

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

**CRA 154 of 2020
Gayanatha Pandey @ Gayanath Pandey
Vs
State of West Bengal Anr.**

For the Appellants : Mr. Prosenjit Mukherjee,
Mr. Saptarshi Chakraborty
Mr. Argha Kamal Das
Ms. Babita Pramanick

For the Respondent No.2 : Mr. Rajendra Banerjee,
Mr. Souvik Ganguly
Mr. Joy Chakraborty
Mr. S. Roy Chowdhury

Heard on : 05.02.2026

Judgment on : 26.02.2026

Dr. Ajoy Kumar Mukherjee, J.

1. Appellant herein has challenged the impugned Judgment and order dated 17th January, 2020 passed by learned Judicial Magistrate 1st Court Rampurhat in connection with CR Case no. 502 of 2018, by which the Court below acquitted the Respondent No.2 under section 255 (1) of Cr.P.C. from the allegation of committing offence punishable under section 138 of the Negotiable Instrument Act (in short N.I. Act).

2. Factual matrix of the case as stated in the complaint is that the accused/Respondent no. 2 herein, Manik Dutta has issued one cheque

being no. 232 dated 18.05.2018 in favour of the appellant/complainant to discharge the legally enforceable debt of Rs. 8.5 lakhs, which amount the accused had taken loan from the complainant for the purpose of his business. When the said cheque was presented before the banker of the complainant, the same was returned as unpaid by the bank with a return memo "stop payment" on 22.06.2018. Complainant /appellant thereafter on 25.06.2018 sent one demand notice against the Respondent no. 2 herein through his Advocate which was duly served upon him. Even after receipt of such demand notice, the Respondent no.2 did not pay the said amount within the stipulated period and for which the complainant initiated the aforesaid proceeding.

3. The main defence of the Private Respondent as had been taken during trial is that there was a *bonafide* family relationship in between the complainant and Respondent/accused person. The wife of the complainant is the elder sister of the respondent herein. The accused was running Medicine whole sale business under the name and style "Matara Enterprise". He had to go outside frequently for the treatment of his differently abled son and ailing wife, and during his such absence, the complainant and his son used to look after his business and for the purpose of smooth running of his business, accused/Respondent issued some blank cheques containing his signature only, including the impugned cheque and handed over it to the complainant to meet up the legal debts of the business transactions. However, with the passage of time the relationship between the complainant and the respondent herein became strained since May, 2018 over some family related issues and for which the wife of the

complainant lodged one FIR against the accused and others on 09.05.2018 and thereafter the elder brother of the accused/respondent filed one eviction suit being no. 73 of 2018 against the complainant and his family members. Now taking advantage of getting custody of one such blank signed cheque, he has initiated the instant Criminal proceeding maliciously.

4. During trial the complainant/appellant herein examined himself as PW1 and he also examined officer of his bank as PW2. One Advocate who issued demand notice was examined as PW3 and the officer of Bank of Baroda was also examined as PW4. The respondent herein was examined under section 313 of the Cr.P.C. and thereafter he had adduced evidence as DW1 and one Rathindra Nath Mondal and Rajib Sengupta have deposed on his behalf as DW-2 and DW3

5. Learned Trial Court after considering the evidence and documents of both the parties came to a finding that the Complainant/Appellant herein has failed to establish that the amount involved in the cheque has got nexus with any legally enforceable debt and as such the offence under section 138 of the N.I. Act has not been proved and thereby he has acquitted the Respondent no.2 from the charge under section 138 of the N.I. Act.

6. Being aggrieved by the impugned judgment and order, learned counsel for the Appellant submits that the Respondent no.2 has lodged G.D. Entry regarding missing of impugned cheque after the dishonour of the said cheque, in order to avoid proceeding under section 138 of the N.I. Act and such information regarding missing cheque was not informed to the concerned bank nor to the present Appellant, who is the payee of the said cheque. The Respondent no. 2 failed to prove that he has not taken any loan

from the Appellant being the payee of the cheque and none of the defence witnesses also could prove in their evidence that the loan had not been disbursed. In fact Respondent no.2 took loan from the Appellant amounting to Rs. 8,50,000/- for the purpose of business and said amount has not been repaid. Appellant in the cross examination has stated that on several occasion Respondent took loan from the Appellant. He further argued that after receiving the demand notice, Respondent no. 2 never replied to the effect that he had handed over any blank cheque to the Appellant rather he admitted that many cheques have been encashed in favour of different person in different times. Defence witness no.2 in his cross examination has admitted the fact that the opposite party no. 2 put his signature at the bottom of the right side and he used to hand over the said cheques by putting his signature only. Though he could not say the number of missing cheque but, Learned Trial court observed that it has been established during trial that there was a *bonafide* relationship in between Appellant and the Respondent and for which blank signed cheque was handed over to complainant and therefore the ultimate finding of the judicial Magistrate that due to personal grudge, the instant complaint has been filed is not based on evidence adduced by the parties

