

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 3770 OF 2008
RAM NARAYAN GUHAIT
VS
THE STATE OF WEST BENGAL & ANR.

For the petitioner : Mr. Prabir Kr. Mitra, Sr. Adv.
Ms. Subhanwita Ghosh, Adv.
Amicus Curiae : Mr. Tanmoy Chowdhury.
Last heard on : 11.07.2025
Judgement on : 21.08.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This is an application under Section 401 read with Section 397 and Section 482 of the Code of Criminal Procedure, 1973 filed by the petitioner against an judgement and order dated September 4, 2008 passed by the Learned Additional Sessions Judge, 4th Court, Purba Medinipur in connection with criminal appeal no 23 of 2008, dismissing the appeal filed by the petitioner upholding the judgement and order passed by the Learned Judicial Magistrate, 3rd Court, Purba Medinipur in C.R. case no 230 of 2006 passed on April 7, 2008, convicting the petitioner under Section 138 of Negotiable Instrument Act 1881 and sentencing the petitioner to suffer simple imprisonment for 2 years

and to pay a fine of Rs. 10 thousand in default to go further simple imprisonment for 6 months.

2. The case of the petitioner emanated from the complaint lodged by the Opposite Party no. 2 under Section 138 of the Negotiable Instrument Act 1881, on May 8, 2006 alleging inter alia that the petitioner used to do business on credit from Opposite Party no 2 and in order to discharge his liability had issued a cheque amounting Rs. 18, 35,000 to the Opposite Party no. 2 and the same was dishonoured while depositing with the banker due to “insufficiency of fund”. It was further alleged that in spite of giving demand notice the petitioner failed to pay the money. Cognizance was taken in the matter and summons was issued by the Learned Court and accordingly the petitioner had to face the trial. The Learned Court passed the order of conviction vide order dated April 7, 2008 against which criminal appeal was preferred before the Learned Session Judge, Purba Medinipur registered as Criminal appeal no 23 of 2008. The Learned Additional Session Judge 4th Court affirmed the order of conviction passed by the Judicial Magistrate, 3rd Court by an order dated September 4, 2007. Being aggrieved thereby this revisional application has been filed.

3. The Learned Advocate appearing on behalf of the petitioner submitted that in the complaint the firm was not made a party nor the firm was notified under Section 138-B of the Negotiable Instrument Act. The petitioner while deposing as P.W.1 mentioned about two companies namely “Bescon and Pure Coke” who got the contract for construction of the petrol Pump but the accused belong to neither “Bescon and Pure Coke” . It is the contention of the learned advocate that the complaint was not maintainable on account of such

deficiency and in this regard the Learned Advocate relied upon the following decisions ; ***MonabenKetanbhai Shah & Anr. Vs. State of Gujrat & Anr.***¹ ***para 3,6,7,8,Maksud Saiyad vs State of Gujrat & Ors.*** ²***Para 13, Sushil Shetty & Anr. Vs State of Arunachal Pradesh & Ors.*** ³, ***para 7.5 and 8.2.***'

4. It was further argued that the proceeding under Section 138 Negotiable Instrument Act ought to have been tried summarily by the First Class Judicial Magistrate or by a Metropolitan Magistrate after following the provision as enumerated under Section 262 to 265 of Cr.Pc. The Learned Advocate in this regard relied upon the decisions in RE; Suo motu ***writ petition (CRL) no 2 of 2020 decided on April 16, 2021 expeditious trial of cases under Section 138 of NI Act. where in para 24.1 it was observed.***

24.1 That the Magistrate before converting a complaint case from summary trial to summons case, the Magistrate has to record the reasons otherwise the purpose for which Section 143 of the act introduced could be defeated.

5. Accordingly it is submitted that on account of the deficiencies as discussed above and for non-compliance of the statutory provision the impugned judgment should be quashed and prayed for dismissal of the revisional application.

