

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1457 of 2017

Tulsi Charan Dey
Versus
Arup Kumar Palodhi

For the Petitioner : Mr. Soumyajit Das Mahapatra, Adv.
Ms. Madhurai Sinha, Adv.
Ms. Upasana Banerjee, Adv.

For the Opposite Party : Mr. Santosh Kr.Chakraborti, Adv.
Mr. Jayanta Kr. Jain, Adv.

Heard on : 12.09.2025

Judgment on : 24.10.2025

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application has been filed by the Petitioner under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973 (In short Cr.P.C.), praying for setting aside the judgment and order dated 02.03.2017 passed by the Learned Additional District and Sessions Judge, Fast Track 3rd court, Paschim Medinipur in Criminal Appeal No. 26 of 2015.
2. By the said Judgment and order, the Learned Judge affirmed the judgement and order dated 25.05.2015 passed by the Learned Judicial Magistrate, 5th Court, Paschim Medinipur in C.R. Case No. 604/2012 filed under Section 138 of the Negotiable Instrument Act, 1881 (In short N.I. Act) whereby and whereunder the petitioner herein was convicted for an offence punishable under Section 138 of the NI Act and sentencing him to suffer imprisonment of three months and pay a fine of Rs. 5,25,000/- out of which Rs. 5,00,000/= shall be paid to the complainant as compensation. In default of payment of the fine amount, Rs. 25,000/-, the petitioner will undergo a further imprisonment of one-fourth of the simple imprisonment.

FACTS OF THE CASE

3. Brief facts of the present case in hand, relevant for the purpose of disposal of this case are as follows:

- a.** It was the specific allegation of the complainant that the present petitioner was his friend and, due to an urgent need for money for his business, requested him to lend to the petitioner a sum of Rs. 5,00,000/-, as a temporary loan for his business, with an undertaking to repay the same within the first week of June, 2012. He had handed over a post-dated cheque of Rs. 5,00,000/- dated 10.06.2012, a Sale deed, and an insurance policy paper to the complainant. However, when the said cheque was presented to the bank, it was dishonoured due to insufficient funds.
- b.** The complainant filed a case under section 138 of the N.I. Act when the Petitioner failed to repay the aforesaid amount, and finally the case was disposed of by the Trial court after conclusion of trial, wherein the Trial Court convicted the petitioner and sentenced him as aforesaid.
- c.** The contention of the present petitioner, whereas, is completely different. Actually, the petitioner was in dire need of money for his business. Consequently, he approached the complainant, who is also a businessman, and had very good relations with several banks. He assured the Petitioner that he would arrange for a loan from one of the banks.
- d.** Upon such assurance and good faith, the petitioner had handed over a blank cheque, a deed of an immovable property, mutation

certificate, the record of rights, and LIC policy papers as mortgage to secure a loan from the bank, but the complainant misused the same after betraying the trust of the petitioner.

- e.** The Learned Trial court did not follow the proper procedure while disposing of the proceeding, and convicted the petitioner under Section 138 of the N.I. Act, whimsically and capriciously, and further sentenced him, even though the case of the petitioner was different.
- f.** The Trial court has also not properly examined the petitioner under section 313 of the CrPC. No opportunity of cross-examination of the P.W.2 was allowed by the successor Magistrate despite the indication that P.W.2 was never cross-examined. Therefore, the Petitioner has lost his valuable right to cross-examine the witness on the factual aspect and finally suffered conviction without any fault.
- g.** Being aggrieved by and dissatisfied with the impugned judgment and order dated 25.05.2015 passed by the Trial court, the petitioner preferred an appeal before the Appellate court but the same was also dismissed without considering the case of the petitioner though it is trite law that statute should be followed strictly and any deviation in the proceeding, as has been done in the instant case, calls for a de novo trial for the proper and just

decision of this case. Hence, the Petitioner filed this application before this Court by way of Criminal Revisional application praying for setting aside the aforesaid impugned judgment and order to secure the ends of justice.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

4. Learned counsel appearing on behalf of the petitioner/accused submitted that whatever complaint was made by the complainant/opposite party under 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 eyes of the law because there was no such transaction or grant of loan or advance to the petitioner. Actually, the case is completely different as the petitioner was allegedly in dire need of money for his business purpose and approached the complainant, who is also a businessman, and had very good relations with several banks. He assured to provide a loan to the Petitioner from the bank concerned.
5. Upon such assurance and good faith, the petitioner handed over a blank cheque, deed of an immovable property, mutation certificate, record of rights and LIC policy papers as mortgage to the bank to secure such loan, but the complainant misused the same after betraying the trust of the petitioner. It would be an abuse of the process of law, and in the best interest of justice, the above Judgment

and order is liable to be set aside and the case be remanded back for de novo trial to unearth the truth.

6. Learned counsel for the petitioner has placed reliance of a judgment passed in the case of ***Nitinbhai Saevatilal Shah v. Manubhai Manjibhai Panchal and Another***¹ particularly paragraphs no. 14, 17 and 20 thereof, to support his contention that the succeeding Magistrate has to record afresh substance of evidence and decide the case, otherwise the evidence recorded by predecessor in chair and conviction ordered by succeeding Magistrate would be bad in law and therefore required to be set aside.
7. Learned counsel further has placed reliance of another judgement in the case of ***Sukhjit Singh v State of Punjab***², particularly paragraphs no. 10 to 14, to support his contention that the conviction can be reversed and set aside, when no incriminating materials have been brought to the notice of the accused while examination under Section 313 of the Cr.P.C.

SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY:

8. Per contra, learned counsel appearing on behalf of the opposite party vehemently raised an objection against seeking such prayer for setting aside the impugned judgement and order and further

¹ **(2011) 9 SCC 638**

² **(2014) 10 SCC 270**

submitted that the judgment referred to by the petitioner is not at all applicable in the instant case. Issuance of a cheque without sufficient balance in the account and bouncing of the cheque is a criminal offence. A person cannot be debarred from filing and prosecuting a complaint under Section 138 of the N.I. Act when the petitioner failed to discharge its liability. Defence has failed to prove its concocted story during trial. Therefore, the judgment relied upon by the petitioner has no manner of application so far as the proceedings under Section 138 of the Negotiable Instruments Act, 1881, is concerned; and as such, the revisional application is liable to be dismissed.

DISCUSSION AND FINDINGS OF THIS COURT:

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

10. 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.

- 11.** The N.I. 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 a 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, 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.

12. The Hon'ble Supreme Court in the case ***Electronics Trade & Technology Development Corporation Ltd., Secunderabad v. Indian Technologists & Engineers (Electronics) (P) Ltd.***³, 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.
13. The Hon'ble Supreme Court again, in the case ***Goa Plast (P) Ltd. v. Chico Ursula D'Souza***⁴, 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 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*

³ (1996) 2 SCC 739

⁴ (2004) 2 SCC 235

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.”

- 14.** 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 the following:-

“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.”

15. The Hon’ble Supreme Court, further in the case ***Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.***⁵, 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 or within the period of its validity, whichever is earlier

(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

⁵ (2000) 2 SCC 745

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.”

16. In the light of the above discussion, it emerges before this Court that the issues, which require judicial consideration in the context of the present application and argument advanced by the parties, are as under:-

(i) Whether the succeeding Magistrate cannot act upon the evidence already recorded by the predecessor in chair in a summary proceeding, because it would cause serious prejudice to the petitioner/accused or has been a clear violation of Section 326 (3) of the Cr.P.C.?

(ii) Whether the Trial court has not brought incriminating materials to the notice of the accused while examining under Section 313 of the Cr.P.C., and thereby the conviction is liable to be set aside.

17. It is reflected that the opposite party, being the complainant, filed the complaint under section 138 of the Act against the Petitioner as detailed hereinabove, 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.

- 18.** It appears from the record that the evidence of PW 2 was not pressed by the complainant on 18.08.2014. So, the question of opportunity to be given to the petitioner to cross-examine PW 2 does not arise at all.
- 19.** The successor in the chair concluded the trial after the closing of the evidence on the complainant's side. The defence did not adduce evidence despite the opportunity being given and finally closed the evidence and fixed for the examination of the petitioner /accused under Section 313 of the Cr.P.C. based on the evidence of PW1 and documents produced thereof.
- 20.** During the examination of the accused under Section 313 of the Cr.P.C., the trial court is required to put all the circumstances appearing in the evidence in question form, so that the accused is able to explain the circumstances appearing in the evidence against him for the offence as alleged. It is true that the conviction is liable to be set aside when the accused is not properly examined in accordance with the provisions of Section 313 of the Cr.P.C., but in

the present case, the Trial court has put all the circumstances appearing in the evidence against him in Question Nos. 3 and 4. Therefore, this court is of the opinion that the trial court has rightly examined the petitioner in the proper manner under section 313 of the CrPC.

21. The Learned Additional Sessions Judge, while deciding the issue no.1 rightly relied upon a decision of Hon'ble Apex Court in ***Criminal Petition No. 13161 of 2013 dated 26.03.2014 (Manju M Agarwal vs. The State of A.P.)***. In the said judgment, the Hon'ble Apex Court held that the Magistrate is normally required to try the offence under Section 138 of the N.I. Act summarily, but there is no bar to try such a matter as a summons case under the N.I. Act. The Learned Judge has further relied upon, particularly paragraphs 6 to 16 of the said judgment, to indicate the power of a succeeding Magistrate. Therefore, this court would not like to repeat the same. The Learned judge rightly dismissed the appeal filed by the petitioner as no sufficient grounds set forth in the appeal.
22. The arguments advanced by the counsel for the Petitioner on the aforesaid issues are without any legal basis and are legally unsustainable. The contention of the petitioner is not brought on record to discard the allegation of the complainant/opposite party to constitute offence punishable under Section 138 of the NIAct. Thus,

the Criminal Revisional application filed by the petitioner is devoid of merit. The Judgement and order dated 02.03.2017 passed by the Learned Additional District and Sessions Judge, Fast Track 3rd court, Paschim Medinipur in Criminal Appeal No. 26 of 2015 calls for no interference by this court.

- 23.** Consequently, **C.R.R. 1457 of 2017** is, thus, **dismissed**. Connected applications, if any, are also, thus, disposed of.
- 24.** Interim order, if any, stands vacated.
- 25.** The Registry shall send a copy of this judgment to the Learned Trial Court for information and to take necessary action against the petitioner in accordance with law.
- 26.** 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.)