7. Learned counsel for the Appellant further argued that learned Magistrate has failed to appreciate that issuance of cheque and putting signature on the cheque is sufficient to constitute the offence punishable under section 138 of the N.I. Act. He further failed to appreciate section 118 of the N.I. Act and that the Appellant has discharged his burden of proof. The court below without having any proper reason has shifted the burden of

proof upon the present Appellant with erroneous observation that Respondent no.2 has duly discharged his burden of proof, which is absolutely contrary to the provision of law. Section 118 of the N.I. Act gives the power to the court to presume certain facts as true, unless proven otherwise. Section 139 of the N.I. Act creates a legal presumption that a cheque was issued for a legally enforceable debt and liability and the burden of proof can only be shifted if the accused has succeeded in proving that no such debts exists, rather than complainant's liability to prove any existing debt. Therefore he has prayed for quashing the impugned judgment.

8. Mr. Banerjee learned counsel appearing on behalf of the Respondent no.2 argued that the Court below has correctly appreciated the oral as well as documentary evidence on record and has rightly held that mere issuance of a cheque and its subsequent dishonour does not ipso facto attract section 138 of the N.I. Act, unless the complainant establishes the existence of a legally enforceable debt or liability. He further argued that the defence of the accused consistently pleaded throughout and supported by evidence that the parties share a close familial relationship and that the complainant along with his sons used to look after wholesale medicine business of the accused, particularly during the absence of the accused. During the course of such business arrangement founded on trust and confidence, the respondent no.2 have handed over certain blank signed cheques for facilitating routine business transaction and the cheque in question forms part of such blank signed cheques which the court below has taken note

9. He further submits that issuance of a blank signed cheque does not create an irrebuttable presumption of liability and the accused is only

required to raise probable defence to rebut the statutory presumption under section 118 and 139 of the N.I. Act and the onus, has been successfully discharged by the accused on the basis of a coherent and plausible defence case. Since presumptions under section 118 and 139 of the N.I. Act are rebuttable in nature, so once a probable defence is established, the burden shifts back upon the complainant to affirmatively prove the existence of legally enforceable debt or liability, which principle has been correctly recorded and applied by the court below. In the instant case the complainant has miserably failed to prove of advancing loan of Rs. 8,50,000/- by any credible oral or documentary evidence.

10. The complainant's testimony suffers from material inconsistencies and omission including the failure to satisfactorily explain why no written documents/receipt was executed for such a huge amount of loan and why no independent witness was examined to support the alleged advancement of money. The PW2, 3 and 4 are formal witnesses and as such the case of the complainant that the respondent had taken loan or there was any legally enforceable debt has not been substantiated during evidence. On the contrary Respondent had led consistent and cogent defence evidence by examining himself and other defence witnesses which remains unshakened during cross examination. The court below has correctly applied the settled principle of law laid down on rebuttal of statutory presumption under the N.I. Act and has properly appreciated the legal effect of 'may presume' and shall presume' within the scheme of Evidence Act and the N.I. Act. Therefore, the judgment of acquittal is founded upon proper appreciation of evidence, correct application of law and sound judicial reasoning and suffers

from no perversity and illegality or miscarriage of justice, warranting interference by this High Court. Accordingly he prayed for dismissal of the instant appeal.

Decision

11. When I examined the case of the appellant/complainant as projected before the court below and the material evidences placed before the trial court, I find that while passed the judgment Trial Court had noted certain vital defects in the case of the appellant/complainant. Such defects noted by the court below and the defects pointed out in the written argument are as follows:-

- 11.1** *Though the complainant has stated in his evidence that the accused Manik Dutta issued the impugned cheque amounting to Rs. 8,50,000/- in his favour for repayment of loan but during cross examination he clearly admitted that he cannot say when accused took money from him for the last time and he has also not shown the loan amount as deduction from capital in his income tax return. He also could not say in his deposition as to who were actually present besides the parties at the time of taking loan, nor could he say the dates when accused took loan from him and he admitted that he has not stated in his complaint the dates and details.*
- 11.2** *Court below also noted that DW2 and DW3 stated that the complainant used to look after the business of the accused in the absence of the accused and such statement has not been denied in the cross examination nor it could be impeached during cross examination nor it was denied that accused used to issue blank cheques to the complainant and his sons for the purpose of business on bonafide belief and usually either the complainant or his son used to hand over the cheque to the business creditor which has been specifically stated during examination by DW2 and DW3.*
- 11.3** *Court below also noted that DW2 specifically stated during cross examination that Manik Babu (accused) put his signature on the cheque at the bottom of right side and he used to hand over the cheques by putting his signature only which has also not been denied during cross examination.*
- 11.4** *Trial Court also noted that the statement of DW3 remained unimpeached to the effect that he used to visit firm of the accused and in the absence of accused, complainant and his son used to hand over the cheques to him after filling up the same and most of the time when he visited the farm, he found that complainant or his son was dealing with the business.*
- 11.5** *The complainant has failed to prove the alleged loan of Rs. 8,50,000/- in as much as much no credible oral, documentary evidence has been adduced to establish the source of fund, mode of payment, date of advancement or the circumstances under which such a substantial amount was allegedly lent.*