¹ (2004) 7 SCC 15

² (2008) 5 SCC 668

³ (2020) 3 SCC page 240

6. The Learned Advocate appearing on behalf of the Opposite Party no. 2 On the other hand submitted that in course of business transaction in order to meet up the liability, the petitioners/convict issued the cheque in favour of the Opposite Party no 2 complainant, which was subsequently placed for encashment but the same was dishonoured. It is further submitted that as a consequence there of the demand notice under Section 138 of the Negotiable Instrument Act was served by the Learned Advocate on behalf of the complainant to the Opposite Party no 2 /petitioner but despite receiving the said notice the Opposite Party no 2 did not respond and/or the contents of the same. Therefore the complaint was written with no other option but to initiate the appropriate proceeding under Section 138 of Negotiable Instrument Act .In course of the said proceeding the complainant himself and the Learned Advocate represented the complainant who issued the demand notice adduced evidence on behalf of the prosecution. The Learned Magistrate after conclusion of trial passed the order of conviction followed by an order of affirmation by the Learned Appellate Court. It is further argued that the accused petitioner wanted to canvass that the firm of the accused got the tender to fill in work at the said pump and the firm entrusted the complainant's firm Siyaram Associates to do the said job, but in support of this contention no documentary evidence were ever produced nor any witness was cited to establish the claim of the accused. It is further submitted that on the contrary the demand bills raised by the complainant which was marked with exhibit 6 duly signed by the accused remain unchallenged. Therefore, to discharge the lawful liability towards business transaction the accused issued the cheque and the complainant was successful to prove the same beyond all reasonable

doubt in course of the trial, so the benefit of Section 139 of the Negotiable Instrument Act is not applicable to the accused person.

7. Therefore, the Learned Magistrate considering the entire aspect, rightly pass the order of conviction which was affirmed by the Learned Session Judge and based on concurrent finding of both the Learned Court below there is hardly any scope to interfere into the said findings by this Court invoking jurisdiction under Section 482 of Criminal Procedure Code. Accordingly prays for dismissal of this revisional application.

8. Heard the submission of both the Learned Advocate and perused the materials on record as well as the judgements passed by the Learned Sessions Judge as well the judgment of the Learned Magistrate, 3rd Court, Paschim Medinipur. At the outset it is important to note that the power to exercise Section 482 by this Court, after the concurrent findings of both the Learned Court is very limited. The complaint was lodged by the present Opposite Party no 2 where from it is seen that the complainant is the proprietor of Sityaram Associates and the accused had his business compact filing contractor and general order supplier and used to deal with that business on credit from the complainant. The accused issued a post-dated cheque against his credit business in favour of Siyaram Associates drawn on Indus Bank, Kharagpur Branch, Paschim Medinipur vide cheque no 057722 dated 30.3.2006 of Rs. 18,35,000 and on receipt of the said cheque complainant deposited in his fund account with Punjab National Bank, Kharagpur Branch on April 10,2006 for collection of the proceed. The said cheque was returned to the complainant by report of concerned banking authority, for the reason of insufficient fund on the said date that is April 10, 2006. In the decision as relied upon by the

Learned Advocate of the petitioner in **Maksud Saiyad vs State of Gujrat and others (supra)** The Hon'ble Supreme Court discussed "Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156 (3) or Section 200 Cr.Pc.

" Where a jurisdiction is exercised on a complaint petition filed in terms of section 156(3) or section 200 of the code of criminal procedure ,The Magistrate is required to apply his mind. The penal code does not contain any provision for attaching vicarious liability on the part of the Managing Director of the company when the accused is the company".

In this case it is clear that the accused is the proprietor of Shiyaram Associates and it is run by him along with 4 partners but there was no amount due excepting what he owed to him due to fill in work .

9. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examination if the business is prima facie committed by all or any of the accused."

10. In the decision relied upon in **Monaben Ketanbhai Shah & Anr. Vs. State of Gujrat & Anr. (supra)** in paragraph 3 that .,

"Section 138 of the Act makes dishonour of the cheque an offence punishable with imprisonment or fine or both. Section 141 relates to offences by the

company. It provides that if the person committing an offence under Section 138 is a company every person who, at the time of offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Thus, vicarious liability has been fastened on those who are in charge of and responsible to the company for the conduct of its business. For the purpose of Section 141, a firm comes within the ambit of a company.

The other decision relied upon by the Learned Advocate of the petitioner in ***Sushil Shetty and another versus State of Arunachal Pradesh and others (supra)*** in paragraph 7.5 that :

“in Sharad Kumar Sanghi this Court had an occasion to consider the initiation of criminal proceedings against the Managing Director or any officer of a company where company had not been arrayed as a party to the complaint”. In the aforesaid decision, it is observed and held by this Court that in the absence of specific allegation against the Managing Director of vicarious liability, in the absence of company being arrayed as a

party, no proceedings can be initiated against such Managing Director or any officer of a company. It is further observed and held that when a complainant intends to rope in a managing Director or any officer of the company, it is essential to make requisite allegations to constitute the vicarious liability”.

11. In the instant case, The complainant adduced evidence as P.W. 1 and during his cross-examination by the defence it has come that a reliance petrol pump was constructed near Basantapur P.W. 1 filled upon the ground with sand moram and it was established during such cross-examination that the said amount fall due during business connection. It is also apparent from the evidence of P.W. 1 that the two names namely Basecon and Pure Coke got the contract and accused belong to neither of the companies .It was established during the cross-examination of the complainant that there was no amount due by the accused to him except what he owed to him due to such filling work at the said pump. No challenge was made by the existence of Siyaram Associates being run by the complainant.

