

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR.JUSTICE AJOY KUMAR MUKHERJEE

CRA (SB) 1 of 2022

**Shriram Transport Finance Co. Ltd.
Vs.
The State of West Bengal & Anr.**

For the Appellant : Mr. Satadru Lahiri
Mr. Safdar Azam

For the respondent No.2 : Mrs. Jharna Biswas

Heard on : 24.04.2025

Judgment on : 20.05.2025

Dr. Ajoy Kumar Mukherjee, J.

1. The instant appeal has been preferred against the judgment and order of acquittal dated 27th August 2021 passed by the court below in complain case no. C-6947 of 2013, initiated under section 138 of the Negotiable Instrument Act (in short N.I Act).

2. In the complaint it is alleged that the respondent no. 2 herein/accused had approached the complaint company for granting refinance of Motor Vehicle and accordingly complainant had refinanced the

vehicle and upon negotiation the accused/respondent no. 2 herein entered into an agreement with the company and took delivery of the said vehicle, in terms of the schedule of payment. The respondent no. 2 in discharge of his outstanding debts issued one account payee cheque dated 16th January 2013, amounting to Rs. 1,72,276/-. Thereafter complainant deposited the said cheque to his banker but it was dishonoured on the ground of “insufficient fund” vide return memo dated 18.01.2013. Thereafter on 4.2.2013 the complainant sent a demand notice through their learned advocate to the accused /respondent no. 2 requesting him to pay the cheque amount but the said demand notice returned with postal endorsement “not claimed” on 14.02.2013. Since thereafter the accused neglected in making payment of the cheque amount and as such the aforesaid complaint case was initiated under section 138 of NI act.

3. The complaint case was filed by one Sandip Chatterjee, the then branch manager of complainant’s company and on 04.06.2014, one affidavit-in-chief was filed by said Sandip Chatterjee who initially filed the case on behalf of de jure the complainant, however during trial it had been detected that there were two affidavits in chief filed on behalf of the complainant/company and both of them were signed by said Sandip Chatterjee. The first one is dated 09.04.2013 and the second one was notarized on 04.06.2014. During pendency of the case one Jayanta Halder was substituted on the application of the complainant. Though Sandip Chatterjee filed affidavit-in-chief but he was not available for cross examination.

4. Learned Trial court after hearing both the parties came to a finding that the complaint was filed by Sandip Chatterjee and he also filed affidavit in chief on 04.06.2014. but there are two affidavit-in-chief filed on behalf of the same complainant and both of them was signed by Sandip Chatterjee and thereafter on 08.12.2016 one Jayanta Halder was allowed to be substituted in place of Sandip Chatterjee. Pointing out this anomaly the trial court called for a clarification as to why the copy of affidavit dated 04.06.2014 was served on 08.12.2016 when Jayanta Halder was allowed to be substituted and learned Court below further noticed that on 23.03.2021, when the case was fixed for clarification there was no affidavit in chief on behalf of Jayanta Halder, who subsequently represented the company. This strikes in the mind of learned court below and he observed that affidavit in chief filed on behalf of the company under section 145 of the N.I. Act was filed by aforesaid Sandip Chatterjee and on the basis of which, the documents were marked as exhibit which is the foundation stone of the complainant case and it has been done under affidavit by aforesaid Sandip Chatterjee but he did not make himself available for cross examination and complainant also did not make any effort to bring Sandip Chatterjee to the witness box, on the contrary on the basis of said affidavit-in-chief filed by complainant Sandip Chatterjee, Jayanta Halder faced the dock and he was cross examined on the basis of aforesaid examination in chief. In the above backdrop without going into the merit of the case any further, the court below dismissed the complaint case observing that complainant has failed to prove the charge beyond reasonable doubt for committing offence punishable under section 138 of the N.I. Act.

5. Being aggrieved by the said judgment of acquittal counsel for the Appellant herein contended that the judgment passed by the court below is absolutely perverse because non examination of the first authorized representative of the complainant company cannot be fatal. The observation that for aforesaid non-examination of first authorized representative, there is no scope of looking into the evidence of the substituted authorized representative, as well as other materials on record, is misconceived. He further submits that unfortunately the sole premise on which the learned Magistrate refused to address the meritorious issues is alleged failure of the complainant to examine the first authorized representative, which is absolutely illegal.

