

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 4568 of 2023
Super Inducto Steels Limited & Anr.
Versus
Annapurna Cast Ltd & Anr.

For the Petitioners : Mr. K.P. Pal, Adv.
Mr. K.K. Pathak, Adv.
Mr. S. Maji, Adv.

For the Opposite Parties : Mr. Rites Goel, Adv.
Mr. Rabindra Kumar Mitra, Adv.

Heard on : 17.09.2025

Judgment on : 14.11.2025

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application has been filed by the Petitioners Under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (In short 'Cr.P.C.'), praying for setting aside the judgment and order dated 11.10.2023 passed by the Learned Additional District and Sessions

Judge, 1st Fast Track Court, Calcutta in Criminal Appeal No. 16 of 2023 (Super Inducto Steels Ltd & Anr. vs. Annapurna Casts Ltd. & Anr).

2. By the said Judgment and Order, the Learned Judge affirmed the judgment and order dated December 22, 2022, passed by the Learned 3rd Metropolitan Magistrate, Kolkata, in complaint case being No. C/2839/2000 filed under Section 138 of the Negotiable Instruments Act, 1881 (In short 'N.I. Act') whereby and whereunder the petitioners herein were convicted for an offence punishable under Section 138 of the NI Act and sentenced to pay a sum of ₹ 6 lacs along with simple interest @ 9% per annum upon the said amount, and in default, convicted to undergo simple imprisonment for three (03) months and the amount of fine imposed is to be paid within a period of two (02) months from the date of judgment.

FACTS OF THE CASE

3. Brief facts of the present case, in hand, are relevant for the purpose of disposal of this case are as follows:
 - a. The petitioner no. 1 is a company duly incorporated under the Companies Act, 1956, and presently governed under the Companies Act, 2013. The petitioner no. 2 is one of the Directors of the said Petitioner no.1 company.

- b.** The Petitioner no. 1 company was engaged in the manufacture of iron ingots and iron rods. Subsequently, it became a sick industrial unit and was registered with the Board of Industrial and Financial Reconstruction in 2010, following its financial difficulties since 2003.
- c.** The opposite party no. 1 (hereinafter referred to as the complainant) filed a case under section 138 of the NI Act against the present petitioners. Upon receipt of notice, the Petitioner no. 2, appeared before the Trial Court and was enlarged on bail. The case was duly contested by the Petitioners.
- d.** It transpires from the aforesaid complaint that in March 1999, the complainant supplied iron moulds to the petitioner no. 1 company by two trucks under two separate invoices to the tune of Rs. 2,14,619/- and Rs. 1,81,105/- respectively. Against the said invoices, the petitioners issued one A/C payee cheque bearing No. 076789 dated 27.10.1999 drawn on Punjab National Bank, for a total sum of Rs. 3,95,724/-. However, when the said cheque was presented for encashment, it was dishonoured on 22.04.2000, with the endorsement "Insufficient funds".
- e.** Thereafter, the complainant issued a statutory notice dated 02.05.2000 under section 138 of the NI Act demanding payment of the said cheque amount. The petitioners, however, failed to comply

with the demand within the stipulated time, whereupon the complainant initiated proceedings under section 138 of the NI Act.

f. Upon conclusion of the trial and after hearing both sides, the learned Trial Court, by its order dated 22.12.2022, convicted the petitioners under section 138 of the NI Act and sentenced them as aforesaid.

g. Being aggrieved by and dissatisfied with the aforesaid conviction and sentences, the petitioners herein filed an appeal before the learned Sessions Judge at Calcutta, being Criminal Appeal No. 16 of 2022. It was subsequently transferred to the Learned Additional District and Sessions Judge, 1st Fast Track Court, Calcutta, for hearing and disposal.

h. After hearing the parties, the learned Judge dismissed the said appeal on contest and affirmed the judgment and order dated 22.12.2022 passed by the learned Trial Court. Hence, this application.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

- 4.** Learned counsel appearing on behalf of the petitioners submitted that the complaint filed under Section 138 of the N.I. Act, is not at all attracted in the instant criminal proceeding and is legally unsustainable. It was contended that the prosecution witness, PW-1, Shri Raj Narayan Singh is not a reliable witness as he himself

admitted during cross-examination that he did not know when the last transaction between the petitioner no. 1 company and the complainant took place. He further admitted that he could not state whether the complainant had supplied any goods to the petitioners after the year 1999, nor could he mention the exact date of the cheque alleged to have been issued by the petitioners.

