IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1643 of 2010

Pabitra Ganguly
-Vs-
The State of West Bengal and Anr.

For the Petitioner	: Mr. Sounak Mukhopadhyay Ms. Dipanwita Das Ms. Sudeshna Maji
For the Opposite Party no.2 (*Amicus Curiae*)	: Mr. Soham Banerjee
Judgment on	: 24.02.2026

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner against the order dated April 20, 2010 passed by the Learned Additional District & Sessions Judge, Barrackpore, North 24 Parganas in Criminal Appeal No.9 of 2009 arising out of judgment and order dated 13.07.2009 passed by the Learned Judicial Magistrate, 5th Court, Barrackpore in Complaint Case No.673/2003, whereby the petitioner was convicted under Section 138 of the Negotiable Instruments Act and sentenced to suffer rigorous imprisonment

for 3 months and to pay a fine of Rs.20,000/-, in default, to suffer rigorous imprisonment for a period of 3 months more.

2. The petitioner stated the Complaint Case No. 673/03 was initiated on the basis of complaint lodged by the opposite party No. 2. The allegations in the aforesaid complaint quoted the petitioner being a partner of a TV channel namely "C-Ren" advertised in the ABP inviting finance for creditable business and accordingly the Complainant/O.P. No. 2 invested Rs.40,000/- through execution of an agreement dated 02.07.2001, *inter alia*, stipulating the complainant would be entitled @ 5% per month as profit on the aforesaid invested amount. Allegedly in discharge of the aforesaid liability the petitioner issued five postdated cheques including the cheque being no.607688 dated 16.04.2003 for Rs.10,000/-. The said cheque was drawn on State Bank of India, Ramrajatala Branch, Howrah. It was alleged that the said Cheque was presented by the complainant at United Commercial Bank, Birati Branch on 11.10.2003. The said cheque was returned by the aforesaid Bank on the ground of "Funds Insufficient". Subsequently, a demand notice was served upon the petitioner but in vain. Consequently the proceeding under Section 138 Negotiable Instrument Act was initiated.

3. The petitioner after receiving summons appeared before the Learned Trial Court and was examined under Section 251 Negotiable Instrument Act, pleaded not guilty and the trial commenced.

4. The petitioner submitted the Opposite Party No.2 never issued any cheque to "C-Ren" or paid any amount to "C-Ren". The agreement was entered into

between "C-Ren" and the complainant/opposite party No. 2 and not with the petitioner. The said partnership Firm namely "C-Ren" was not a party to the proceeding being Complaint Case No.673 of 2003. There was no dues payable by the petitioner to the Opposite Party No.2. The purported agreement was not in existence when the cheque was deposited for encashment.

5. During the course of transaction, the petitioner on behalf of the said Firm requested the complainant/opposite party no.2 to become the partner of the said firm but the complainant refused. Thereafter the complainant compelled the petitioner to refund the said invested amount.
6. The complainant and her son namely Subhrangshu Majumdar, forcefully obtained 5 postdated cheques of different dates of like amount of Rs.10,000/- each and a writing dated 15.03.03 was obtained mentioning the cheque numbers. In this regard the petitioner was compelled to initiate a complaint case which was pending before 1st Judicial Magistrate, Howrah against the complainant and her son. A plain reading of the said document would show that the same was issued under threat and coercion, which had been admitted by the complainant/opposite party no. 2 in her evidence, where the opposite party no.2 said that *"finally the accused person compelled to return/refund the money of Rs.50,000/- along with profit to me by way of issuing five account payee postdated cheques"*.
7. The petitioner further stated to be a mere partner of the Firm "C-Ren" and was in no way personally liable for payment to the complainant and the

cheque in question was obtained by force for which a criminal case was pending for disposal before 1st Judicial Magistrate, Howrah.