6. In this context he further argued that section 311 of the Code grants exclusive and unfettered power and judicial discretion to the learned magistrate for conducting the trial in the manner he decides, necessary for reaching to a just decision. Accordingly even if the learned court was of opinion that the earlier authorized representative of the complainant company is a vital witness for reaching to a just decision of the case, the learned magistrate should have ensured attendance and examination of the said person irrespective of failure on the part of the prosecution to adduce that particular person as a witness in the case. But by no means an order of acquittal can be recorded on such technical scores.

7. Mr. Lahiri further argued that the fallacy of the impugned judgment needs to be further appreciated on the settled proposition of law as mandated under section 33 of the Indian Evidence Act which deals with relevancy of certain evidence for proving in subsequent proceeding that

truth of fact therein stated. What happened in the present case is that the first authorized representative Sandip Chatterjee left the job and his present whereabouts are not available with the company. Under such circumstances the evidence adduced by the said witness can very well be looked into for determining the merit of the case and until and unless the accused is able to canvas the irreparable loss and prejudice, he is being suffered owing to non production of the said witness for adducing evidence, especially when the entire prosecution is based on documentary evidence. There are sufficient material on record to demonstrate the loan transaction entered between the parties owing to financing the vehicle and that the accused failed to make payment even after receipt of notice nor did he give any reply to the notice nor any credible evidence has been brought on record to dislodge the liability or to show that the cheque was obtained by fraud or coercion. He further submitted that the accused person's alleged plea of issuing post-dated cheque as security is an afterthought, belated, uncorroborated one and absolutely dislodged in view of documentary evidence adduced. Therefore, the accused failed to dent the prosecution case in any manner and as such no question of prejudice can be fathomed for the alleged technical issue raised in this case, nor order of acquittal can be recorded.

8. He submits that once it is explicit that the order impugned is suffering from manifest error, gross illegality and has been passed in complete disregard to the settled propositions of law as well as legislative object and purpose, all the essential conditions for exercising the power under section 378(4) of the Code is fulfilled. He also pointed out in this

context that there is difference between an order of acquittal passed in a case pertaining to other criminal law of the land and in a proceeding under N.I. Act as proceeding under the N.I. Act, is a quasi criminal proceeding and the principles which apply to acquittal in other criminal cases are not applicable in the cases instituted under the N.I. Act and in this context he relied upon judgment of ***Sumeti Vij Vs. M/S Paramount Tech Fab Industries*** reported in **(2022) 15 SCC 689**.

9. Mrs. Jharna Biswas, learned counsel appearing on behalf of the accused/respondent herein contended that the affidavit sworn by Sandip Chatterjee under section 145 of N.I. Act, on the basis of which the exhibits were marked, said Sandip Chatterjee did not make himself available for cross examination

10. Mrs. Biswas in this context argued that the presumption under section 139 of the Act is that the cheque was issued for discharge of a debt or liability but the onus is initially on the complainant to establish the basic facts of the case such as issuance of the cheque and its subsequent dishonour. Once their facts are established, the burden shifts to the accused to rebut the presumption. As such absence of Sandip Chatterjee for not facing the dock for cross- examination caused prejudice to the respondent no.2 and as he did not face the dock, the accused did not get any opportunity to rebut his case as his evidence and examination should be based on the affidavit in chief of Sandip Chatterjee under section 145 of N.I. Act. The accused did not get the opportunity to rebut the contents of the complainant filed by Sandip Banerjee and as such his absence is prejudicial. The complainant has also not made any attempt to bring the

said witness to the witness box. In fact the person who faced the cross examination is Jayanta Halder who did not file any affidavit under section 145 of the N.I. Act. Accordingly learned Trial Court rightly did not consider the oral and documentary evidence on record observing that there is miles of gap between the establish procedure of law and what actually on record.

