

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 3120 of 2017

Ma Kreeng Construction Pvt. Ltd. & Ors.

Versus

Mr. Dipak Saha & Anr.

For the Petitioners	:	Mr. Dhiraj Kumar Trivedi, Sr. Adv. Mr. Bikash Kumar Singh, Adv. Ms. D. Shaw, Adv.
For the Opposite Party No. 1	:	Mr. Ayan Bhattacharjee, Ld. Sr. Adv. Ms. Ritu Das, Adv.
For the State	:	Ms. Faria Hossain, Ld. A.P.P. Ms. Suparna Chatterjee, Adv.
Judgment reserved on	:	26.09.2025
Judgment delivered on	:	19.11.2025

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application has been filed under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 (In short Cr.P.C.), praying to set aside the judgment and order dated July 28, 2017 passed by the Learned Additional District and Sessions Judge, Bench-II, Calcutta in Criminal Revision Case No. 40 of 2017.
2. By the impugned Judgment and order, the Learned Judge affirmed the judgment and order dated 06.12.2016 passed by the Learned Metropolitan Magistrate, 8th Court at Calcutta in Complaint Case No. 3924 of 2009 filed under Section 138 of the Negotiable Instruments Act, 1881 (In short N.I. Act) whereby and whereunder the petitioners were convicted for offences punishable under Section 138 of the N.I. Act. Consequently, Petitioner no. 1/Ma Kreeng Construction Pvt. Ltd. was sentenced to pay a compensation of an amount of Rs. 10,00,000/- (Rupees ten lakhs only) to the complainant within one month from the date of judgment, in default, the complainant will have the liberty to take appropriate legal steps against the convict company/petitioner no. 1. Petitioner nos. 2 and 3 were sentenced to suffer simple imprisonment for three months each and pay a compensation of an amount of Rs. 20,00,000/- (Rupees twenty lakhs only) each to the complainant within one month from the date of

judgment, in default, to suffer further simple imprisonment for another one month each.

FACTS OF THE CASE

3. Brief facts of the case of the Complainant/Opposite Party no. 1 are as follows: -

- a.** The complainant/opposite party No.1 and his wife, Smt. Sharmila Saha had agreed to purchase an office space of approximately 2500 sq. ft. (super built-up area) on the first floor at premises No. 118, Raja Dinedra Street, P.S. Burtolla, Kolkata-700 004, from the petitioners, for a total consideration of Rs. 68,00,000/-, which was allegedly paid to the petitioners/accused in full, on different dates, on the basis of an agreement for sale.
- b.** In spite of full payment, the Petitioners failed to hand over possession or execute a conveyance deed. Thereafter, they agreed to refund the amount, with compensation aggregating to Rs.1,10,00,000/- (one crore ten lakhs), and executed a Refund Agreement dated 19.05.2009.
- c.** In discharge of partial liability, the Petitioners issued an account payee cheque bearing no. 092403 dated 23.08.2009 for a sum of Rs. 25,00,000/- drawn on Indian Overseas Bank to the Complainant. However, the cheque, when presented to the bank

within the validity period, was dishonoured with the remark “Exceeds arrangement”

- d.** Despite a demand notice, the Petitioners failed to make payment. Thereafter, the complainant filed a case under section 138 of the N.I. Act. The case was disposed of by the Trial Court after conclusion of the trial, wherein the Trial Court convicted the petitioners and sentenced them as aforesaid.
- e.** The Petitioners herein contended that the refund agreement and cheque were obtained under coercion. Petitioners are denying the liability to pay the amount covered under the impugned cheque. As such, Petitioner no. 2 lodged a complaint to that effect with the concerned police station on 19.05.2009.
- f.** The petitioners also alleged that the consideration amount of Rs. 68,00,000/- has not been paid to the petitioners by the complainant. The latter could not show the source of such a huge payment.
- g.** The Learned Trial Court did not consider such facts while disposing of the proceeding, and convicted the petitioners under Section 138 of the N.I. Act, whimsically and capriciously, and further sentenced as aforesaid, even though the case of the petitioners was different.