- 5.** It was further submitted that PW-1, during his cross-examination, categorically admitted that at the time of filing of the complaint, the complainant company had already converted its status from a limited company to a private limited company. However, no amendment was carried out in the pleadings to reflect this change, and the case proceeded with and was ultimately decided in favour of the old company. It was argued that the failure to amend the name and status of the complainant company rendered the proceedings invalid in law, and both the Trial Court and the Appellate Court erred in not dismissing the complaint on this ground.
- 6.** It was further contended that the petitioners have paid a sum of Rs. 1,00,000/- by a cheque being No. 076782 dated 26.06.1999, and another amounting to Rs. 2,00,000/- was paid by Demand Draft being No. 961562. These payments, however, were not taken into consideration either by the learned Trial Court or by the Appellate Court.

- 7.** Finally, it was submitted that there was no existence of the complainant company, namely, Annapurna Cast Ltd., during pendency of the proceeding. Therefore, the complaint could not have been continued in the name of a non-existent juristic person. A non-existent body corporate/Company tantamounts to a dead person and/or non-existent juristic person, and no complaint case can be maintainable by such dead person and/or non-existent juristic person, but the Trial Court ignored such facts and decided the case in favour of the complainant, though there was no existence of the complainant's company. Therefore, the impugned judgment and order is otherwise bad, both in facts and law, and is liable to be set aside for securing ends of justice.
- 8.** Learned counsel for the petitioners has placed reliance of the following judgments to support of his case:
- i. Roy Joseph Creado and Others Vs. SK. Tamisuddin s/o Late Sk. Nazir Ahmed and Others*¹;
 - ii. V.U. Pathrose, S/o Ulahannan & Anr. Vs. V.K. Jeevalan & Anr.*²;
 - iii. A.C. Narayanan Vs. State of Maharashtra & Anr.*³;
 - iv. George Joseph & Anr. Vs. Hmt (International) Limited & Anr.*⁴;

¹ 2008 SCC OnLine Bom 133;

² 2017 ACD 582 (Ker);

³ 2014 (11) SCC 790;

⁴ 2015 ACD 83 (Kar);

- v. Candy Spirit Pvt. Ltd. Vs. Reeves Mia*⁵;
- vi. Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel & Anr.*⁶;
- vii. A.G. Joseph @ Joseph Aloor (Died) & Ors. Vs. M. J. Joseph & Anr.*⁷;
- viii. M/s. Jaimin Jewellery Exports Pvt. Ltd. & Ors. Vs. The State of Maharashtra & Anr.*⁸;
- ix. M/s. Kumar Exports Vs. M/s. Sharma Carpets*⁹;
- x. Janki Vashdeo Bhojwani & Anr. Vs. Indusind Bank Ltd. & Ors.*¹⁰;
- xi. John K. Abraham Vs. Simon C. Abraham & Anr.*¹¹;
- xii. M/s. Shankar Finance & Investments Vs. State of Andhra Pradesh & Ors.*¹².

SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY NO. 1:

9. Per contra, learned counsel appearing on behalf of the opposite party No. 1 vehemently opposed the prayer for setting aside the impugned judgment and order and further submitted that the judgments referred to by the petitioners are not at all applicable in the instant case. It was submitted that the issuance of a cheque without sufficient balance in the account and the consequent dishonour of such clearly attracts the provisions of section 138 of the N.I. Act,

⁵ 2012 ACD 911 (Bom)

⁶ 2023 (1) SCC 578

⁷ 2012 ACD 446 (Ker)

⁸ 2017 ACD 642 (Bom)

⁹ 2009 (2) SCC 513

¹⁰ (2005) 2 SCC 217

¹¹ 2014 ACD 560 (SC)

¹² (2008) 8 SCC 536

1881. A drawer of a dishonoured cheque cannot escape criminal liability under the guise of technicalities when all the statutory ingredients of the offence are fulfilled.

- 10.** Defence has failed to prove its concocted story during the trial regarding payment of Rs. 3,00,000/-. Therefore, the judgments relied upon by the petitioners have no manner of application, so far as the proceedings under Section 138 of the N.I. Act is concerned, and as such, the revisional application is liable to be dismissed.
- 11.** It was further contended that the cheque was issued in the name of the complainant company, and the complaint was validly instituted by the authorised agent of the said company. The subsequent change in the company's name is of no consequence to the criminal proceedings already initiated. The criminal offence was committed by the Petitioners when they refused to pay the cheque amount even after receipt of the demand notice. The Petitioners never disputed the issuance of cheques nor challenged the validity of the demand notice issued by the complainant after its dishonour with the endorsement "insufficient funds".
- 12.** Finally, it was submitted that the subsequent change in the name of company does not affect the judgment and order passed by the trial court in the name of previous company, since all rights and liabilities of the old company vest in the new company by operation of law. On

the other hand, the statute which further provided that any proceeding which had been commenced or continued by the company in its old name code be continued by the Company in such name even after the change of name. No right, however, was conferred on the company to commence a new proceeding in its old name. This provision is available in the Companies Act, 1956 under Section 23 (1) of the Companies Act, 1956. Therefore, the judgment and order passed by the Trial Court should be affirmed by dismissing the revisional application.

