IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 461 OF 2015

AYON KUMAR ROY

VS

SEKHAR CHAKRABORTY

For the Petitioner : Mr. Apan Saha.Adv.

For the Opposite Party : Mr. Anirban Dutta, Adv
Mr. Abhijit Sarkar, Adv.
Ms. Shiba Das, Adv.

Last heard on : 15.05.2025

Judgement on : 31.07.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This criminal revisional application has been filed under Section 482 of the Code of Criminal Procedure, 1973 against a judgement and order dated 7.6.2014 passed by the Learned Sessions, Judge, Fast Track, first Court, Calcutta, in criminal revision case number 115 of 2010 upholding the judgement and order dated 22.2.2010, as passed by the Learned Metropolitan Magistrate, 9th Court, Calcutta in T.R case number 327/05, which correspondence to C.R. case number C–5793/2005.

2. The case of the petitioner is that the Opposite Party here in filed a petition of complaint before the learned chief Metropolitan magistrate, Calcutta alleging inter alia ;

> *A) He was employed as a sales officer of M/s Crescent manufacturing, PVT. Ltd, a company incorporated under the companies Act, 1956*
>
> *B) The company had sold and supplied cement to the petitioner*
>
> *C) The petitioner issued a cheque of ₹7, 30, 151/-dated 17.05.2005 to the company towards discharge office lawful abilities;*
>
> *D) The check was presented by the company to its banker on 17.5.2005 was returned unpaid on 19.5.2005, along with a bank memo dated 18.5.2005, the remark "full cover not received";*
>
> *E) Thereafter on 27.5.2005A demand notice was sent on behalf of the company by its lawyer to the petitioner;*
>
> *F) Such demand notice was received an acknowledged by the petitioner on 30.5.2005 and the A/D card thereof was received by the lawyer for the petitioner company on 1.6.2005;*
>
> *G) Even after the lapse of 15 days from the date of receipt of the aforementioned demand notice by the petitioner, the petitioner failed to pay the state amount of money to the company.*

The jurisdictional Court was pleased to take cognizance of the offence under Section 138 of the Negotiable Instrument Act, 1881, receiving the complaint, which was registered as C.R case number C – 5793/2005 and transferred to the court of learned Metropolitan magistrate, 9th Court for disposal where renamed as T.R case number 327/05.

3. In order to prove the case, the prosecution examined one witness and defence cited one witness that is the accused himself. The learned trial judge after perusing the evidence on record and examining the petitioner under Section 313 of the code of criminal procedure and after hearing arguments advanced on behalf of both the parties ,vide an order dated 22.02.2010, held the petitioner guilty of commission of offence punishable under Section 138 of the Negotiable Instrument Act, 1881 and sentenced him to suffer simple imprisonment for one month and to pay a compensation of 11, 50, 000/-to the complainant in default to suffer simple imprisonment for a further period of nine months.

4. The petitioner filed a criminal revision application under Section 397 read with 399 of the Code of Criminal Procedure, 1973, which was registered as criminal revision case number 115 of 2010, against the order of conviction as passed by the learned Trial Court. Vide order dated 7.6.2014 passed in criminal revision case number 115 of 2010, the Learned Additional Sessions Judge, Fast Track Court, Calcutta affirmed the said order of conviction.

5. The Learned Advocate representing the petitioner would argue that the presumption under Section 139 of the Negotiable Instrument Act, 1881 was successfully rebutted by the petitioner, but it's trite that court may not insist upon the accused to revert the presumption by leading direct evidence as the existence of negative evidence is neither possible nor contemplated and even if led, is to be seen with a doubt.

6. It is further submitted that the accused may rebut the said presumption by raising a defence propped on preponderance of the probability. If the accused is proved to have discharged the initial burden of proof showing that the presumption under section 139 was improbable, doubtful or was illegal, the onus would shift to the complainant who will be obliged to prove it as a matter of fact, and upon his failure to prove would be disentitled to the grant of relief on the basis of the negotiable instrument.

7. It is further submitted that the Learned Trial Court as well as the Appellate court failed to consider that the complainant, the opposite party here in, has miserably failed to establish any legally enforceable, debt or liability, by way of producing a ledger account of the petitioner, maintained by the company, which suggests that on 3.2.2005, the petitioner had liability of ₹7, 30, 151/- towards the company. Further, more both the learned court erred in directing that in the event of default in paying the compensation of ₹11, 50, 000/-to the complainant, the petitioner shall undergo simple imprisonment for nine months when there is no specific provision, in the Code of Criminal Procedure 1973, which enables the Court to sentence a person who commits breach of the order of payment of compensation.