8. The petitioner further stated during different stages of trial of the case, the Opposite Party No.2 previously issued a notice dated 28.04.2003 under Section 138 of the Negotiable Instruments Act regarding the same cheque being no.607688 dated 16.04.03 and the Complaint Case No.673 of 2003 had been initiated and continued on basis of another notice dated 30.10.2003 regarding the same cheque in question. Therefore the complaint case being no.673 of 2003 commenced on the basis of the second notice was barred under the Negotiable Instruments Act. The Learned Trial Court did not take into consideration the fact of second notice though the said previous notice dated 28.04.2003 had been marked as Exhibit-11 in the complaint case and the complainant admitted the same. Issuance of second notice resulted the complaint *void ab initio*.

9. On July 13, 2009, the Learned Judicial Magistrate, 5th Court at Barrackpore passed a Judgment and order whereby the petitioner had been convicted and sentenced to suffer rigorous imprisonment for three months and also sentenced to pay a fine amounting to Rs.20,000/-.

10. In the aforesaid circumstances the petitioner preferred a Criminal Appeal being No.9 of 2009, before the Learned Additional District & Sessions Judge at Barrackpore, North 24 Parganas, challenging the judgment and order of conviction passed by the Learned Judicial Magistrate, 5th Court, Barrackpore.

11. In the present case the Learned Sessions Judge confirmed the judgment of trial court partly without considering the factual and legal aspect of the case.

12. The Learned Advocate representing the petitioner submitted as follows:-

    i. The petitioner was the accused in a case concerning dishonour of a cheque dated 16.04.2003 marked Exbt.-6. The petitioner had challenged the findings of the Learned Trial Court (in the judgment and order of conviction dated 13.07.2009) and of the Learned Trial Appellate Court (in the judgment and order dated 20.04.2010 whereby the conviction and penalty imposed by the Trial Court was affirmed but the term of imprisonment was set aside) holding the petitioner to be guilty under Section 138 of the Negotiable Instruments Act, 1881.

    ii. The petitioner assailed the findings of both the Learned Trial Courts below on two primary grounds:- The complainant/opposite party no. 2 admittedly presented the cheque for payment twice and sent two statutory demand notices on 28.04.2003 (Ext.-11) and 31.10.2003 (Ext.-10). The petitioner challenged the maintainability of the Section 138 of the N.I. Act proceedings instituted on the basis of such successive presentations of the said cheque. However, this point had been held not to be valid in the decision of the Hon'ble Supreme Court reported in *AIR 2019 SC 502* which was passed after the filing of the present revisional application. As such, the challenge to the successive presentations of the said cheque and the issuance of two demand notices was not pressed by the petitioner.

iii. The debt/liability owed to the complainant/opposite party no. 2 was on account of and/or owed by a partnership firm 'C-Ren' and not that of the petitioner in his personal capacity. The submissions of the petitioner in respect of this ground of challenge reflected as follows:-

a) The case of the complainant was the complainant had invested Rs.40,000/- in respect of the partnership firm 'C-REN' wherein the petitioner was a partner. The complainant was promised good return on the said investment and was owed Rs.50,000/- in that regard. The subject cheque of Rs.10,000/- was issued in discharge of such debt/liability of Rs.50,000/-.

b) It was admitted by the complainant/opposite party no. 2 that the entire transaction (on the basis of which the cheque was issued) was with the partnership firm "C-Ren".

c) The agreement dated 02.07.2001, which formed the basis of the liability purportedly owed to the complainant, was executed "for C-REN" (Ext.-1).

d) The letter (Ext.-2) on the basis of which the complainant made the investment of Rs.40,000/- was issued on behalf of "C-REN" and the petitioner signed as partner of "C-REN". In fact, in the said letter the complainant was invited to become a partner of "C-REN".

e) Despite the basis of the alleged liability owed to the complainant being the transaction with the said partnership firm, the complainant did not issue any demand notice to the said firm (Ext.-10 and 11) nor did the complainant implead the said firm as party in the complaint case.

f) Though the petitioner was a partner of the said firm and the cheque was issued by the petitioner, the liability allegedly owed to the complainant was that of the firm, and the proceeding under Section 138 of the Negotiable Instrument Act could not be maintained against the petitioner in his individual capacity. No order of conviction could have been passed against the petitioner in his personal capacity and without impleading or serving statutory demand notices upon "C-REN".

