IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 2864 OF 2022

AACUS EDUCATIONS LIMITED & ORS.

VS

THE STATE OF WEST BENGAL & Anr.

For the Petitioners	:	**Mr. Amarta Ghose, Adv.**
		Mr. Siddartha Paul, Adv.
		Mr. Souryadeep Ghosh, Adv.

Last heard on	:	**16.02.2026**
Judgement on	:	**06.05.2026**
Uploaded on	:	**06.05.2026**

CHAITALI CHATTERJEE DAS:-

1. This application under section 148(3) of the Negotiable Instruments Act, 1881, was filed against the judgement and order dated July 7, 2022 passed by the learned Additional District and Session Judge, Bench-II , BICHAR BHAWAN in criminal appeal number 159 of 2019 affirming the judgement and order dated June 14, 2019 passed by learned Metropolitan Magistrate, 20^{th} court, thereby sentencing the petitioner to pay a fine of Rs. 6, 00, 000 within one month from the date of judgement, in default to undergo simple imprisonment for three months.

Brief resume of the case

2. The opposite party no. 3 was introduced to the petitioners by one Swapna Saha when the opposite party no. 2 expressed his interest in obtaining the franchise of AACUS Education and the possibility to run its franchise in his property situated at Madhyam Gram. The petitioner was influenced and considered the opposite party no. 2 as the main franchisee of 24 Parganas North and paid the Opposite party no. 2 an amount of Rs. 5, 00, 000 vide cheque no. 174868 on January 9, 2013 towards the mandatory infrastructure of the franchisee along with the security cheque. The said deal was never executed and the opposite party no. 2 returned the entire money to the petitioner vide cheque no. 346906 January 10, 2013 except the security cheque.

3. The petitioners received a demand notice on August 12, 2014 issued by an advocate of the opposite party No. 2 intimating about the dishonouring of the aforesaid security cheque to the tune of Rs. 5 lakhs which was never returned by the opposite party no. 2 .The petitioners in reply to the said letter categorically denied about existing debt or liability upon the petitioners and clarified the closure of transactions in between the petitioners and the opposite party No. 2. The opposite party no. 2 initiated a proceeding under section 138/141 of the Negotiable Instrument Act, 1881 and the complaint was filed before the court of learned Additional Chief Metropolitan Magistrate at Calcutta took cognizance of the same and transferred the matter to the court of learned Metropolitan Magistrate, 20th Court. The case was decided by the learned court and passed the order of conviction against the petitioners. Being aggrieved thereby a criminal appeal No. 159 of 2019 was filed before the Additional District and Sessions judge, Bench II , Bichar Bhawan which was dismissed on contest and the judgement passed by the learned Metropolitan magistrate was affirmed. Challenging the said order of conviction this revisional application has been filed.

Submissions

4. The learned Advocate appearing on behalf of the petitioner argued that none of the witnesses including P.W. 1 could produce before the court either the deposit slip or its counterpart in evidence which would have conclusively proven the presentation of cheque by the complainant/opposite party no. 2. Neither the cheque returned register produced in evidence by P.W. 3 contained any information regarding the purported dishonour of the cheque in question. This clearly establishes the fact that there was no dishonour of the cheque in question as the cheque in question was never presented for clearing which is evident from the document for which no explanation would be offered in evidence by the P.W. 2 and 3, the bank staff.

5. The physical examination of the cheque which was marked as exhibit in evidence clearly reveals that the cheque does not bear any mark, whatsoever of being accepted by the bank for clearing. It does not contain the number of the drawee on the reverse side of it even. The learned advocate further argued that according to the S.B.I manual, it is mandatory to mention the account number on the reverse side of the cheque as deposed by P.W. 12. Additionally no illustration or any description of any existing debt and /or liability on the part of the petitioners/accused either in the legal notice or the complaint of petitioner brought on record can be found when it is mandatory to mention and explain the same to draw the part of the rebuttable presumption under section 139 of the Negotiable Instruments Act, 1881.

6. The rebuttal of the statutory presumption by D.W. 1 in examination under Section 313 Criminal Procedure Code demonstrates that he inquired with the bank but no such cheque was presented on January 17, 2019 and in the account statement there is no such reflection.