- h.** The Trial court has also not properly examined the evidence of the witnesses and decided the case in favour of the opposite party no.1.
- i.** Being aggrieved by and dissatisfied with the impugned judgment and order dated 06.12.2016 passed by the Trial Court, the petitioner preferred Revisional application before the Revisional Court. However, the same was also dismissed without considering the case of the petitioner, though it is trite law that a statute should be followed strictly and any deviation in the proceeding, as has been done in the instant case, calls for interference and should have set aside the conviction to prevent the abuse of process of law but the Revisional court dismissed the revisional application. Hence, the Petitioners have filed this application before this Court praying for setting aside the aforesaid impugned judgment and order to secure the ends of justice.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

- 4.** Learned counsel appearing on behalf of the petitioners/accused argued that the complaint under Section 138 of the Negotiable Instruments Act, 1881, is not maintainable in the instant criminal proceeding, since there was no such transaction or agreement for refund. The cheque in question was allegedly obtained under duress.

It is, therefore, the case of the Petitioners that the Trial Court erred in law and fact in convicting them.

5. It was further submitted that the revisional court also did not properly assess the case of the petitioners. The complainant further failed to state the place of issuance, the handing over of the cheque, and the signing of the agreements during cross-examination. Such facts are also not considered by the revisional court, which decided the application in an evasive manner without assigning any sound speaking order; as such, it is also liable to be set aside.

SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY NO. 1:

6. Per contra, learned counsel appearing on behalf of the opposite party vehemently objected, seeking such a prayer for setting aside the impugned judgment and order, and further submitted that 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 the trial, and as such, the instant application is liable to be dismissed.

DISCUSSION AND FINDINGS OF THIS COURT:

7. This Court has heard the rival submissions advanced by the learned counsels appearing for the parties, perused the contents of the

complaint, and examined the impugned judgment of the Trial Court and the Revisional Court. The scope of interference at this stage is limited to examining whether the concurrent findings suffer from perversity, patent illegality, or non-consideration of material evidence affecting the foundation of the conviction under section 138 of the N.I. Act. 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 and legal propositions read as under:

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.

- 8.** The N.I. Act, 1881 was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. By the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988, the Legislature introduced Chapter XVII comprising sections 138 to 142 with effect from 01.04.1989, to criminalise the dishonour of cheques for insufficiency of funds or like reasons. Section 138 prescribes the penalty for such dishonour and is intended to enhance the credibility of negotiable instruments in commercial transactions.

9. 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.
10. The Hon'ble Supreme Court in the case ***Electronics Trade & Technology Development Corporation Ltd., Secunderabad v. Indian Technologists & Engineers (Electronics) (P) Ltd.***¹, observed that the object of bringing section 138 on statute appears to inculcate 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.
11. The Hon'ble Supreme Court again, in the case ***Goa Plast (P) Ltd. v. Chico Ursula D'Souza***², 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.

¹ (1996) 2 SCC 739

² (2004) 2 SCC 235

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 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.”

- 12.** 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.”

13. The Hon’ble Supreme Court, further in the case ***Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.***³, 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 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

³ (2000) 2 SCC 745

(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.”

14. In the light of the above discussion, the issues, which require judicial consideration in the context of the present application as well as the arguments advanced by the parties, are as under: -

(i) Whether any valid transaction or refund agreement existed between the parties, or whether the cheque in question was procured from the petitioners through fraud, coercion, or undue influence?

(ii) Whether the Trial court failed to properly assess the evidence in accordance with law while convicting the petitioners as per section 138 read with section 141 of the N.I. Act?

15. It is not disputed that the Petitioners admitted to the issuance of the cheque bearing no. 092403 dated 23rd August, 2009 for a sum of Rs. 25,00,000/- drawn on Indian Overseas Bank, in favour of the complainant. The dishonour of the cheque with the remark “exceeds arrangement” is also not disputed.

16. The entire defence of the Petitioners rests upon 2 contentions: -

a. That the cheque and the refund agreement dated 19th May, 2009, were obtained under coercion; and

b. That no consideration amount of Rs. 68,00,000/- was ever paid by the complainant and therefore no legally enforceable liability existed.

