

17.07.2025
SL No.355
Court No.32
S.Gayen

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

CRR 3645 of 2024

**Dr. Parimal Chandra Acharjee
Versus
Mrs. Chirashree Paul & Anr.**

Mr. Tarasankar Bhattacharjee

...for the Petitioner

Mr. Sandip Chakraborty
Mr. Kaustav Das

...for the Opposite Party No.1

Mr. Debasis Kar
Mr. Arka Tilak Bhadra

...for the Opposite Party No.2

1. This revisional application has been filed assailing the order dated 24.07.2024 passed in connection with C Case No. 792 of 2023, wherein the learned Judicial Magistrate, 2nd Court, Barrackpore, North 24 Parganas dismissed the complaint on an application filed on behalf of the accused persons/opposite parties herein with a prayer for dismissing the application under Section 138 of the Negotiable Instruments Act, 1881.
2. Learned counsel appearing for the petitioner has submitted that the cheque which is the genesis of the dispute, was issued by the accused/opposite party No.1 herein against the legally enforceable debt within the presumption enshrined in Section 139 of the NI Act.

3. In support of his contention, he relied on a reportable case in connection with **SLP (Cri) No. 3915 of 2006** in the matter of **M/s. Mandvi Co-op Bank Ltd. Vs. Nimesh B. Thakore**.
4. In opposition to that learned counsel for the opposite parties has submitted that there was an oral agreement between the parties to purchase a flat and the petitioner No.2 issued a cheque to the complainant but later on the flat was not purchased by the accused persons. Therefore, the cheque cannot be said to have been issued against any legally enforceable debt.
5. Learned counsel for the petitioner did not dispute the fact that the flat was not purchased by the accused persons and on this score learned Magistrate came to a finding that the cheque was not issued against any legally enforceable debt as the accused persons did not purchase the flat eventually.
6. The offence under Section 138 of the NI Act can be attracted only in case of issuance of cheque against legally enforceable debt according to explanation to proviso of Section 138 of the NI Act.
7. Considering all facts and circumstances, I find hardly any reason to interfere with this order by exercising the jurisdiction under Section 482 of the Code of Criminal Procedure (582 of BNSS), as the principal ratio of **M/s. Mandvi Co-op Bank Ltd.** (supra) has no application on the issue involved in this case.
8. With the above observation, the revisional application stands dismissed.
9. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

10. Urgent Photostat certified copy, if applied for, be given to the parties upon compliance with all requisite formalities.

(Bibhas Ranjan De, J.)