The learned advocate relies on the decision reported in ***Dattatraya vs Sharanappa***[1] which inter alia clearly says that mere signature of accused on the cheque is not enough to raise the statutory presumption in favour of the complainant, in absence of other documents. It is therefore submitted that in such event the cheque in question completely lacking in evidence of presentation before the bank, subsequently followed by a cryptic legal notice and petition of complaint are unconvincing and the self-contradictory evidence of the complainant and other attending witnesses, it is imperative in the interest of justice that the order of conviction of the petitioner be set aside and the petitioner accused be acquitted from the instant case.

<u>Analysis</u>

7. In this case the learned advocate who was representing the opposite party no. 2 submitted that due to the death of the complainant the vakalatnama has ceased to exist, however the argument on behalf of the opposite party No. 2

[1] (2024) 8 SCC 573

was concluded earlier and an application was filed on behalf of the opposite party no. 2 to withdraw the deposited fine amount in terms of provision of Section 148(3) of the Negotiable Instrument Act, 1881.Therefore this court considers the written notes of argument placed before this court by the said Learned Advocate.

The argument the learned advocate since deceased relied upon the decision of ***Bir Singh versus Mukesh Kumar*[2], *Rajesh Jain VS Ajay Singh*[3]** and took the point that the learned Magistrate considering the evidences adduced before the court by the complainant as well as the accused person and the bank staffs passed such order of conviction which was duly affirmed by the learned appellate court. In such circumstances hence the scope of interfere with concurrent finding of fact recorded by the courts, is very limited. It is an admitted position that the cheque was issued, trial presented for encashment and subsequently dishonoured. The proceeding was accordingly in "question" and the dishonour of the cheque stand duly proved. It was further assailed that in terms of guidelines of Reserve Bank of India dated May 7, 2013 where banks are Levying cheque returned charges even in cases i) where customers have not been at fault in the return and ii) delay the representation of the cheques which had been returned by the paying bank under technical reasons, both the issues result in unsatisfactory customer service. Therefore it was considered necessary to streamline the procedure followed by all the banks in this regard. Accordingly banks advised to adhere to certain instructions with immediate effect. The cheque return Memo was exhibited

[2] (2019) 4 SCC 197
[3] (2023) 10 SCC 148

and the accused admitted of receiving advocate's letter. The learned Magistrate considered the evidence of Chief Manager, State Bank of India, Salt Lake, sector I Branch as P.W. 3 produce the statement of accounts along with its narration which stored in the name of AACUS Education Ltd. According to her testimony, the cheque was deposited in the said account and hence it was held by the learned Magistrate that the accused issued the cheque in question in the name of complainant in discharge of the existing legal debt and liability, and the cheque was dishonoured due to drawer's signature differs. Hence this revisional application has got no merit and is liable to be dismissed.

8. In the case of ***Dattatraya (supra),*** the cheque in question was allegedly issued towards discharge of a loan amount advanced by the appellant complainant to the respondent accused and the defence was taken that the cheque was issued at the time of advancing the loan as security .The appellant established the signature on the cheque in question was of the respondent. It was held that there was no material to raise the presumption in favour of the appellant .The appellant did not plead a valid existence of a legally recoverable debt. It was held by the Hon'ble Supreme Court that Section 139 of the N.I. Act 1881, is an example of a reverse onus clause. This is done so, as the court expounds, in the light of Parliament's intent, which can be culled out from placing of act of dishonour of cheque in a statute having criminal overtone. It was further held that an accused cannot be obligated to rebut the said presumption through an unduly high standard of proof.

9. In the said decision, the Hon'ble Supreme Court further held that as per Section 140 of the said Act mens rea was held not material while dealing with proceedings under section 138 of N.I. Act. Further in a complaint lodged under section 138 of the NI Act it is required to be presumed that the cheque is issued for the debt and liability .This presumption is rebuttable and the burden of proving a cheque being not issued for a debt or liability, held on the accused .It was further observed by the Hon'ble Apex court that the accused ,held entitled to place reliance on the materials adduced by the complainant and his statement recorded under Section 313 Cr.P.C .However the accused ought not to adduce any further or new evidence from his end in said circumstances to rebut the statutory presumption concerned .