g) The Learned Trial Court in the impugned judgment and order dated 13.07.2009 recorded in the first paragraph itself that the complainant's case was the petitioner was the partner of "C-REN", and it was also recorded in the judgment that "C-REN" was a "partnership institution" and the "complainant invested Rs.40,000/- on the basis of an agreement in the letter head of C-REN." Despite noting such existence of liability only qua the firm, the Learned Court went on to pass an order of conviction without deciding the issue of non-maintainability of the proceeding and non-existence of liability/debt owed by the petitioner.

h) The Appellate Court also found that "the agreement executed on behalf of "C-Ren", and the Court recorded the contention of the petitioner that "the case filed as against the appellant individually was not maintainable".

i) Despite such findings and recording of the petitioner's contentions in that regard, the Appellate Court failed to decide the issue as to existence of liability owed by the petitioner in his personal capacity to the complainant.

j) The impugned orders of conviction were both perverse inasmuch as they failed to render any decision on the points raised by the petitioner, namely (a) maintainability of the proceeding without impleading the said firm; (b) existence of liability qua the complainant and the petitioner individually.

k) Section 138 of the Negotiable Instrument Act required the existence of "debt or other liability" for which the cheque was issued and presented. In that case, it was the case of the complainant that the debt/liability was owed by the firm "C-REN". As such, the proceeding was required to be initiated against the firm, if at all.

l) Section 141 of Negotiable Instrument Act required the impleadment of the "company" in addition to person(s) in charge thereof or responsible thereto. The word "company" included partnership firms. As such, it was incumbent upon the petitioner to serve statutory demand notice upon the firm, and to implead the firm in the complaint case.

iv. The Learned Advocate representing the petitioner relied on the decision of the Hon'ble Apex Court in ***Aneeta Hada v. Godfather Travels and Tours Private Limited***, *(2012 (5) SCC 661 para 17, 51, 56, and 59)*

> *"**17.** The gravamen of the controversy is whether any person who has been mentioned in Sections 141(1) and 141(2) of the Act can be prosecuted without the company being impleaded as an accused. To appreciate the controversy, certain provisions need to be referred to.*
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> *…*
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> ***51.** We have already opined that the decision in Sheoratan Agarwal [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] runs counter to the ratio laid down in C.V. Parekh [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is by a larger Bench and hence, is a binding precedent. On the aforesaid ratiocination, the decision in Anil Hada [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] has to be treated as not laying down the correct law as far as it states that the Director or any other officer can be prosecuted without impleadment of the company. Needless to emphasise, the matter would stand on a different footing where there is some legal impediment and the doctrine of lex non cogit ad impossibilia gets attracted.*
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> *…*
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> ***56.** We have referred to the aforesaid passages only to highlight that there has to be strict observance of the provisions regard being had to the legislative intendment because it deals with penal provisions*

and a penalty is not to be imposed affecting the rights of persons, whether juristic entities or individuals, unless they are arrayed as accused. It is to be kept in mind that the power of punishment is vested in the legislature and that is absolute in Section 141 of the Act which clearly speaks of commission of offence by the company. The learned counsel for the respondents have vehemently urged that the use of the term "as well as" in the section is of immense significance and, in its tentacle, it brings in the company as well as the Director and/or other officers who are responsible for the acts of the company and, therefore, a prosecution against the Directors or other officers is tenable even if the company is not arraigned as an accused. The words "as well as" have to be understood in the context.