- 13.** Learned counsel for the opposite party no. 1 has placed reliance of judgments in support of his submissions as under: -

- i. Pioneer Protective Glass Fibre P. Ltd. Vs. Fibre Glass Pilkington Ltd.*¹³;
- ii. EIC Holdings Limited Vs. E.I.T.A. India Limited*¹⁴.

DISCUSSION AND FINDINGS OF THIS COURT:

- 14.** In the light of the submissions and arguments advanced by the learned counsels appearing for the parties and upon perusal of the complaint as well as judgments relied upon by both parties, this Court deems it appropriate to first refer to certain relevant provisions for convenience, ready reference and for proper assessment before entering into the merits of this case. Those Sections read as under:

¹³ **1984 SCC OnLine Cal 171**

¹⁴ **G.A. No. 68 of 2020 with C.S. No. 239 of 2008**

Section 138 of the N.I. 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.

15. The N.I. Act was enacted to define and amend the law relating to promissory notes, bills of exchange and cheques. By virtue of the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988, Chapter XVII comprising sections 138 to 142 was inserted into the Act with effect from 01.04.1989. Section 138 of the Act provides the penalties in case of dishonour of cheques due to insufficient funds or similar reasons.
16. However, sections 138 to 142 of the Act were subsequently found to be inadequate in effectively 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 ensuring the speedy disposal of cases relating to dishonour of cheque through summary trial and making the offences compoundable.
17. The Hon’ble Supreme Court in ***Electronics Trade & Technology Development Corporation Ltd., Secunderabad v. Indian Technologists & Engineers (Electronics) (P) Ltd.***¹⁵, observed that the object of introducing section 138 was to inculcate faith in the

¹⁵ (1996) 2 SCC 739

efficacy of banking operations and enhance the credibility of business transactions conducted through negotiable instruments. Section 138 intends 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 bank and induce the payee or holder in due course to act upon it.

18. The Hon'ble Supreme Court again, in the case **Goa Plast (P) Ltd. v. Chico Ursula D'Souza**¹⁶, 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 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

¹⁶ (2004) 2 SCC 235

a long-drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee.”

19. 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.”

20. The Hon’ble Supreme Court, further in the case ***Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.***¹⁷, laid down the following ingredients for taking cognisance 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

¹⁷ (2000) 2 SCC 745

(ii) That cheque has been presented to the bank within a period of six months from the date on which it is drawn of 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

(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.”

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

(i) Whether this Court, while exercising jurisdiction under Article 227 of the Constitution of India and/or section 482 of the Cr.P.C., has power to re-assess the entire evidence adduced before the Trial Court for the purpose of setting aside the impugned judgment and

order? What are the powers that the Court can exercise under Article 227?

(ii) Whether the failure to amend the cause title of the newly amended company's name during the pendency of the proceedings would affect the validity of the entire judgment and order of conviction?

- 22.** Upon perusal of records, it is evident that the opposite party no. 1, being the complainant, filed the complaint under section 138 of the N.I. Act against the Petitioners as detailed herein above, primarily on allegations that the complainant company had supplied iron moulds by two trucks under two separate invoices to the tune of Rs. 2,14,619/- and Rs. 1,81,105/-, respectively, to the petitioner no. 1. Against the said invoices, the petitioners issued one A/C payee cheque bearing No. 076789 drawn on Punjab National Bank, dated 27.10.1999 amounting to Rs. 3,95,724/-. When the said cheque was presented to the bank, it was dishonoured on 22.04.2000, with the endorsement "Insufficient funds".
- 23.** Thereafter, the complainant issued a demand notice dated 02.05.2000 under section 138 of the NI Act, demanding payment of the said sum. The petitioners herein failed to comply with the requisition of the said notice, which led to the filing of the present complaint. The complaint led to pre-summoning evidence and, thereafter, cognizance for the offence punishable under section 138 of

the Act was taken against the petitioners. The Petitioners were ordered to be summoned for offence under section 138 of the Act. Notice under section 251 Cr.P.C. was given to the Petitioners, to which they pleaded 'not guilty' and claimed to be tried.