So far the contention of the learned advocate of the petitioner that the said cheque was never placed for encashment and thereafter the cheque in question does not bear any official seal of the bank after its presentation by the opposite party no 2 and no amount was deducted from the account of the petitioner no.1 after the cheque was allegedly dishonoured. It can be seen that the reason for dishonour is mentioned as "signature differs" .The learned trial court considering the evidence of P.W. 1 was of the view that the complainant categorically stated that he lent Rs 5 lakhs through bank to the accused and the transaction dated 7.1.2013 and 10.1.2013 was entered into his passbook marked exhibit 1 wherefrom it was clearly evident that on 10.1.2013 an amount of Rs.5 lakhs were debited from the account of Prashanta and was credited in the account of no. 32389967013 .Similarly the P.W. 2 produced bank statement of Prashanta which was also exhibited, revealed that an amount of Rs.5 lakhs was debited on 10.1.2013 .The account of accused was admitted by D.W 1 and PW 2 corroborates that Rs.5 lacs was given to the accused which was credited and held that on 10.1.2013 Rs. 5 lacs was transferred in the account of AACUS Education limited.

10. The learned Appellate Court further considered that the documents of defence were also “ marked with objection” but no reason was assigned by any of the parties for raising such objection .The stand taken by the appellant that the cheque was not presented before the bank was not accepted considering the statement of Bank that the cheque was deposited for clearance and the same was not cleared due to “mismatch of signatures of the drawee” .In the decision of ***Rajesh Jain vs Ajay Singh (supra),*** the Hon’ble Supreme Court discussed the standard of proof to discharge the evidential burden to rebut such presumption once raised, held not as heavy as that usually seen in situations where the prosecution is required to prove the guilt of an accused. It was observed and held that :-

> “39.…*The accused is not expected to prove the non-existence of the presumed fact beyond reasonable doubt. The accused must meet the standard of “preponderance of probabilities.”, similar to a defendant in a civil proceeding.”*

It was further held that-

“41. The preponderance of probability in favour of the accused’s case may be even fifty one to forty-nine and arising out of the entire circumstances of the case, which includes: the complainant’s version in the original complaint ,the case in the legal/demand notice ,complainant’s case at the trial, as also the plea of the accused in the reply notice, his section 313 Cr.P.C or statement at the trial as to the circumstances under

which the promissory note/cheque was executed. All of them can raise a preponderance of probabilities justifying a finding that there was "no debt/liability."

11. The point raised on behalf of the Opposite Party no. 2 that this court is empowered interfere when there is concurrent finding of the courts has been discussed in the case of ***Bir Singh vs Mukesh Kumar (supra)***. It was observed that findings of fact of courts below that the cheque was duly signed was issued by respondent in favour of the appellant but on presentation in bank the cheque was returned for want of sufficient fund in account, where after appellant served statutory notice on respondent and then filed the complaint under section 138 of the Negotiable Instrument Act and hence held that High Court erred in re-appreciating and re-interpreting evidence and reversing concurrent findings on the basis of its own findings -Debt, Financial and Monetary Laws.

12. In the said case the Court further discussed that the trial court, on analysis of the evidence adduced by the respective parties arrived at the factual finding that the respondent accused had duly issued the cheque in question for Rs. 15 lakhs in favour of the appellant /complainant in discharge of debt or liability. The cheque was presented to the Bank for payment within the period of its validity but returned unpaid for want of sufficient funds in the account of the respondent-accused in the bank on which the cheque was drawn. The appellate court affirmed the aforesaid factual finding .The trial court and the appellate court arrived at the specific concurrent factual finding that the cheque had admittedly been signed by the respondent/accused and rejected the plea of the respondent/accused that the appellant/complainant had misused a blank signed cheque made over by the respondent/accused to the appellant/ complainant for deposit of income tax. Statutory notice of dishonour was duly issued to which there was no response from the respondent authority.