11. Mrs. Biswas further argued that the cross examination of said Jayanta Halder reveals that company failed to say the loan amount and he had no knowledge about the mode of loan transaction i.e. whether same was given in cheque or in cash. Infact he had no knowledge about said transaction made in the complaint and as such his evidence is inadmissible and in this context he relied upon the decision of **A.C. Narayanan Vs. State of Maharashtra and another** reported in **(2014) 11 SCC 809** and contended that the power of attorney holder must have a knowledge about the transaction but here the person who was examined by the complainant has no knowledge regarding the transaction. Furthermore the accused in his examination in chief stated that he issued blank cheque and complainants witness Jayanta Halder could not state the actual cheque amount and he only identified the cheque filed by Sandip Chatterjee. She specially alleged that the cheque has materially altered and no longer valid and mere holding a signed blank cheque does not automatically constitute a legally enforceable debt. The complainant must provide clear and consistent evidence to substantiate their claims which the complainants witness has failed to discharge and as such the court below was justified in acquitting the opposite party/accused person. And as such the order of acquittal does not call for interference by this court.

12. I have considered submissions made by both the parties.

13. The allegation levelled in the complaint is that the accused/respondent herein in discharge of his legal debt and liability issued the impugned account payee cheque amounting to Rs. 1,72,276/-and the appellant through its banker presented the cheque within the validity period but the same was dishonoured with remarks insufficient funds and thereafter appellant issued a demand notice through his advocate but inspite of receipt of demand notice accused /respondent neglected to pay the amount covered by the dishonoured cheque and thereby committed offence punishable under section 138 of the N.I. Act. During examination in chief in order to prove the prosecution case complainant company has filed the loan agreement dated 06.04.2009, disclosing the loan transaction. They have also filed the impugned cheque as well as the cheque return memo and the demand notice along with postal receipt and acknowledgment due card in support of service of demand notice.

14. Unfortunately while proceeding to the logical conclusion, in connection with the instant proceeding, learned Trial Court refused to address on the documents which are condition precedent for initiating any prosecution under N.I. Act and on the contrary simply because two affidavits in chief filed on behalf of the complainant and since both of them were signed by Sandip Chatterjee, who lodged the complaint and since the substituted de jure complainant, Jayanta Halder did not file any affidavit in chief so learned Trial Court without considering any other point acquitted the accused person.

15. Before going to further details let me reproduce the relevant portion of the impugned judgment, by which the order of acquittal was recorded by the court below:-

So, the situations is that, the affidavit u/s 145N.I. Act on the basis of which the exhibits were marked and which is the foundation stone of the complainant's case has been done on the under the affidavit of Sandip Chatterjee. He did not make himself available further cross-examination. There was no effort made by the complainant to bring Sandip Chatterjee to the witness box. On the contrary the after substituting Jayanta Halder in the place of Sandip Chatterjee, the Advocate of the complainant brought Jayanta Halder to face the cross-examination, were examined in chief and proved the documents relied upon, by the complainant. So, there is a miles of gap between the established procedure of law and what actually on record. Thus, the situation be like the same, I am unable to consider the oral and documentary evidence on record.

Thus further analysis on the points of law and facts are not required, as per my understanding of the fact and law of the case in hand.

Hence, it is pertinent to mention that the complainant has failed to prove the charge beyond reasonable doubts for committing offence punishable u/s 138 of N.I. Act."

16. Needless to say that present proceeding has been initiated by company namely Shriram Transport Finance Company ltd. It is well settled, once a prosecution under N.I. Act is initiated by a dejure complainant i.e. Company an individual is to represent the dejure entity and it may happen that such dejure entity shall not continue to represent the same entity till conclusion of the trial and that is why substitution is permissible under the law, while different persons can represent the company. It is open to the dejure complainant/company to seek permission from the learned Court to substitute a competent person. In the present case vide order dated 8th December, 2016 the substitution was made. However, the acquittal in this case has been recorded only on the premise that the first authorised representative of the company who filed the affidavit in chief, did not face the dock for cross examination and the trial court came to a finding that

there is no scope for looking into the evidence of the substituted authorized representative as well as the documents of sterling quality.