- 24.** It appears from the record that the evidence of P.W. 1 has fully established the case of the complainant, which was duly considered by the Trial Court, culminating in the conviction and sentence of the Petitioners.
- 25.** This Court finds that the Petitioner has failed to demonstrate any cogent reason to show that the impugned order suffers from any legal infirmity or perversity. The complainant successfully proved all the essential ingredients of the offence under section 138. The contention of the petitioners regarding payment of money to the complainant against the cheque amount is not supported by any admissible evidence. The Petitioners have also not disputed the fact that the cheque was not issued by the Petitioners. Even after receiving the statutory notice, the Petitioners neither paid the cheque amount nor rebutted the complainant's claim by replying in any manner.
- 26.** So far as the first issue herein is concerned, it is a well-settled principle of law that the power of superintendence conferred upon the High Court under Article 227 of the Constitution of India and the inherent powers vested under Section 482 of the Code of Criminal

Procedure, 1973, are of an extraordinary and discretionary nature. These provisions are intended to ensure that the process of law is not abused and that justice is secured in cases where no other efficacious remedy is available.

- 27.** However, the scope of interference under these provisions is narrow and circumscribed. The High Court, while exercising its supervisory jurisdiction, does not act as a court of appeal to re-appreciate or re-evaluate evidence adduced before the Trial Court or to substitute its own findings of fact for those recorded by the subordinate courts. Interference is justified only when there is a patent error of law, a manifest miscarriage of justice, or where the findings are perverse or based on no evidence at all.
- 28.** The Hon'ble Supreme Court, in several judgments including ***State of Haryana v. Bhajan Lal***¹⁸, particularly paragraphs 102, 103; ***Surya Dev Rai v. Ram Chander Rai***¹⁹, particularly paragraphs 38, 39, 41; and ***Shalini Shyam Shetty v. Rajendra Shankar Patil***²⁰, particularly paragraphs 64-69 and 89, has consistently held that the supervisory and inherent powers are not to be invoked for routine correction of errors or for a re-appraisal of evidence. These powers are meant to keep the subordinate judiciary within the bounds of its

¹⁸ AIR 1992 SC 604

¹⁹ (2003) 6 SCC 675

²⁰ (2010) 8 SCC 329

authority and to prevent gross injustice arising from illegality, irregularity, or arbitrariness in judicial proceedings.

29. Furthermore, in ***Amit Kapoor v. Ramesh Chander***²¹, particularly paragraphs 12, 13, 20, 27, the Supreme Court reinforced that section 482 of Cr.P.C. cannot be invoked to reassess the credibility of evidence or the correctness of findings.
30. Accordingly, this Court, in the present case, cannot reassess or re-appreciate the entire evidence as if sitting in appeal over the Trial Court's findings. Its interference would be warranted only if the petitioners succeed in demonstrating that the impugned judgment suffers from a jurisdictional error, a violation of due process of law, or a patently perverse conclusion unsupported by the record or wholly an abuse of process of law.
31. Coming to the second issue, the contention of the Petitioners that the complaint was not maintainable due to lack of authority is equally untenable. The complainant has established its authority by producing the board resolution authorising Kuldip Yadav to represent the company in the complaint. Subsequently, upon Kuldip Yadav's departure from the company, Sri Raj Narayan Singh was authorised to represent the company in connection with the above complaint

²¹ (2012) 9 SCC 460

case vide resolution dated 1st December, 2001 (Ext.1/1), Therefore, the complaint is well maintainable.

- 32.** The judgment passed in the case of ***Pioneer Protective Glass Fibre P. Ltd. v. Fibre Glass Pilkington Ltd***²², relied upon by the Opposite party no.1, squarely applies to the present case. It was held therein that a complaint, filed in the old name of the company, remains maintainable even after the subsequent change of name and/or status of the company. In the said judgement, the Hon'ble Court held in paragraph 10 as under:

“10. It was contended that the Companies Act, 1956, provided that a change of the name of an existing company was to be registered afresh and a new certificate of incorporation was to be issued by the Registrar, from the date of which, the change of name would be effective. It followed that from the date of the change of its name, a new company under a new name had come into existence. The rights and liabilities of the old company vested in the new company under the statute which further provided that any proceeding which had been commenced or continued by the company in its old name could be continued by the company in such name even after the change of name. No right, however, was conferred on the company to commence a new proceeding in its old name.”

- 33.** This Court, therefore, finds no reason to interfere with the impugned judgment and order passed by the learned courts below. Consequently, **C.R.R. 4568 of 2023** stands **dismissed**. Connected applications, if any, are also, thus, disposed of.

²² **1984 SCC OnLine Cal 171**

- 34.** Interim order, if any, stands vacated.
- 35.** Registry shall send a copy of this judgment to the Learned Trial Court for information and taking necessary action against the petitioners in accordance with law.
- 36.** All parties shall act on the basis of server copy of this judgment duly downloaded from the official website of this court.
- 37.** 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.)