

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 528 of 2013

**Mr. Suresh Kumar Kabra (HUF)
-Vs-
The State of West Bengal & Anr.**

For the Appellant	: Mr. Somopriyo Mukherjee Mr. Debayan Sen
For the Opposite Party No.2	: Mr. Milan Mukherjee Mr. Dattatreya Dutta Mr. Smartajit Sarkar Mr. P. Misra
For the State	: Mr. Pratick Bose
Judgment on	: 29.06.2026

Ananya Bandyopadhyay, J.:-

1. This appeal is directed against the judgment and order of acquittal dated 02.01.2012 passed by the Learned Metropolitan Magistrate, 17th Court, Calcutta in connection with Complaint Case No.18345/2010 corresponding to T.R. No.1545/2010 under Section 138 of the Negotiable Instruments Act.
2. The genesis of this intense litigation involved financial transaction wherein the appellant received a cheque bearing number 255904, dated December 31, 2009, for a specific sum of Rs. 7,64,300.53/-, drawn on HDFC Bank, Moulali Branch, Kolkata, by respondent no. 2. This instrument was delivered as token for the repayment of a loan advanced on absolute good faith by the appellant to the respondent. This cheque upon presentation for encashment

at Citi Bank N.A., Chowringhee Branch, Kolkata, suffered dishonor owing to insufficiency of funds, a fact verified by the return memo dated May 3, 2010.

3. Subsequent to this fiscal disruption, the appellant, on May 15, 2010, dispatched a formal demand notice through legal Counsel via registered post, which was acknowledged by the respondent on May 17, 2010, as evident from the speed post delivery information report and A/D Card. The complete failure of the respondent to satisfy the statutory demand within the mandated fifteen days compelled the aggrieved appellant to invoke the penal provisions of Section 138 of the Negotiable Instruments Act. The appellant contended that the Trial Court reached its flawed conclusion of acquittal by failing to apply its judicial mind and ignoring the substantive assessment of the evidence presented. The depositions of the primary witness (PW-1), coupled with bank statements and exhibited documents (Exhibits 1 to 5), demonstrated the cheque was genuinely issued by respondent no. 2 and was subsequently returned unpaid due to a deficit of capital in the drawer's account, thereby justifying the present legal challenge.
4. The Learned Counsel appearing on behalf of the appellant had analytically and articulately argued against the judgment of acquittal passed by the Metropolitan Magistrate, 17th Court, Kolkata, demonstrating that the impugned order suffered from severe legal infirmities. It is forcefully contended that the primary foundation upon which the acquittal rests—namely, the appellant's lack of a money-lending licence under the Bengal Money Lenders Act, 1940—constitutes a grave misconception of law that has completely derailed the course of justice. The Counsel submits that the statutory ingredients required to attract the penal provisions of Section 138

of the Negotiable Instruments Act, 1881, stand fully established, thereby naturally inviting the operational force of the statutory presumption under Section 139 of the Negotiable Instruments Act, 1881. The execution of the account-payee cheque, bearing the distinct signature of the accused respondent, its presentation within the period of validity, its subsequent dishonour with the definitive endorsement of insufficient funds, and the persistent non-payment despite the successful service of a formal demand notice, remain absolute realities that were never effectively dismantled by the defence.

5. The Learned Counsel for the appellant further argued that a mere bare denial of liability was entirely inadequate to displace the burden of proof shifted onto the drawer once execution was admitted. The explanation offered by the respondent—that thirty to forty signed blank cheques were delivered over to the appellant in the capacity of an income tax consultant for routine book entry—was rightly exposed as a desperate and hollow plea, entirely unsupported by cogent or corroborative evidence. Placing reliance upon authoritative judicial pronouncements, including the decisions in **Hiten P. Dalal**¹, **Rajesh Jain**², and **K.N. Beena**³, the Learned Counsel emphasized that a statutory presumption must be drawn when the factual nexus of issuance was clear, and the existence of a fiduciary relationship could not strip a legitimate holder of the beneficial protection afforded by the said Act.

¹ (2001) 1 SCC 16

² (2023) 10 SCC 148

³ (2001) 8 SCC 458

6. Furthermore, invoking the guiding principles laid down by the Apex Court in ***Bir Singh v. Mukesh Kumar***⁴, it was urged that even a signed blank cheque leaf attracted the full rigor of Section 139 of the N.I. Act, unless rebutted by standard, highly persuasive evidence showing that the instrument was not issued in discharge of a debt. The core error committed by the Trial Court lies in its misapplication of the Bengal Money Lenders Act, 1940, to a criminal proceeding governed strictly by the Negotiable Instruments Act.
7. The Learned Counsel brings to light a fatal paradox in the Trial Court's reasoning, pointing out that while the Magistrate correctly observed that the covering letter admitting liability remained unchallenged and that the defence version lacked credibility, the Trial Court still proceeded to acquit the accused solely on the mistaken belief that the debt has been legally unenforceable due to the absence of a money-lending licence.
8. Buttressed by a trilogy of notable judgments - ***Jupiter Brokerage Services Limited***⁵, ***Samarendra Nath Das***⁶, and ***Sajal Guha***⁷—the Learned Advocate for the appellant demonstrated that liability arising from the dishonour of a cheque rest on a distinct legal pedestal, completely separate from the regulatory requirements of a money-lending licence. The existence or non-existence of such a licence cannot have any bearing on a proceeding under Section 138 of the Negotiable Instruments Act, 1881, nor is it necessary for deciding whether a liability constitutes a legally enforceable debt.