17. Insofar as the allegation of coercion is concerned, this Court finds that apart from the bald allegation and complaint, purportedly lodged by Petitioner no. 2 on the same date, there was no independent, reliable, or corroborative evidence before the Trial Court. Only lodging of a complaint, without any substantive proof of coercion, threat, or compulsion, cannot displace the statutory presumption, especially when the Petitioners chose to remain silent thereafter and did not take any concurrent step to challenge the validity of the agreement of the cheque. In *Kumar Exports v. Sharma Carpets* reported in (2009) 2 SCC 513, the Supreme Court held that a mere bald plea is insufficient; the accused must bring probable evidence on record to support his contention. Such evidence is squarely absent in the present case.

18. The plea of non-payment of Rs. 68,00,000/- also remains unsubstantiated. The Petitioners failed to produce bank statements, financial records, or any concurrent correspondence to support the allegations made by them. The Supreme Court, in ***Hiten P. Dalal v.***

Bratindranath Banerjee⁴ held that unless the accused produces reliable material to show that the liability is improbable, the presumption continues to operate.

19. The fact that the Petitioners expressly acknowledged liability amounting to Rs. 1,10,00,000/- in the refund Agreement dated 19th May, 2009, further weakens the Petitioner's case.
20. Insofar as the omissions in the complainant's cross-examination concerning the exact place of signing and issuance of the cheque, such discrepancies are minor, and do not constitute a material contradiction. In **K.N. Beena v. Muniyappan**⁵, the Supreme Court held that once the cheque and signature are admitted, technicalities cannot defeat the statutory presumption, and the accused must prove his defence affirmatively.
21. This Court finds no merit in the argument that the Trial Court and Revisional Court passed "evasive" orders. Both the Learned Courts have considered the essential facts, recorded findings regarding the presumption under the Act, and assigned reasons for rejecting the defence. A conviction under Section 138 is sustainable so long as the Learned Courts apply the correct legal presumptions and evaluate the evidence on record, as held in **Laxmi Dychem v. State of Gujarat**⁶.

⁴ (2001) 6 SCC 16

⁵ (2001) 8 SCC 458

⁶ (2012) 13 SCC 375

- 22.** It is reflected that the opposite party, being the complainant, filed the complaint under section 138 of the Act against the Petitioners as detailed hereinabove, primarily on allegations that the petitioners issued a cheque to refund the amount as per the agreement, but the same was dishonoured with the remark “Exceeds arrangement”.
- 23.** 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.
- 24.** After conclusion of the trial, the learned Trial Court decided in favour of the complainant and thus convicted and sentenced as aforesaid. This court does not find any infirmity or perversity in the concurrent findings of the Trial court and revisional court.
- 25.** Apart from that, all the petitioners herein had filed two other criminal revisional applications, being CRR No. 2758 of 2017 and CRR No. 2996 of 2017 assailing the trial Court and Revisional Court’s judgments and orders passed in connection with other cheques issued by the petitioners for refund of money as per Refund Agreement dated 19.05.2009. Those cases are similar. The coordinate bench has already dismissed the aforesaid cases vide judgment dated

13th December, 2017. Therefore, the impugned judgment under challenge calls for no interference.

- 26.** Consequently, **C.R.R. 3120 of 2017** is, thus, **dismissed**. Connected applications, if any, are also thus disposed of.
- 27.** Petitioner nos. 2 and 3 are directed to surrender before the court, within 15 days from the date of this judgment, for execution of the sentence awarded by the Trial Court. In default, the Trial court shall exhaust all formalities in accordance with law to execute the sentences as aforesaid.
- 28.** Interim order, if any, stands vacated.
- 29.** 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.
- 30.** 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.)

Later:

After pronouncement of the Judgment, the learned senior counsel appearing on behalf of the petitioners prays for stay of the operation of the Judgment.

Such prayer is considered and rejected.

(Ajay Kumar Gupta, J.)

P. Adak (P.A.)