8. The Learned Advocate appearing on behalf of the opposite party on the other hand submitted that in this case, the present petitioner adduced evidence and never denied about the execution of the alleged cheque and once the execution of cheque is admitted, Section 139 of the N.I act mandates a presumption that the cheque was for the discharge of any debt or other liability. Furthermore the petitioner took similar grounds while filing the revisional application before the learned revisional Court but the Learned Court after hearing the argument observed that the business in between the parties on credit is admitted and admittedly, the accused used to pay through cheque as apparent from the ledger account of accused maintained by the complainant company.

9. The accused did not raise any objection or dispute against the said statement of outstanding enhancing the liability of the accused towards the complainant. Therefore prima facie this court is to see as to whether any such occasion arises to interface with the concurrent findings of the Learned Courts.

10. Having heard both the advocates as well as going through the materials on record and the judgements delivered by both the learned revisional Court as well as the Trial Court this Court is now to consider as to whether any irregularities can be found in the order passed by the learned Appellate court .It is a settled law that to seek interference under Section 482 three conditions are to be fulfilled,1) it is palpable, clear and doubtful, and 2)the alleged injustice should be of a grave and not trivial, character 3) No other provision of law by which the party agreed could have sought relief . Furthermore the inherent power of High Court under Section 482 is intended to prevent the abuse of the process of the court and to secure ends of justice. So it is well settled that in exercise of jurisdiction under Section 482 Croce the High court does not ,in the absence of perversity ,upset the concurrent factual findings since High court is not empowered to re-analyse and re-interpret the evidences adduced by the witnesses .

11. In a decision reported in[1] ***Basi Lingappa versus Mudibasappa*** the principles of Section 118 (a) and 139 of N.I Act has been summarised and it was observed by the Supreme Court that to rebut the presumption, it is open for the accused to rely on evidence laid by him, or the accused can also rely on the materials submitted by the complainant in order to raise a viable 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.

12. In the instant case, the allegation was the accused towards the payment of discharge of his existing lawful liabilities, mainly sell and supply of cement, issued an account payee cheque dated 17.5.2005 for the sum of ₹7, 30, 151 drawn on United Bank of India, Branch, District, North 24 Parganas, in favour of the complaint company and after receiving the said cheque the complainant company presented the same on 17.5.2005 for encashment through its banker State Bank of India, overseas branch, Kolkata within the stipulated time, but it was returned dishonoured upon presentation which was received with cheque Returning bank memo dated 18.5.2005 on 19.5.2005 with remarks." full covered not received." The petitioner in this case in order to support his case appeared in the witness box and offered himself for cross examination ,as D.W.1 and according to him, he was never dealer of complaint company, but used to place order with them and they used to supply cement to him for sale. He also said that he used to do business in credit. He admitted to pay the complainant in cheque but denied that he issued exhibit-2 to discharge any

[1] (2019) 5 SCC 418

liability. According to the petitioner/accused, the particular cheque was taken by complainant in blank state as security.

13. The other facts which can be seen from the evidence that since 2004, there was a business transaction between the petitioner and the complainant company, though there was no written agreement between the parties. The accused denied the contents of the exhibit 2 that is the disputed cheque but never tried to prove the same by adducing any further cogent evidence. The date of the said cheque is 17.5.2005, which is not tallying with the version of D.W.1/the accused that it was given blankly in June, 2004, and he never denied the signature as of him. Even if that cheque was issued as claimed by the accused, it is decided by the Hon'ble Supreme Court in ***Veer Singh versus Mukesh Kumar***[2] at paragraph 38 ,

> *"38 that even a blank cheque , voluntarily, signed, and handed over by the accused, which is towards some payment attract presumption under section 139 of the negotiable instrument act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."*

"It was further held in paragraph 40 that ;

> *"40. 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*

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[2] AIR 2019 SC 2446

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

14. It further appears from exhibit. 5 dated 3.3 .2005 when the reply was given to the notice served upon the accused through advocate, he expressed his options to clear the outstanding in spite of working within his credit limit, and this letter reveals the outstanding lying due. The learned revisional court correctly observed that in terms of the provision of section 118 of NI Act unless the contrary is proved, it is presumed that cheque has been made or drawn for consideration under Section 139, the Court has to presume unless the hold or of the cheque receive the cheque for discharge in whole or in part of a debt or liability however, that has not been issued for any debt or liability on the accused.

15. In the instant case, as discussed above, the accused failed to prove that requirement and this Court also finds nothing perverse in the order of conviction and hence not interfered. Hence this Criminal Revision stands dismissed.

16. In view of the disposal of this revisional application all the connected applications are hereby disposed of.

17. Hence the order passed in C.R. case No 115/2010 is hereby affirmed.

18. No order as to costs.

19. Urgent Photostat copy of the order be supplied upon compliance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)