⁴ (2019) 4 SCC 197

⁵ (2016) 1 C Cr LR (Cal) 453

⁶ (2006) 3 CHN 518

⁷ (2015) SCC OnLine Cal 6204

9. Consequently, the reasoning of the Trial Court stands entirely exposed as flawed. The Trial Court erroneously granted acquittal based on an inapplicable provision of the Bengal Money Lenders Act, 1940, despite the perfect presence of all legal ingredients constitutes the offence, the Learned Counsel drew the final inference that the impugned judgment was liable to be set aside, the accused respondent must be convicted, and an appropriate sentence as contemplated under Section 138 of the N.I. Act should be sternly imposed by this Court.
10. A circumspection of the evidence adduced by the respective parties illuminates the contrasting narratives put forth during the trial. The primary prosecution witness, PW-1, a Chartered Accountant by profession, deposed that the accused was introduced to him through a common friend, Mr. B.K. Maruti. He asserted that the loan was advanced to the accused in private accommodation without examining any formal records, and the cheque in question was subsequently handed over by the accused to discharge the liability. While PW-1 claimed interest on the principal sum, he could neither state the exact amount of the loan disbursed nor recollect the specific rate of interest charged. He admitted that he did not possess a formal money-lending licence, nor did he engage in a regular money-lending business, save for this singular instance of private lending with the accused. He further stated that he could not specify the duration of his private lending interaction with the accused, that he did not insist on any mortgage or lien as security, and that a post-dated cheque was accepted to secure the repayment. Although he maintained all relevant documents supporting his

claim had been filed, he could not produce any independent documentary proof to explicitly demonstrate the actual disbursement of the loan amount.

11. In stark contrast, the defence witness, DW-1, testifying as the accused, admitted to a friendly relationship with the complainant, whom he recognized as a Chartered Accountant. He stated that the complainant used to manage the bill discounting finance or bill disbursing requirements of his business. According to DW-1, he had indeed taken a loan from the complainant, but he routinely delivered thirty to forty blank signed cheques to him at intervals of six months specifically for book entry purposes, owing to the complainant's professional capacity as his accountant. He vehemently denied any existing legal liability toward the complainant at the time the cheque was presented, asserting had he known the complainant would misuse these instruments to falsely implicate him in multiple criminal cases, he would never have surrendered such blank signed cheques. During his cross-examination, however, DW-1 explicitly admitted that the disputed cheque leaf, as well as the accompanying document marked as Exhibit-1, bore his genuine signature, including the date of its issuance, while maintaining a denial regarding the receipt of the statutory demand notice.
12. The appellate jurisdiction of this Court has been invoked to challenge a judgment and order of acquittal passed by the Learned Metropolitan Magistrate, 17th Court, Calcutta, in connection with a complaint filed under Section 138 of the Negotiable Instruments Act, 1881. The appellant, a practicing Chartered Accountant, has aggressively assailed the Trial Court's verdict, contending that the Learned Magistrate has erred fundamentally by misapplying the provisions of the Bengal Money Lenders Act, 1940, and by

ignoring the formidable statutory presumptions that arise under Section 139 of the Negotiable Instruments Act, once the signature on the cheque is admitted. It has been argued with great fervor that the respondent failed to lead cogent, independent evidence to rebut the presumption of a legally enforceable debt, rendering the acquittal patently perverse and unsustainable in law.

13. A scrutiny of the evidence on record, however, reveals irremediable cracks in the of the prosecution's case. While it is a settled principle of law that the regulatory mandate of a money-lending licence does not automatically sterilize a criminal proceeding under Section 138 of the Negotiable Instruments Act, the complainant in a criminal trial is never fully absolved from demonstrating the edifice of their financial transactions when the consideration is disputed. In the instant case, the appellant deposed to have advanced a substantial sum of Rs. 7,64,300.53/- entirely on absolute good faith. Yet, during his examination, this professional accountant projected a remarkably fragile figure on the witness stand. He could neither specify the exact parameters of the loan disbursement, state the specific date of the transaction, nor recollect the agreed rate of interest. Most fatally, he could not produce a single scrap of contemporaneous, independent accounting records, bank statements, or receipts to corroborate the actual course of movement of such a substantial volume of capital from his possession to the accused.
14. Conversely, the Learned Advocate for the respondent has raised a highly probable, deeply contextual defence that directly destabilizes the claim of a legally enforceable liability. The accused established an intimate professional

and friendly relationship with the appellant, who was actively managing the bill discounting and accounting requirements of his business. The explanation that a batch of blank signed cheques was delivered in absolute confidence to his professional accountant for routine book entries possesses an inherent, realistic probability that resonated with ordinary human conduct and commercial practice. By exposing the total absence of primary financial documentation on the part of a Chartered Accountant, the defence has successfully created a cloud of doubt regarding the very existence of the loan transaction, thereby effectively rebutting the statutory presumption and shifting the onus back to the complainant to prove his case beyond a reasonable doubt.