11.6 *No loan agreement, receipt, acknowledgment, banks statement, income tax document, proof of withdrawal or any other fundamental material has been produced by the complainant*

11.7 *The cheques sequence as brought on record clearly indicates that cheque no. immediately preceding and succeeding the cheque in question namely cheque no. 231 and cheque no. 233 were encashed earlier in April, 2017 in the normal course of business, thereby strongly probabalising the defence that the cheque series was being utilised for the business purpose and not for a one time personal loan transaction.*

11.8 *The dishonour of cheque in the present case is on account of 'stop payment' and not due to insufficiency of funds, which instruction was given after serious family dispute had arisen, as evident from the general diary entry dated 12.05.2018 and the subsequent civil and criminal disputes between close family members, all of which preceded the presentation of the cheques*

11.9 *The existence of prior GD entries the FIR lodged by the complainant wife and the eviction suit involving family members turned the relationship strained prior to the presentation of the cheque, which leads to a support to the defence case that the cheque was misused after dispute erupted.*

12. Needless to say that in order to draw the presumption under section 118 read along with section 139 of the N.I. Act, the burden is heavily upon the complainant to have shown that he had the required funds for having advance the money to the accused and that the issuance of the cheque in support of the said payment advance was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant.

13. In the light of the said statutory requirement I find that while the impugned judgment was passed, trial court rightly came to a finding that the appellant/complainant was not even aware of the date when substantial amount of Rs. 8,50,000/- was advanced by him to the accused/respondent and he was not even aware exactly when and in whose presence the transaction took place, for which the cheque came to be issued by the accused respondent and apart from that in the evidence of the complainant

he further admitted that he could not even say the instalments and dates of payment of loan amount to the accused.

14. Section 139 of the Act mandates that it shall be presumed unless contrary is proved that the holder of a cheque received it in discharge of whole or in part of debt or liability. But such presumption is rebuttable. In ***Rangappa Vs. Shri Mohan***, reported in **(2010) 11 SCC 441**, a Three Judges Bench of Supreme Court held that in determining whether the presumption has been rebutted, the test of proportionality must guide the determination and the standard of proof for rebuttable of the presumption under section 139 of the Act is guided by preponderance of the probabilities. The relevant paragraph 28 may be quoted below.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.

15. In the present case as stated above. The defence of the respondent is that he never borrowed the amount of Rs. 8,50,000/- from the complainant as alleged, nor he had issued any cheques in discharge of any legally enforceable debt. His specific case is that no payment was made by the complainant to him in discharge of which the cheques have been issued. His specific defence is that the complainant used to look after his medicine business during his absence and on good faith he handed over certain blank signed cheques to him for continuation of the business smoothly and out of

which complainant has misused one such blank signed cheque for initiation of the instant proceeding.

16. In such background, as I have stated above that PW1/complainant could not even say in his evidence when he paid the loan to the accused /Respondent nor he could say through how many instalments such payment was made or in whose presence such loan amount was disbursed. Furthermore one important facet in the instant case is that the complainant also failed to establish the source of funds which he has alleged to have utilized for the disbursement of the loan of Rs. 8,50,000/- to the respondent.

17. For the reasons indicated above I have no other option but to conclude that the respondent accused has duly rebutted the presumption under section 139 of the Act. His defence that there was an absence of a legally enforceable debt is rendered probable on the basis of the materials on record and therefore the order of acquittal passed by the court below can hardly call for interference.

18. In ***Tota Singh and another Vs. State of Punjab***, reported in **(1987) 2 SCC 529** the Supreme Court has clearly laid down the law that the jurisdiction of the appellate court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the trial Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is therefore liable to be characterized as perverse. Even when two views are possible on an appraisal of the evidence

adduced in the case and the court below has taken a view which is a plausible one, the appellate court cannot legally interfere with an order of acquittal, even if it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous.

19. In a recent judgment reported in **(2024) 3 SCC 544 (Malappa and Ors. Vs. State of Karnataka)** Supreme Court reiterated the same view that there is no inhibition on the High Court to re appreciate or re visit the evidence on record but the power of the High court to re appreciate the evidence is a qualified power specially when the order under challenge is of acquittal. Thus, first and foremost question to be asked by the High Court is whether the trial court thoroughly appreciated the evidence on record and gave due consideration to all material pieces of evidence and thereafter to consider whether the finding of the trial court is illegal or affected by an error of law or fact and if not whether the view taken by the Trial Court is fairly possible view or not.

20. Since in the instant case from the aforesaid discussion, I have already observed that the view taken by the court below is fairly possible view, **CRA 154 of 2020** thus stands dismissed. The impugned judgment and order passed in connection with CR No. 502 of 2018 dated 17th January, 2020 by Learned Judicial Magistrate First Court Rampurhat is hereby affirmed. Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)