present case. There are no merits in arguments advanced by the counsel for the petitioner that without Money lending license a complaint cannot be filed under the N.I. Act and the complaint can be decided without evidence being led to show that petitioner was a Money Lender. The arguments advanced by the counsel for the Petitioner on aforesaid issues are without any legal basis and are legally unsustainable. Therefore, there are insufficient reasons placed before this court that no proceedings can be initiated or continued and it would be gross abuse of process of law. The revisional application filed by the Petitioner has devoid of merits.

34. Accordingly, **C.R.R. 1910 of 2021** is, thus, **dismissed**. Connected applications, if any, are also, thus, disposed of.

35. Case Diary, if any, is to be returned to the learned Counsel for the State.

36. Interim order, if any, stands vacated.

37. Registry shall send the copy of this judgment to the Learned Trial court for information.

38. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)