…

59. *In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in C.V. Parekh [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is a three-Judge Bench decision. Thus, the view expressed in Sheoratan Agarwal [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in Anil Hada [(2000) 1 SCC 1 : 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. The decision in Modi Distillery [(1987) 3 SCC 684 : 1987 SCC (Cri) 632] has to be treated to be restricted to its own facts as has been explained by us hereinabove."*

v. The presumption under Section 139 Negotiable Instruments Act was also rebutted by the valid defence raised by the petitioner that the liability/debt was owed by the firm and not the petitioner in his personal capacity - such defence was proved by the admission of the complainant that the investment made by the complainant was on account of transactions only with the firm and not the petitioner in his personal capacity.

vi. The Learned Advocate representing the petitioner further relied on the decision of the Hon'ble Supreme Court in ***Rangappa v. Sri Mohan***, *2010 (11) SCC 441 para 26-28)*

> *"… **26.** In light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat [(2008) 4 SCC 54 : (2008) 2 SCC (Cri) 166] may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.*
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> ***27.*** *Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable*

by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof.

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."*

vii. In view of the aforesaid, it was submitted the complaint case and proceeding under Section 138 of the Negotiable Instrument Act were not maintainable for non-impleadment of the firm "C-REN", no debt/liability owed to the complainant by the petitioner in his personal capacity was established and as such, the decisions of the Courts below not considering such aspects were perverse. The revisional application ought to be allowed.

13. The Learned *Amicus Curiae* representing the complainant submitted the dishonour of cheque was against a legally enforceable debt against which

proper notice was issued under Section 138 of the Negotiable Instruments Act and the petitioner failed to repay the loan taken for the purpose of ameliorating the business prospect of the partnership firm as evident on the materials on record and both the Learned Trial Courts, after assessing the evidence on record, had rightly convicted the petitioner.

14. The gravamen of the controversy in the present revisional application lies in the determination of whether the conviction of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 could at all be sustained in the factual matrix emerging from the record. Revisional jurisdiction of this Court, though circumscribed, nevertheless casts upon the Court a solemn duty to examine whether the findings recorded by the Trial Courts suffer from patent illegality, perversity, or a failure to consider material aspects having a direct bearing on the administration of criminal justice. When a conviction results from such fundamental omissions, the Revisional Court cannot remain a silent spectator to the miscarriage of justice.

15. At the outset, it is necessary to notice that the entire substratum of the prosecution case rests upon the alleged investment made by the complainant in a partnership concern styled as “C-Ren”. The materials on record unmistakably reveal the complainant herself asserted that a sum of Rs.40,000 was invested in the said partnership enterprise on the basis of an agreement dated 2nd July, 2001. The promise of returns emanates from the said business venture. The documentary evidence relied upon by the complainant including the agreement and the contemporaneous

correspondence acknowledging the investment also disclose that such transaction was entered into on behalf of the partnership firm.

16. Thus, the very foundation of the complainant's case attributes the alleged liability to the firm "C-Ren". The petitioner appears in that narrative only as a partner of the said firm. The distinction between a liability of the firm and a personal liability of an individual partner is neither ornamental nor technical; it lies at the heart of the statutory framework governing criminal liability under the Negotiable Instruments Act.

17. Section 138 of the Negotiable Instruments Act criminalises the dishonour of a cheque only when the cheque has been issued in discharge of a legally enforceable debt or other liability. The existence of such legally enforceable liability is therefore not merely an evidentiary circumstance but a jurisdictional prerequisite. In the absence of proof of cheque being issued towards the subsisting liability of the accused, the penal consequences contemplated under the statute cannot be attracted.

18. Equally significant is the statutory architecture of Section 141 of the aforesaid Act which governs offences committed by companies and partnership firms. The explanation appended to the provision clarifies in indubitable terms that the expression "company" includes a firm and that the term "director" in relation to a firm refers to a partner of the firm. The legal consequence flowing from this provision is well settled: When the liability arises from a transaction undertaken by a firm, the firm itself must

be arraigned as an accused and the persons responsible for the conduct of its business may be proceeded against only in addition there to.

19. This requirement is not a mere procedural formality but a substantive safeguard embedded in the statute. The criminal liability of the persons in charge of the affairs of a company or firm is derivative in nature and arises only when the principal offender viz., the company or firm itself, is before the Court. The prosecution against an individual partner in the absence of the firm therefore strikes at the very root of the statutory scheme.

