

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 1242 OF 2025

SRI ARUN KUMAR DEV & ANR.

VS

THE STATE OF WEST BENGAL & ANR.

For the Petitioners : Mr. Rabi Sankar Chattopadhyay, Adv.
Ms. Suprava Jana, Adv.
Ms. Manisa Saha, Adv.
Mr. Ayanava Acharya, Adv.

For the Opposite

Party no. 2 : Ms. Devipriya Mitra, Adv.

Last heard on : 22.12.2025

Judgement on : 19.02.2026

Uploaded on : 19.02.2026

1. this revisional application has been filed under Section 482 of the Code of Criminal Procedure, 1973 read with Section 397/401 corresponding to Section 438/442 read with Section 528 of BNSS, 2023 against the judgement and order dated February 13, 2025, passed by the learned Additional District and Sessions Judge, First Track Court, Baruipur, 24 Parganas South, in criminal appeal No. 6 of 2017 arising out of the order dated April 28, 2017, passed by

the learned Additional Chief Judicial Magistrate, First Court, Baruipur , 24 Parganas South, whereby both the petitioners were directed to suffer sentence to undergo simple imprisonment for a term of one year each and also to pay a fine of ₹ 24 lakhs jointly in default to suffer further simple imprisonment for six months each in connection with a proceeding under section 138 of the Negotiable Instrument Act, 1881, affirming the judgement of the learned Magistrate Court.

2. The allegations levelled against the petitioners that the case of the petitioner is that the petitioners being husband and wife took a loan of ₹ 12, 00, 000/- during the period from January 10, 2009, to August 29, 2013 from the Opposite Party No. 2, namely Shajal Guha . The petitioners issued four cheques of different dates of different amount in order to discharge their liability to repay the said loan issued on various dates totalling Rs 12,00,000/- in favour of the Opposite Party no. 2 and all were drawn on State Bank of India, Zilla Parishad Building, Baruipur. Both the petitioners acknowledged the aforesaid due upon execution of the document on April 24, 2014 in writing in a nonjudicial Stamp paper of ₹ 10. The petitioners also admitted that previously they issued for cheques which returned to them and in lieu of them the above-mentioned cheques were issued. The Opposite Party no. 2 presented the said cheque at Indian Overseas Bank, Ballygunge Branch on August 6, 2014 which were returned to the Opposite Party no. 2 on August 12, 2014 for insufficient funds. The Opposite Party no. 2 sent a notice dated September 3, 2014 through their advocates by registered post to both the petitioner's with a demand to clear their dues of ₹12, 00, 000/- within 15 days of receipt of said notice which was duly received by the petitioner no. 1 on

September, 2014 but they failed to comply the said demand within the stipulated period. A complaint was preferred by Opposite Party no. 2 in terms of Section 200 of the Code of Criminal Procedure, 1973 before the Court of learned Additional Chief judicial Magistrate, 1st Court, Baruipur 24 Parganas South.

- 3.** The Opposite Party no. 2 being the complainant deposed before the learned Magistrate as P.W.1 and no other prosecution witnesses adduced on behalf of the complainant. The petitioners also deposed as D.W. 1 and 2 respectively and no other defence witness adduced on their behalf. Number of documents were exhibited being the agreement, the disputed cheques, cheque returned memos, demand notice, postal receipts and a A/D cards respectively.
- 4.** After hearing at length to the council's represented the parties the learned court found the petitioners guilty of offence under Section 138 of Negotiable Instrument Act, 1881, in terms of Section 255(2) of the code of criminal procedure, 1973 and sentenced both the petitioners to undergo simple imprisonment for a term of one year each and pay a fine of ₹ 24, 00, 000 in default to suffer further simple imprisonment for six months each. An appeal was preferred against such judgement and order of conviction before the learned appellate court and of their also of after hearing both the parties the learned it up court dismissed the appeal and affirmed the judgement passed by the learned Magistrate. Being aggrieved thereby this revisional application has been filed.
- 5.** The learned Advocate raised the point of territorial jurisdiction in terms of Section 2 (b) of Section 142 of the Negotiable Instrument Act as well as Section 138 (c) of the said Act . It is submitted by the learned Advocate that the

proceeding was initiated before the learned Court of Magistrate at Alipore when the cheques were issued from Ballygunge SBI branch. Therefore there is lack of territorial jurisdiction and hence the judgement passed by the said Court should be set aside. It is the contention of the learned Advocate appearing on behalf of the petitioner that the learned Magistrate while sentencing the petitioners directed to pay a fine of ₹ 24, 00, 000 jointly which is twice the amount of the claim, which is not tenable in the eye of law. The Learned Judge after hearing the Criminal Appeal and the said order and sentence affirmed the whimsical order by the Magistrate imposing whimsical amount as fine. The learned Judge did not consider that no evidence was adduced by the Opposite Party no. 2 for establishing his statement that from January, 2009, 2nd August 9, 2013, the petitioners jointly took an amount of ₹ 12, 00, 000 from him in cash as loan. No agreement was executed between the parties. The learned Advocate also tried to impress the appellate court as well as this court regarding the non-disclosure source of income or financial capacity of the complainant to grant loan of an amount of ₹ 12, 00, 000 and that was not proved before the learned Trial Court.