12. Furthermore, the accused did not challenge the signature made by him in exhibit 1 and or he never issued any such cheque in his favour. The accused did not dispute the bill under exhibit 6 and did admit his signature on the cheque. Therefore from the examination of both the complainant as well as the accused person it is well established that the signature appearing in the cheque was of the accused person and he issued the cheque during a business transaction between the complainant and the accused person in respect of a

particular job. The defence taken by the accused person during his examination under Section 313 that the cheque was lost which was signed previously was not accepted by the Learned Court of Magistrate since the accused never made any attempt to rebut the presumption of adducing cogent evidence on that score.

13. It is a settled law that once it is proved that the cheque was issued by the accused person and admits his signature there on the burden lies on the accused person to satisfy the Court under what circumstances the cheque was issued. Therefore, so far the issuance of cheque is concerned it can be said to be well established and well founded and has no room for inference with regard to the findings arrived at by both the Learned Trial Court as well as the Appellate Court. The submission advanced on behalf of the petitioner about the admission of non-issuance of notice to the Shiya Ram Associates by the P.W. 1 is hit by the decision of the Hon'ble Apex Court that if it is a partnership firm all the members of the firm were supposed to be made parties let the decision of ***Monaben Ketanbhai Shah & Anr. Vs. State of Gujrat & Anr.***⁴ be look into where in para 3,6,7,8 it was clearly observed by the Learned Supreme Court that Section 141 of the Act do not contract all the members liable and the liability is fasten only those who , at the time of commission of the offence, were in charge of and where responsible to the firm for conduct of its business. Primary responsibility is on the complainant to make necessary averment in complaint and establish that the offence was committed the accused were in charge and responsible to the firm for the conduct of its business. In the instant case, the specific evidence on behalf of

⁴ (2004) 7 SCC 15

the complainant left no room to doubt that there was no contract or agreement with the firm of the accused person but it was only the accused person with whom the business transaction entered upon in whatever capacity there might have been and for a specific job that is to fill up the ground with sand and moram for which such cheque was issued by the accused person.

14. That apart it has come out from the evidence of the complainant/Opposite Party no 2 that as the accused except what he owed to the Opposite Party no 2 to fill in work at the Petrol Pump exactly the same amount was shown in the said dishonoured cheque. Therefore to discharge the lawful liability towards the business transaction the accused issued the cheque and complainant was able to prove the same beyond all reasonable doubt in course of trial. Therefore question of benefit of Section 139 of the Negotiable Instrument Act is not applicable to the accused person. The last point which is to be considered is that the application filed before the Magistrate under Section 156 (3) of Cr.Pc was not accompanied by an affidavit and the law laid down by the Hon'ble Supreme Court in **Priyanka Sribastaba V/z State of Uttar Pradesh**⁵. In the instant case also the complaint was lodged under 156 (3) which was not supported with affidavit. However, it is seen that the point was never raised before the Learned Trial Court as well as Appellate Court and also not taken as a ground before this Court and in course of argument only this point has been raised. It is undisputed that by virtue of the decision of **Praiyanika Srivastava (supra)** as reiterated in the various judgement including in the decision of **Kanishk Sinha and another V/z State of West Bengal and**

⁵ (2015) 6 SCC 287

another⁶ mandated that such application are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. However in the said case in paragraph 5 of the judgement it is observed after quoting para 30 of the decision of **Priyanka Srivastava (Supra)**.

5. "It is necessary to mark the words in the above quoted para 30a stage has come in the country' and thus the above directions could only be prospective. This would signify that what the court intended was that from now onwards it would be necessary that an application would be accompanied by an affidavit.

We are of the opinion that the High court was right in holding that the direction that a complaint will be accompanied by an affidavit will be prospective in nature."

15. In this case the complaint was filed in the year 2006 and the revisional application was filed in the year 2008 and it is in connection with a case under Section 138 of Negotiable Instrument Act where the sentence was for a simple imprisonment for 2 years to pay a fine of Rs. 10,000 and in default to further undergo simple imprisonment for 6 months, so even if the application/complaint under Section 156 (3) of Cr.Pc was without support with F.I.R. The petition cannot take such point as a defence, in view of the aforesaid decision.

⁶ 2025 IN SC 278

16. Hence when both the Learned Trial Court as well as the Appellate Court affirmed the order of conviction holding the present applicant as guilty of the offences committed under Section 130 of Negotiable Instrument Act this Court finds no reason to interfere with such view and thereby concurs with the order of affirmation of the Learned Appellate Court.

17. Therefore, this Revisional Application is devoid of any merit and hence stands dismissed.

18. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)