15. It is one of the principles of criminal jurisprudence that an accused is cloaked in a presumption of innocence until proved guilty.
16. The Learned Counsel for the appellant has relied upon a constellation of authoritative judicial precedents, which this Court must dispassionately analyze. First, reference was made to the landmark decisions of the Hon'ble Supreme Court in **Hiten P. Dalal v. Bratindranath Banerjee, Rajesh Jain v. Ajay Singh**, and **K.N. Beena v. Muniyappan**, to argue that when the factual basis for the issuance of a cheque is established, it is obligatory for the Court to raise a statutory presumption in favor of the holder, and that a mere bare denial of liability by the drawer is entirely insufficient to displace this heavy burden. Furthermore, the appellant invoked the guiding principles of **Bir Singh v. Mukesh Kumar**, emphasizing that even a signed blank cheque leaf attracts the full rigor of Section 139 of the N.I. Act in the absence of cogent evidence to show it was not issued in discharge of a debt.

To counter the Trial Court's structural reliance on the Bengal Money Lenders Act, the Learned Advocate for the appellant cited a trio of notable judgments—***Jupiter Brokerage Services Limited v. Ektara Exports Pvt. Ltd. & Ors.***, ***Samarendra Nath Das v. Supriyo Moitra***, and ***Sajal Guha v. Maniklal Ghosh***—to demonstrate the settled legal proposition that the existence or nonexistence of a money-lending licence is entirely irrelevant to the adjudication of a criminal offence under Section 138 of the N.I. Act.

17. While this Court is in complete agreement with the legal propositions enunciated in the aforesaid judgments, their application cannot be divorced from the unique factual matrix of the case at hand. The decision in ***Bir Singh*** explicitly underscores that the presumption under Section 139 of the N.I. Act operates “in the absence of any cogent evidence of undue influence or coercion” or when a highly probable defence is not established. Similarly, the principles in ***Hiten P. Dalal*** and ***Rajesh Jain*** do not contemplate a blind, mechanical application of statutory presumptions where the complainant's own cross-examination completely shatters the baseline probability of the underlying transaction.

18. When the Trial Court, upon a comprehensive evaluation of the oral and documentary evidence, arrives at a plausible, well-reasoned conclusion of acquittal, the High Court, sitting in appellate judgment, must exercise exemplary judicial restraint. The law is firmly settled that an appellate court will not lightly interfere with an order of acquittal merely because a secondary, alternative view of the evidence might look attractive or possible. Unless the findings of the Trial Court are permanently scarred by absolute perversity, manifest illegality, or a complete misreading of material evidence,

the view that favors the innocence of the accused must be vigorously preserved. The Learned Magistrate's conclusion that the appellant failed to establish a legally enforceable debt is a entirely sustainable view anchored firmly upon the factual vacuum in the complainant's evidence. Finding no perversity or structural error in the approach of the court below, this Court declines to disturb the innocence judicially conferred upon the respondent. Consequently, the criminal appeal stands dismissed, and the impugned judgment of acquittal is hereby affirmed.

19. To constitute a valid offence under Section 138 of the Negotiable Instruments Act, 1881, the statutory framework demands the meticulous fulfillment of specific, mandatory conditions: the cheque must be issued by the drawer for the discharge, in whole or in part, of a legally enforceable debt or other liability; it must be presented to the bank within its validity period; it must be returned unpaid due to a deficit of capital or because it exceeds the arrangement made; and a formal demand for payment must be raised in writing within thirty days of the receipt of information regarding the dishonor. Most crucially, the opening words of the provision establish a penal consequence only when the instrument is drawn to satisfy a “legally enforceable debt or other liability”. While Section 139 of the N.I. Act shifts the initial burden of proof by introducing a presumption that the holder received the cheque for the discharge of such liability, this presumption remains inherently rebuttable. The statutory design does not create an absolute or unassailable right; rather, it permits the accused to demonstrate, through a preponderance of probabilities, that the foundational debt claimed by the complainant is non-existent, illusory, or legally fragile.

20. The decision in ***Bir Singh*** explicitly underscores that the presumption under Section 139 of the N.I. Act operates only when a highly probable defence is not established.
21. The Learned Magistrate's conclusion that the appellant failed to establish a legally enforceable debt is an entirely sustainable view anchored firmly upon the factual vacuum in the complainant's evidence. Finding no perversity or structural error in the approach of the court below, this Court declines to disturb the innocence judicially conferred upon the respondent.
22. Consequently, the criminal appeal being CRA 528 of 2013 stands dismissed, and the impugned judgment of acquittal is hereby affirmed.
23. There is no order as to costs.
24. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
25. Photostat certified copy of this judgment, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)