

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 4298 of 2024

Ramachandra Hunasikatti

Vs.

Niraj Kumar Ladsaria

With

C.R.R. 4782 of 2024

Niraj Kumar Ladsaria

Vs.

State of West Bengal & Anr.

For the Petitioner in	:Mr. Ayan Bhattacharjee, Sr. Adv.
CRR 4298 of 2024 and	Mr. Nirmalya Chatterjee, Adv.
Opposite party no.2 in	Mr. Shounak Mondal, Adv.
CRR 4782 of 2022	

For the Opposite party in	:Mr. Md. Shahjahan Hossain, Adv.
CRR 4298 of 2024 and	Ms. Sanjida Sultana, Adv.
Petitioner in CRR 4782 of 2024	Mr. Prithwiraj Biswas, Adv.

Last Heard on	:05.08.2025
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Judgment on	:11.09.2025
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Bibhs Ranjan De, J.

Both the revision applications arising out of the self same cause of action and involving identical parties shall be disposed of via this common judgment.

Background:-

1. One complaint under Section 138 of the Negotiable Instrument Act, 1881 (for short N.I. Act) was filed before the Court of Additional Chief Judicial Magistrate invoking the provision of Section 200 of the Code of Criminal Procedure (for short CrPC) alleging *inter alia* that the complainant namely Mr. Ramachandra Hunasikatti transferred his equity shares in M/s. M.M.C Technologies (P) Limited to the accused for a total consideration of Rs. 56,13,345/-. The accused allegedly paid Rs. 11,00,000/- initially by an account payee cheque and for the balance consideration of Rs. 45,13,345/- the accused on 24.09.2018 issued 4 post dated account payee cheques drawn on HDFC Bank Limited, Stephen House Branch, Kolkata. On 18.12.2018 when those said cheques were deposited, all 4 cheques were dishonored with the remark 'Funds Insufficient'. Thereafter, on 31.12.2018 a demand notice was sent to the accused by the

Ld. Advocate of the complainant thereby demanding payment of Rs. 45,13,345/-. The said notice was duly received on 02.01.2019. Despite receiving the demand notice the accused deliberately and intentionally neglected to pay the amount of the dishonored cheques within the stipulated time and as a sequel, on 15.02.2019 a complaint was filed under Section 138 of the N. I. Act before the Court of Ld. Additional Chief Judicial Magistrate, Sealdah, South 24 Parganas and the Ld. Magistrate was pleased to take cognizance thereof and subsequently the matter was transferred to the Court of Ld. Judicial Magistrate, 1st Court, Sealdah.

In Re: 4782 of 2024

2. The instant revision application has been filed with a prayer for quashment of the criminal proceeding under Section 138 of the N.I. Act, arising out of Case No. N.I. Act 51 of 2019 presently pending before the Court of Ld. Judicial Magistrate, 1st Court, Sealdah.

Argument Advanced:-

3. Mr. Md. Shahjahan Hossain, Ld. Counsel appearing on behalf of the petitioner, at the very outset has submitted before this Court that the petitioner had issued the impugned cheques as security cheques which is evident from

the undated memorandum of understanding duly executed between the opposite party no. 2 and the petitioner and at the time of execution of the said instrument, an amount of Rs. 11 lacs was admittedly paid to the opposite party no. 2 as token advanced and the balance of the settled amount was to be paid in due course after deducting all statutory dues and liabilities of the company in lieu of tax liabilities. Ld. Counsel, Mr. Hossain further submitted that the undated security cheques duly signed by the petitioner were given in good faith so that all dues and liabilities of the opposite party no. 2 could be calculated and the parties could arrive at a settlement amount but the said settlement never took place. Therefore, the proceeding initiated against the petitioner cannot be said to be maintainable as there is no legally enforceable debt and/or dues and/or liabilities lying with the petitioner as of date.

