

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 4611 of 2022

With

CRAN 2 of 2024

Sudipta Ghosh

Versus

Tapas Pal

For the Petitioner : Mr. Anirban Tarafder, Adv.
Mr. Daniel Sarkar, Adv.
Mr. Arnab Nandi, Adv.

For the Opposite Party : Mr. Sourav Mondal, Adv.
Mr. Rony Mondal, Adv.
Mr. Arijit Bhuiya, Adv.

Heard on : 17.06.2025

Judgment on : 06.08.2025

Ajay Kumar Gupta, J:

1. The petitioner being the accused in connection with Case No. CS/6463/06 initiated under Section 138 of the Negotiable Instruments Act, 1881 (in short 'N.I. Act') assailed the impugned order dated 30.11.2022 passed by the Learned Metropolitan Magistrate, 16th Court at Calcutta.

2. By the said impugned order, the Learned Magistrate rejected the petitioner's prayer to send the Trade Licence issued in favour of opposite party – Tapas Pal, Proprietor of M/s. Ashray by Bally Municipality to the CFSL for examination to ascertain its genuineness.

3. The background facts of the case of the petitioner are that the opposite party filed a petition of complaint under Section 200 of the Code of Criminal Procedure, 1973 (in short 'CrPC') before the Learned Chief Metropolitan Magistrate, Calcutta, against the present petitioner alleging commission of offence punishable under Section 138 of N.I. Act for issuing a cheque in favour of M/s. Ashray in discharge of legally enforceable debts and/or liabilities being Cheque No. 901536 dated 27.03.2006 for a sum of Rs. 5,00,000/- (Rupees Five Lakhs Only), drawn on Union Bank of India, Ezra Street Branch, Kolkata 700 001. However, upon depositing the said cheque within

the period of its validity by the opposite party with his banker, namely, UTI Bank Ltd., Konnagar Branch, Hooghly, 712 235 for encashment on 09.05.2006, the said cheque was dishonoured on the ground of “Insufficient Funds” and was returned on 13.05.2006. Thereafter, all procedural requirements under the Act were duly followed prior to the filing of the said case when the petitioner failed to pay the said amount.

4. During trial, three witnesses have been examined as P.Ws. 1, 2 and 3 who deposed and exhibited number of documents in support to prove the case of the opposite party/complainant. However, complainant could not produce the Trade Licence before. Upon recall of the witness, a Trade Licence dated 08.11.2005 issued by Bally Municipality for the year 2003-2004, was produced and marked as Exhibit 8 without any objection.

5. Despite the said fact, the Petitioner filed an application dated 22.06.2022 for expunging the said Exhibit 8, but the prayer was rejected by the Learned Magistrate vide Order dated 3rd August, 2022 on the ground that the document was exhibited without objection after recall of witness and sufficient opportunity for cross-examination was afforded. Subsequently, petitioner filed another application on 16.11.2022 with a prayer that the document marked

as Exhibit 8 appears to be not genuine and the same should be sent to the CFSL for examination at the cost of the petitioner.

6. Upon hearing the parties, the prayer was rejected by the Learned Magistrate on 30.11.2022 on the ground that subsequent application filed by the petitioner only with the intention to re-open the issue on the ground of suspicion and CFSL examination is an indirect attempt to revisit the earlier rejection. Hence, this application.

SUBMISSION ON BEHALF OF THE PETITIONER:

7. Learned counsel appearing on behalf of the petitioner vehemently advanced arguments and submitted that the petitioner has challenged that the claim of the opposite party to be the holder in due course of the cheque in question. His status as the proprietor in M/s. Ashray is also under challenge. The petitioner is in no way connected or related with M/s. Ashray. He was unable to produce any document to prove his status as the proprietor of M/s. Ashray at the initial deposition. But, subsequently, on recall of the witness, a Trade Licence dated 08.11.2005 issued by Bally Municipality for the year 2003-2004 was exhibited to support the contention that he is proprietorship of M/s. Ashray is fabricated. The said Trade Licence

was not confirmed by D.W. 1 who was examined by the petitioner to rebut the opposite party's claim.