13. In such circumstance it was held that "in exercise of the revisional jurisdiction the High court does not, in the absence of perversity, upset concurrent findings. The Revisional court will not interfere even if a wrong order is passed by a court having jurisdiction, in the absence of a jurisdictional error .It is not for the revisional court to re-analyse and re-interpret the evidence on record". It was held that the High court patently erred in exercising the discretionary jurisdiction and interfering with the concurrent factual findings and consequent order of conviction under Section 138 of N.I. Act in absence of jurisdictional error or error of law.

14. Therefore from the above contention reflected from the written notes of argument placed before this court on behalf of the petitioner and the judgement of the Hon'ble Apex Court passed in ***Dattatraya (Supra)*** that to adjudicate whether the concurrent findings are perverse it is to be seen whether there has been failure of justice. In paragraph 33.4 the Hon'ble Supreme Court took note of ***Babu Vs. State of Kerala (2010) 9 SCC 189*** where it was clarified the ambit of the term "Perversity" in para 20 which is as follows:-

> "20. ……. *If the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material.*

The finding may also be said to be perverse if it is 'against the weight of evidence', or if the findings so outrageously defies logic as to suffer from the vice of irrationality".

15. The Hon'ble Supreme Court further held *that* " furthermore such *interference is necessitated to safe guard the interest of justice when the acquittal is based on some irrelevant ground or fallacies in re-appreciation of any fundamental evidentiary material or a manifest error of law or in cases of non-adherence to the principles of natural justice or the decision is manifestly unjust or where an acquittal which is fundamentally based on an exaggerated adherence to the principle of granting benefit of doubt to the accused, is liable to be set aside.'*

16. In the instant case as can be found that the Branch Manager of SBI Amharst street Branch receives the summons from the court and deposed before the court that Daptaripara Branch has been merged with Amharst Street Branch. The cheque bearing no. 705962 was presented at M.G, Road, Daptari Para Branch but it was dishonoured for drawer's signatures dieferred. He brought the certified copy of such cheque return and refer Register, the cheque return memo which bears the seal of the Branch and issued by the Branch. He also brought the branch instalment of account of the present petitioner which shows that Rs. 5, 00,000/- was debited from the account of Prashanta Bhattacharya through cheque bearing no. 346906 on 10.01.2013 and it was credited in account no. 32389967013 on 10.01.2013. The amount was debited from SBI Salt Lake Branch bearing branch code 01612.

It is pertinent to mention that here all those registers were marked with exhibit. The Learned Advocate heavily relied upon the fact that there was no signature on the reverse side of the cheque when it was presented and the deposit slip was not placed and the Register of "cheque received" and "clearing" was not produced. It is clear from the evidence of Branch Manager that two different Branches have been merged and it was specifically stated that the cheque 705962 was not sent for clearance at SBI Salt Lake Branch because both drawee and drawer's Banks are SBI and under CBS it is not required. Pursuant to the Learned Advocate of the petitioner the Relationship Manager of SBI Sales Sector I Branch, authorised by Chief Manager , SBI, Salt Lake Sector –I Branch brought the statement of account in the name of AACUS Educations Limited and from the said statement it was found that she believes on 12.7.2014 in the said account as amount Rs. 9,255 and on 14.7.2014 of Rs. 10,465 was only shown she also was asked absent that if a cheque is dishonoured by bank any charge to be deducted. In reply she said that generally , charge is deducted. but in this case the cheque was returned and she was not aware about that.

17. From the statement of account for the period 11.7.14 to 15.7.14 it was not mentioned in the statement of account that any cheque was dishonoured during that period. Accordingly it was argued that prima facie some inconsistencies are found and the presumption under Section 139 cannot be accepted. However, the Return memo dated 15th July, 2014 was issued because of 'drawee's signature differs 'and not because of insufficient fund. The cheque was dated 1st of July, 2014 therefore it becomes immaterial whether any amount was there to that extent or not. It is clear from the statement of Bank Branch Manager that the cheque was placed for clearance and could not be cleared due to mismatch of the signature of the drawee which was proved by production of document. Merely because the reverse side of the cheque was not signed or the deposit slip was not produced before the court can not ipso facto be a ground of suspicion about the intention of the bank official of a Nationalised bank. No criminal complaint is lodged against the bank official by the present petitioner alleging any misrepresentation of fact by them. Here the complainant not only merely assailed the fact that the cheque was placed for encashment but proved the same but adducing cogent evidence.