20. In the present case, it stands admitted on record that the partnership firm "C-Ren" was neither impleaded as an accused nor served with the statutory demand notice contemplated under Section 138 of the said Act. The complainant's own evidence indicated that the investment transaction and the alleged promise of return were undertaken with the said firm. Once the complainant chose to predicate the liability upon the firm, the failure to implicate the firm as an accused rendered the prosecution fundamentally defective.

21. What is particularly disquieting is, both the Trial Courts have recorded the complainant's case pertained to investment in the partnership concern "C-Ren", yet despite noting such a crucial aspect the Courts proceeded to affirm the conviction of the petitioner in his personal capacity without examining whether the statutory requirements governing prosecution of offences by partnership firms have been satisfied. Such a course betrays a clear non-

application of mind to the legal consequences flowing from the admitted facts.

22. Another aspect which merits consideration is the existence of a legally enforceable debt. The complainant admitted in her evidence that the entire transaction was with the partnership firm and the investment proceeded in relation to the business activities of that firm. Once such admission surfaces on the record, the presumption under Section 139 of the Negotiable Instrument Act cannot be treated as irrebuttable. The presumption is a rule of evidence and stands displaced the moment a probable defence emerges showing that the liability has not been of the accused personally.

23. The defence of the petitioner that the liability, if any, was that of the partnership firm thus assumed considerable significance. The complainant's own testimony lends credence to this defence. Once such a defence is probabilised through the admissions of the prosecution witness the burden reverts to the complainant to establish that the cheque has been issued in discharge of a personal liability of the petitioner. The record is conspicuously silent on any material that will justify such a conclusion.

24. It is further evident from record that two statutory demand notices were issued by the complainant following successive presentations of the cheque. Both the Trial Courts failed to undertake a comprehensive examination of the legal consequences of such successive notices in the context of the present prosecution. The omission to address these issues further reflects an incomplete adjudication of the questions arising in the case.

25. The Revisional Court cannot overlook that criminal liability under Section 138 of the Negotiable Instruments Act is founded upon strict statutory conditions. The penal nature of the provision demands scrupulous adherence to the requirements prescribed by the legislature. Where the prosecution fails to establish the existence of a legally enforceable personal liability of the accused and where the entity alleged to have incurred the liability has not ever been brought before the Court, the continuation of criminal proceedings will amount to stretch the statutory provision beyond its legitimate contours.

26. The cumulative effect of these circumstances leaves no room for doubt that the conviction of the petitioner is vitiated by a fundamental error in law. The Trial Courts failed to appreciate the alleged liability arose, if at all, from transaction with the partnership firm “C-Ren”. In the absence of the firm being arraigned as an accused and in the absence of proof that the petitioner individually owned any enforceable debt to the complainant, the conviction cannot be sustained in the eye of law.

27. The revisional jurisdiction of this Court is therefore rightly invoked to correct the manifest illegality that has crept into the findings recorded by both the Trial Courts. Criminal law particularly when it imposes penal consequences, cannot be allowed to proceed on assumptions divorced from the statutory framework governing the offence.

28. The impugned judgments, therefore suffer from a clear failure to appreciate the legal requirements of Section 138 and Section 141 of the Negotiable

Instruments Act and from a non-consideration of material admissions appearing in the evidence of the complainant herself. Such findings cannot be permitted to stand nearly on the ground that they have been affirmed in appeal.

29. Justice, to remain worthy of its name, must not only punish the guilty but must equally guard against the conviction of one whose culpability has not been established in accordance with law. Where the record discloses a fundamental infirmity in the very institution of the prosecution case and the existence of personal liability remains unproven, the conviction becomes unsustainable. For these reasons, the revisional application merits acceptance on the conviction recorded against the petitioner cannot be allowed to survive.

30. Accordingly, the instant criminal revisional application being CRR 1643 of 2010 stands allowed.

31. The instant application, thus, disposed of.

32. There is no order as to costs.

33. I record my appreciation for the able assistance rendered by the Learned Advocate, Mr. Soham Banerjee as *Amicus Curiae* appearing for the Opposite Party no.2, in disposing of this appeal.

34. Let a copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.

35. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)