7a. The D.W. 1, staff of Bally Municipality deposed during his examination that he was the in charge of Licence Department on the date of purported issuance of the Trade Licence. However, he could not bring the Licence Register and other documents as sought for because on 6th March, 2018 a fire broke out in the Office of Bally Municipality and in the said fire, many documents of the department were burnt. His deposition was recorded on 12th April, 2022.

7b. It was further submitted that the Learned Magistrate failed to appreciate that the opposite party/complainant failed to prove his status as the proprietor of M/s. Ashray and has no locus standi to file the complaint and whole case depends on the said Trade Licence. Rejection of such prayer is bad in law or non-est in the eye of law as the Learned Magistrate holds that the petition filed by the petitioner is only to delay the trial of the proceeding without going into real disputes and issues involved for the purpose of proper and effective disposal.

7c. The learned counsel further submitted that if Exhibit 8 (Trade Licence) is found to be forged and not genuine after examination by the CFSL then the same becomes inadmissible in

evidence and greatly effect the final conclusion of the trial. To bolster his submission, he placed reliance of following judgments as under:-

i. S. Ravichandra Vs. M/s. Elements Development Consultants, Bengaluru¹ particularly paragraph no. 7;

ii. Kalyani Baskar Vs. M. S. Sampooram² particularly paragraph no. 11;

iii. T. Nagappa Vs. Y. R. Muralidhar³ particularly in paragraph nos. 7 to 9;

iv. A. Sivagnana Pandian Vs. M. Ravichandran⁴ particularly in paragraph nos. 18, 29 to 32).

7d. Finally, learned counsel prays for allowing the Revisional application by directing that the Exhibit No. 8 may be sent to the CFSL to ascertain whether the said Trade Licence is genuine or not on the expenses of the Petitioner for ends of justice.

SUBMISSION ON BEHALF OF THE OPPOSITE PARTY:

8. Learned counsel appearing on behalf of the opposite party vehemently raised objection of such prayer of the learned counsel appearing on behalf of the petitioner and further submitted that the instant Revisional application is filed only to delay the proceeding. All

¹ 2018 CrLJ (Kar) 4314;

² 2007 (1) SCC (CRI) 577 : AIR ONLINE 2006 SC 318;

³ 2008 AIR SCW 3349 : AIR 2008 SC 2010

⁴ 2011 CRI. L.J. 4152 : (2011) 2 MAD LJ (CRI) 595.

the witnesses have been examined by the Learned Trial Court. The proceeding initiated under Section 138 of the N.I. Act is required to be followed summary procedure. In such case, the petitioner is required to prove the case of cheque issued in favour of the opposite party/complainant in order to discharge legally enforceable debts and/or liabilities and not to prove whether the Trade Licence is genuine or not. Furthermore, the said document was exhibited as Exhibit 8 by the Learned Trial Court after affording an opportunity of cross-examination. The petitioner tried to stall the proceedings on two occasions. **Firstly**, by filing application for expunging the Exhibit No. 8 though it was exhibited in presence of both parties without objection after leading evidence and **secondly**, he tried to send the Trade licence for CFSL examination but he could not succeeded. Moreover, the Bally Municipality did not deny and raised any objection regarding Trade licence issued in favour of the M/s Ashray. The case is pending before the trial court since 2006. Therefore, the Revisional application is liable to be dismissed.

DISCUSSION , FINDINGS AND CONCLUSION OF THIS COURT:

9. Heard the arguments advanced and submissions made by the learned counsels appearing on behalf of the parties and on perusal of the records as well as impugned order, this Court finds the opposite party/complainant has initiated a proceeding under Section 138 of

the N.I. Act against the Petitioner. In such a proceeding, the essential ingredients that must be proved are:-

- (i) Whether the cheque was issued in order to discharge legal debts and/or liabilities of the accused person or not?
- (ii) Whether it was drawn in favour of the complainant?
- (iii) Whether the cheque was presented to the bank within its validity period?
- (iv) Whether it was dishonoured due to insufficient funds and other valid reasons and
- (v) Whether despite receipt of the statutory notice, the accused failed to make payment of cheque amount?