17. In ***Premier Medical supply and stores Vs. M/s. Pharma Traders and others*** reported in **2006 SCC Online Cal 5**, a co-ordinate Bench of this court had specifically held, when the complainant is a body corporate, it is the de jure complainant, and it must necessarily associate a human being as *de facto* complainant to represent the former in court proceedings and no magistrate shall insist that the particular persons, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceeding because there may be occasion when different person can represent the company and it is open to the de jure complainant to seek permission of the court for sending any other person to represent company in court. Thus even assuming that initially there was no authority, still the company can at any stage rectify that defect and at a subsequent stage the company can send a persons who is competent to represent the company as held in ***M/S M.M.T.C. ltd. and another Vs. Medchi Chemicals pharma (P) ltd.*** reported in **(2002)1 SCC 234**.

18. It is undoubtedly true that the entire prosecution case herein is based on documentary evidence, and the offence alleged is punishable under section 138 of the N.I. Act. Accordingly what is required to be adjudicated by the court is whether from the available documents the complainant would have raised prima facie case in his favour and then whether the accused could discharge the burden of presumption envisaged under section 139 of the N.I. Act. Unfortunately the order of acquittal has been recorded by the court below on technical score which runs contrary to the legislative object

and purpose for which chapter XVIII of the N.I. Act was introduced. It has been rightly canvassed by learned Counsel appearing for the appellant that even if it was in the mind of the court that earlier authorized representative of the complainant who filed the complaint is a vital witness for reaching to a just decision of the case, what prevented learned Magistrate to invoke his power under 311 of the Code of Criminal Procedure to summon the said person and to compel his attendance before the court to do complete justice. But by no stretch of imagination there can be an order of acquittal on such technical score. In fact court below was not justified in observing that failure of the prosecution to bring the first authorized representative in the witness box is fatal.

19. In the present case PW-1 Jayanta Halder who is the substituted representative of the complainant company has stated that it is true that Sandip Banerjee, the then branch manager of the company filed the case and he filed affidavit in chief along with original documents. But those documents were not marked exhibit in the case and in the meantime Sandip Chatterjee left the company. Mr. Lahiri on behalf of the appellant also submits that whereabouts of said Sandip Chatterjee is not available with the company. Mr. Lahiri in this context argued that under such circumstances the evidence adduced by the said witness can very well be looked into for determining the merit of the case until and unless the accused is able to canvass the irreparable loss and prejudice. He further submits that entire prosecution case is based on documentary evidence and as such the accused respondents cannot have any cause to prejudice for non production of that initial authorized representative Sandip Chatterjee. Mrs. Jharna

Ghosh on behalf of respondent in this context submits that said Jayanta Halder who deposed as PW-1 did not file affidavit in chief and Sandip Chatterjee who filed affidavit in chief did not make himself available for further cross examination and for which the accused did not get the opportunity to cross examine said Sandip Chatterjee and as such the interest of the accused has been seriously prejudiced as also accused did not get any opportunity to rebut his evidence and examination is supposed to be on the basis of affidavit in chief of Sandip Chatterjee.

20. However having considered aforesaid facts and circumstances of the case and having observed that the court below was not justified in acquitting the accused solely on the ground that first authorized representative of the company was not examined and also considering the ground reality that different persons may represent the company and it is open for the de jure complainant/company to substitute the human face representing de jure entity with leave of the court, the judgment impugned which did not address the other issues involved in the case is not sustainable in the eye of law and therefore, liable to be set aside.

21. In such view of the matter the impugned judgment dated 27th August 2021 passed by MM 17th Court Calcutta in complaint case no. C/6947 of 2023 is hereby set aside. The evidence adduced by PW-1 before the court below and the examination of accused under section 313 Cr.P.C. are hereby expunged. The court below is directed to conduct denovo trial from the plea taking stage and after giving opportunity to both the parties to adduce documentary and oral evidence and to give the respective other side to cross examine the witness and thereafter following the procedure laid down for

trial of summons cases he is directed to conclude the trial at the earliest preferably within a period of six months from the date of communication of the order and thereafter to pronounce judgment afresh without being influenced by any observation made herein. It is also made clear that for the purpose of adducing evidence, the complainant will be at liberty to pray for substitution, if required.

22. CRA (SB) 1 of 2022 thus stands allowed. Return the trial court record at once to the court from which it was called for.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)