- 6.** The learned Advocate appearing on behalf of the opposite party on the other hand raised strong objection and submits that this is an and effort to delay and drag the order of conviction passed against the appellant's who since inception has tried to misappropriate the amount, which was received as loan. The learned appellants have not comply the direction passed by the learned trial court and not paid the mandatory provision of 20% of the total amount at the time of filing of the appeal. The revisional Court has very limited power to

interfere with the judgement and order affirming the judgement and order of conviction passed by the learned Magistrate.

7. Heard the submission. At the outset the point raised by the learned advocate regarding territorial jurisdiction is to be considered. In this case the disputed cheques were dated 9.6.20 14 for ₹ 3, 00, 000, dated 13.6.20 14 for Rs 4,00,000/- , dated 13.7.14 for ₹ 3, 00, 000 and dated 9.7.14 for Rs 2, 00,000/- respectively and those were presented on 6.8.20 14 at Indian overseas Bank, Ballygunge Branch, Kolkata. The cheques were dishonoured on 7.8.20 14 and the complainant derived such knowledge on 3.9.14. The demand notice was dated 3.9.14 asking the present petitioners to repay the amount of ₹12,00000/- by 15 days from the date of receipt of the said notice of demand which was duly received by the accused petitioner no .1 on 8.9.14 . The complaint was lodged on 22.10. 2014.

8. The point of jurisdiction under Section 142 of the Act was incorporated by virtue of the amendment which came into effect on 26.12.20 15 and hence it was not applicable in this proceeding. That apart both the Courts delivered their judgements holding the petitioner's as guilty of the offence committed under section 138 of the Negotiable Instrument Act, 1881 and at no point of time this was raised.

9. It is a settled law that the High Court under inherent powers under section 482 of the Cr.P.C corresponding to 528 of BNSS will not upset the concurrent findings of the trial as well as the appellate Court unless found perversity. In this case the accused persons in their examination under section 313 CRPC expressed their desire for adducing further evidence. The date was then fixed for defence witness when the accused persons being the present petitioner's

only deposited. No documentary evidence was adduced from the side of the defendant.

10. Section 139 of the N.I Act reads as follows;

“presumption in favour of holder-It shall be presumed, unless the contrary is proved that the holder of a cheque received the cheque of the nature referred to in section one 38 for the discharge, in whole or in part , of any debt or liability. Therefore the presumption is not absolute but a rebuttable one and the burden to the but search presumption lies every on the defence that is the driver of a cheque”.

11. In ***Lakshmi Dyechem vs State of Gujarat and others***¹ Supreme could reiterated that in view of section trial court as well as appellate court that, it has to be presumed that cheque was issued in discharge of a debt or other liability but the presumption could not be rebutted by adducing evidence. The burden of proof was however on the person who wanted to rebut the presumption.

12. In this case the petitioner no. 2 who adduced evidence as D.W. 2 admitted to have endorsed their signature in the cheque issued in favour of O.P. In view of the legal parlance as enumerated in Section 139 and 118 of N.I. Act. Once the issuance of cheque is proved the presumption is drawn against the person is issuing the cheque but it is a rebuttable presumption and if it is rebutted by cogent evidence the onus shifts upon the claimant. But the petitioners herein failed to rebut such presumption as mandated that the cheque was issued was not for discharge of any debt or other liability. The total amount

¹ (2012) 13 SCC 375

borrowed is of Rs. 12, 00,000/- in several instalments. The exhibit. 1 clearly shows that the debt of Rs. 12, 00,000/- was acknowledged by the petitioners by endorsing their respective signatures.

13. In the instant case the principal stand taken by the present petitioner before the Appellate Court that the complainant being a professional money lender ought produced money lender's to have license to substantiate his claim and hence the onus is on the appellant to establish that the complainant is the professional moneylender. The appellate court was of the view that no iota of evidence was established to show that the complainant is a moneylender. It is settled law that existence of legally enforceable debt as per Section 138 of Negotiable Instrument Act if established the onus lies upon the accused to rebut such presumption. The standard of proof required 'preponderance of probability' and in view of the nature of evidence adduced and the observations made by both the learned Appellate Court as well as the learned Trial Court this Court to not find any ground which can inspire confidence in the mind of Court in order interfere into the judgement passed by the learned Appellate Court affirming the judgement and order of conviction against the petitioner. Further The stand taken by the petitioner for challenging the concurrent findings of the learned trial court as well as the Appellate Court that an excess amount has been levied upon them towards fine appears to be not sustainable in the eye of law as in terms of section 138 of N.I Act, if the offence is found to be committed under this provision the accused will be punished with imprisonment for a term which may be extended to 2 years or with fine which may extend to twice the amount of the cheque or both and the learned Magistrate directed the petitioners to pay a fine of ₹ 24 lakhs, initially and to

undergo simple imprisonment for a term of one year. Therefore no ground of perversity or illegality can be found from the four corners of the judgements. In the present case the petitioners did not pay the 20% of the amount as directed by this Court despite giving ample opportunities and the order of law, so there remains no question of further adjustment.

14. Hence this criminal revisional application stands dismissed.

15. The judgement of the Learned Appellate Court affirming the judgement of the Learned Magistrate is hereby affirmed.

16. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]