

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

Present:

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

CRA 426 of 2007

**Smt. Shanta Dutta
Vs.
The State of West Bengal & Anr.**

Mrs. Manasi Roy

**...For the appellant (Legal Aid
Committee)**

Heard on : 18.02.2026.

Judgement on : 18.02.2026.

Uploaded on : 19.02.2026.

CHAITALI CHATTERJEE (DAS) J:

- 1.** This is an appeal filed under Section 378(4) Cr.P.C. with an application for grant of Special Leave to file against an order of acquittal passed on 28th May, 2007 by the learned Judicial Magistrate, 5th Court, Barrackpore, 24- parganas North.
- 2.** The case of the petitioner in short is that she is proprietor of Silpo Industries and the opposite party took materials worth of Rs. 60,614/- with a promise to pay the said amount within specific time in lieu of said purchase accused issued cheque bearing no. 529009B of Rs. 60,614/- dated 19.9.2005 drawn on State Bank of India, Tarakeswar Temple Ext. counter in favour of complainant.

- 3.** On 5.10.2005 the complainant/appellant presented the cheque for encashment before P.N. B, Dharmatala Branch, Kolkata when it was dishoured on 21.10.2005. It is demand notice was duly served and it has been received the same amount was not paid. Accordingly lodged the complaint.
- 4.** Learned Court of Magistrate passed the judgement holding not guilty of the offence punishable under Section 138 of the N.I Act in favour of the opposite party.
- 5.** Being aggrieved that this appeal has been filed due to the glaring infirmities in the judgement and order impugned and the trial Court failed to deal effectively important aspect of evidence. Learned trial Court must have a presumption that the accused issued a cheque for discharging and antecedent liability and expenditure given by the accused should have been rejected as the same has no weight in the eye of law. Learned trial Judge made reliance on such documents filed by the accused like Exhibits C & D were exclusively in the existing of the accused.
- 6.** It is pertinent to mention, none appeared on behalf of the appellant despite several attempts, and the matter being the year of the 2007 a direction was given by this Court to the Calcutta Legal Aid Services Committed for engagement of an advocate and accordingly learned advocate Ms. Mansi Roy has been engaged to represent the appellant. Learned advocate so engaged submits that learned Court failed to

consider that the goods were supplied by the complainant of credit for Rs. 60,614/- which was payable by the accused to the complainant. Learned trial Court committed error in holding that the cheque was not signed by the accused as the cheque bears signature of the accused.

7. The owner of the complainant to show the goods were supplied to accused and he issued the cheque was proved but it was not rebutted by the accused and that the trial Court must have a presumption that accused issued the cheque for discharging an antecedent liability. That apart the defence taken by this appellant that the content of the cheque was filled by complainant it was left to the duty of handwriting expert to prove his defence.

8. It is submitted in this case no such rebuttable can be found that the learned trial court passed order of acquittal. Accordingly, this judgment and order so passed should be set aside.

9. None appears to represent the respondent despite service.

10. Having heard learned advocate and on careful perusal and materials on record as placed before this Court. It is clear that in lieu of purchase that it is very specific case of the complainant that she was proprietor of Shilpo Industries and the opposite party took materials worth Rs. 60,614/- with a promise to pay such amount and in lieu of such purchase she issued such cheque of Rs. 60,614/- on 9.9.2005 drawn on SBI in favour of the complainant.

11. The complainant herself examined on oath PW-1 and during her evidence she stated accused asked herself materials worth Rs. 60,614/- which was supplied in order to clear up such liability. Such cheque was issued and original cheque has been supplied with marked Exhibit-2. The accused was examined on oath DW-7 and during examination she was attempted business relationship for last seven and eight years with the complainant/husband. Who used to run Shilpa Industries. There was an agreement with the accused on 7.4.2004 and such agreement was filed in Court being marked Exhibit-A.

12. DW-1 also stated that said Sri Prasanta Dutta used to give invoice challan against the blank cheques before delivery of goods. In order to prove the same original invoice challan issued by Shilpa Industries and invoice of various business transaction were also placed.

13. The learned Court observed that the cheque No. Exhibit –B is found one of the said original challan to Exhibit-B(5) reflected his bills amount mentioned in Exhibit-A and therefore, in the similar manner the other charges were also found from such original challans which proves that Shilpa Industries used to take cheque for security purpose and after giving cash, goods original challan were given to him and accordingly accused /complainant did not deliver the goods relating to such transaction on Exhibit-2.

14. Therefore, it was observed by the learned Court that the complainant failed to prove that the cheque was issued towards discharge of any

legal debt or liabilities which is the senequanone to constitute the offence under Section 138 of N.I.Act. (i) It is settled law that complaint under Section 138 of the N.I.Act must contain the following ingredients that legally enforceable debt (ii) Chque was drawn from the account of bank for discharging whole or in part or any debt or other liabilities or any steps legally enforceable debt (iii) Cheque was returned due to insufficiency of fund.

15. It was specific contention of the complainant/appellant during her cross-examination in the present case that the said cheque of her husband was a blank was to be filled by the accused. She further stated she cannot file any bill or voucher to show that accused received the amount mentioned in Exhibit-2.No one from bank was examined in this case in order to show that cheque was received by the accused from the complainant and hence, complainant failed to prove all the points before the learned trial court.

16. The accused must taken probable defence to rebut adverse presumption Under Section 139 N.I.Act. The presumption Under Section 139 N.I.Act includes a presumption there exists a legally enforceable debt or liability.

17. Therefore, this Court is also of the view no case has been made any interference is necessary. Hence, judgment and order passed by the learned trial court is hereby affirmed and appeal is disposed of.

18. No order as to costs.

19. Urgent Photostat certified copy of this judgement, if applied for, be supplied to the parties upon compliance of all legal formalities.

[CHAITALI CHATTERJEE (DAS) J.]

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