- 4.** Per contra, Mr. Ayan Bhattacharjee, Ld. Senior Counsel, appearing on behalf of the opposite party no. 2 has vociferously contended that the primary grounds on which the petitioner has sought quashing of the complaint under Section 138 of the N. I. Act cannot be said to be applicable in an application for quashing as Section 118 coupled with

Section 139 of the N. I. Act raises a statutory presumption in favour of the payee that the cheque was issued for discharge, in whole or in part, of any debt or other liability, and such presumption can be rebutted only by way of evidence in the course of trial. Therefore, the bald assertion of the cheque being issued as security has no legs to stand. The defence of cheque being issued as 'security' is essentially a mixed question of law and fact which can only be adjudicated during the course of extensive trial.

5. In order to further buttress his submission, Mr. Bhattacharya has relied on the following cases:

- ***MMTC Ltd. vs. Medchal Chemicals and Pharma (P) Ltd., (2002) 1 SCC 234***
- ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Ltd. , (2016) 10 SCC 458***
- ***Kalamani Tex vs. P. Balasubramanian, (2021) 5 SCC 283***

Analysis:-

6. Having heard the rival contentions adduced on behalf of the parties as well as after going through the cases relied on behalf of the opposite party no. 2, this Court is of the view

that the petitioner preferred the instant application challenging the impugned criminal proceedings initiated under Section 138 of the N. I. Act primarily on the ground that the impugned cheques were given as security cheques and the petitioner did not have any existing legally enforceable debt.

- 7.** Now, whether those cheques were issued as security cheques or not and whether any legally enforceable debt existed on the date of issuance in my humble opinion is a mixed question of law and fact which can only be determined by the Trial Court after extensive trial and recording of evidence of the parties.
- 8.** All these disputed questions of fact which were not admitted between the parties cannot be subject of an application under Section 482 of the CrPC as it is settled law that extraordinary power should be exercised stringently and with great circumspection. This Court is also not oblivious to the settled ratio elucidated by the Hon'ble Apex Court in plethora of decisions that while entertaining an application under Section 482 CrPC, the Court is not justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint. The

inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice as **the High Court in exercise of it's jurisdiction under Section 482 of Cr.P.C does not function either as a Court of appeal or revision**, also having no power to conduct a mini trial. Moreover, the Hon'ble Apex Court has further held that at the **initiation of the Criminal Proceedings, whether the criminal proceedings are malicious or not, is not required to be considered at the stage of quashing as it is required to be considered only at the conclusion of the Trial.**

9. Alternatively, it can be further suggested that the legislative object behind the basic enactment under Section 118 and 139 of the N.I. Act clearly speaks about 'statutory presumption'. The statute mandates that once the cheque is issued having the admitted signature, a statutory presumption is raised in favour of the payee that the cheque was issued for discharge, in whole or in part, of any debt or other liability, and such presumption can be rebutted only by way of evidence adduced in course of trial and not at the stage of quashing.

10. In light of the aforesaid discussion, at this stage, I am not inclined to enter into the disputed question of fact and therefore no interference with the impugned proceeding at this stage by invoking power under Section 482 of CrPC is required.

11. As a sequel, the instant revision application being CRR 4782 of 2024 stands dismissed being devoid of merits.

12. However, I would like to clarify that this Court has only gone into the question whether on admitted facts, case for quashing has been made out or not. Therefore, no observation has been made regarding the merit of the case and the petitioner is at absolute liberty to raise all the available pleas before the Trial Court in accordance with law.

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13. This application has been preferred with a prayer for expeditious culmination of Case No. N.I. Act 51 of 2019 presently pending before the Court of Ld. Judicial Magistrate, 1st Court, Sealdah.

14. Prayer being not prejudicial to either of the parties, stands allowed.

- 15.** The Learned Trial Judge is requested to dispose of the case as expeditiously as possible without affording any unnecessary adjournment to either of the parties.
- 16.** With the aforesaid observation, both the revision applications being no. CRR 4298 of 2024 and CRR 4782 of 2024 stand disposed of.
- 17.** Connected applications, if any, stand disposed of accordingly.
- 18.** Interim order, if there be any, stands vacated.
- 19.** All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.
- 20.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]