The Hon'ble Supreme Court took note of the decision of ***Hitendra P. Dalal Nath vs Bratindra Nath Banerjee Reported in (2001) 6 SCC 16*** and it was held :-

> *21. While describing the offence envisaged under section 138 of the NI Act, 1881 as a regulatory offence for largely being in the nature of a civil wrong with its impact confined to private parties within commercial transactions, the three-Judge Bench in the decision of Rangappa v Sri Mohan, (2010) 11 SCC 441 highlighted section 139 of the NI Act, 1881 to be an example of a reverse onus clause. This is done so, as the Court expounds, in the light of Parliament's intent, which can be culled out from the peculiar placing of act of dishonour of cheque in a statute having criminal overtones. The underlying object of such deliberate placement is to inject and enhance*

credibility of negotiable instruments. Additionally, the reverse onus clause serves as an indispensable "device to prevent undue delay in the course of litigation". While acknowledging the test of proportionality and having laid the interpretation of Section 139 of the NI Act, 1881 hereof, it was further held that an accused cannot be obligated to rebut the said presumption through an unduly high standard of proof. This is in light of the observations laid down by a coordinate Bench in Hitendra P. Dalal Nath vs Bratindra Nath Banerjee, wherby it was clarified that the rebuttal ought not to be undertaken conclusively by an accused, which is reiterated as follows.

"23. *In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. A fact is said to be proved when, "after considering the matters before it, the court either believes it to exist, or considers its existence, so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that is exists" Therefore the rebuttal does not have to be conclusively established but such evidence must be adduced before the court in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonable probable, the standard of reasonability being that of the "Prudent Man" .*

18. It goes without saying that the presumption can only survive before a Court of law unless it is proved contrary that a cheque was not issued for discharge of any existing or future debt or liability and in the decision of ***Bir Singh .Vs Mukesh Kumar (Supra),*** it was held that if a signature of a blank cheque stands admitted to having been inscribed voluntarily, it is sufficient to trigger a presumption under Section 139 of the N.I. Act 1881, even if there is no admission to the effect of execution of entire content of the cheque.

19. Both the Learned Court of Magistrate as well as Appellate Court discussed the essential ingredients to constitute the offence under Section 138 which includes that a cheque must be drawn on an account maintained by him in a bank for payment of a certain amount of money to another person and that the cheque has been presented to the bank within a period of 3 months. The cheque is returned by the bank unpaid, the payee of the holder in due course of the cheque makes a demand for the payment of the said amount and the drawer of such cheque failed to make payment of such amount in due course within 15 days of receipt of such notice and in the instant case the entire criterions were fulfilled and established by the present Opposite Party no. 2. and there may be certain inconsistencies in the evidence adduced by the Relationship Manager and the Branch Manager since there is a merger of Daptari Para Branch SBI with SBI Amharst Street Branch and a confusion arose as the said cheque 705962 was not sent for clearance at SBI, Salt Lake,Sector -I Branch as both drawer and drawee bank are SBI. But merely because of these technical glitches the entire observation made by the Learned Magistrate Court on assessing the evidences adduced before him and duly affirmed by the Learned Appellate Court do not become perverse which is an essential factor for this court to interfere and reverse such observation.

It is settled law that one drawer's signature differs mismatch of signature a attract offence under Section 38 of N.I. Act and statutory presumption under Section 118 (a) and 139 of N.I. Act shall be drawn in favour of the complaint. There is no convincing rebuttal evidence on behalf of the accused to disprove the case of the complaint**.**

The demand notice was served upon the petition and the A/D card bear his signature. The petition admitted receipt of such letter and despite that no payment made nor replied. Therefore the offence was very much proved and question of [resumption of probability that no cheque was presented is absolutely, missing**.**

<u>Conclusion</u>

20. Accordingly this court does not find any merit in this case and according the same stands dismissed.

21. The judgement and order of conviction passed by the Learned Metropolitan Magistrate on 14.06.2019 and affirmed by the Learned Appellate Court is on 7/7/22 hereby affirmed by this Court.

22. 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.]