These are the criteria necessary to establish the offence under Section 138 of N.I. Act.

10. Moreover, at the time of the filing complaint, the complainant specifically indicated in the cause title that he is the proprietor of M/s. Ashray having its office at 12/1, Old G.T. Road, Bally, Howrah. Initially, he could not produce any other relevant document to show his proprietorship. But later, upon recall, the Trade Licence, issued by the Bally Municipality was exhibited as Exhibit 8 without any

objection even sufficient opportunity was provided to the petitioner to cross-examine the witnesses.

11. All the P.Ws. and D.W. have already been examined and all the relevant documents have been exhibited including the cheque, memo of return, legal notice, trade licence etc. Even, the employee of the Bally Municipality brought by the petitioner to challenge the authenticity of the Trade Licence but he did not deny that the Licence was not issued by Bally Municipality. He also did not question about the genuineness of Trade Licence by the Municipality.

12. In addition, the petitioner herein filed two petitions. **Firstly**, seeking expunging the Exhibit 8 and **secondly**, application for requesting that the said document to be sent to the CFSL for forensic examination at petitioner's own cost. Both the prayers were rejected after hearing the parties.

13. The Learned Trial Court while rejecting the said application, rightly held that once a document already exhibited in presence of both sides without objection is not necessary to be sent for expert opinion before the CFSL to prove whether the said Trade Licence is genuine or not, in the case initiated under Section 138 of N.I. Act. It is not the case of the petitioner that he had not issued the cheque. He only raised the issue with regard to proprietorship of the opposite

party/complainant that issue will be decided by the Learned Trial Court after going through the oral and documentary evidence of the parties while assessing the whole evidence. The earlier petition filed by the petitioner was rejected by the Learned Magistrate therefore, subsequent application filed only with intention for re-opening the issue on the ground of suspicion and CFSL examination is an indirect attempt to revisit the earlier rejection order. The petitioner never challenged the genuineness of cheque issued by him.

14. This Court relies a judgment passed in ***M.M.T.C. Ltd. & Anr. Vs. Medchl Chemicals and Pharma (P) Ltd. & Anr.***⁵ where the Hon'ble Supreme Court held that only eligibility criteria prescribed by Section 142, of the N.I. Act for maintaining a complaint under Section 138 is that the complainant must be the payee or the holder in due course.

15. In another judgment passed in ***Rangappa Vs. Sri Mohan***⁶ the Hon'ble Apex Court made it clear that once the issuance of the cheque is admitted or proved, the Trial Court is duty bound to raise the presumption that the dishonoured cheque placed before it was

⁵ (2002) 1 SCC 234;

⁶ AIR 2010 SUPREME COURT 1898, 2010 AIR SCW 2946.

indeed issued in discharge of a legally enforceable debt or liability of the amount mentioned therein.

16. The Judgements relied by the Petitioner do not support the proposition that a Trade Licence must be sent for CFSL for forensic examination as the proceeding is to be followed summary procedure under Section 138 of the N.I. Act, particularly when the core elements of the offence are not in dispute.

17. Therefore, this Court finds there is no any illegality, infirmity or perversity in rejecting the prayer as made by the petitioner. Therefore, the impugned order dated 30.11.2022 passed by the Learned Metropolitan Magistrate, 16th Court at Calcutta is hereby affirmed.

18. Accordingly, **CRR No. 4611 of 2022** is, thus, **dismissed**. **CRAN 2 of 2024** is also, thus, disposed of.

19. Let a copy of this Judgment be sent to the Learned Court below for information.

20. Interim order, if any, stands vacated.

21. Case Diary, if any, be returned to the learned counsel for the State.

22. Parties shall act on the server copies of this Judgment uploaded on the website of this Court.

23. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal and necessary formalities.

(Ajay Kumar Gupta, J)

(P.A.)