

18.02.2026
Item No.8
Ct. No. 34
nb

CRR 3546 of 2012

In the matter of: **Sri Parimal Chakraborty,**
..... petitioner.

Mr. Priyankar Ganguly,
Mr. Amaan Deep Gupta,
.....For the petitioner.
Ms. Suparna Chatterjee,
.....The amicus curie.

1. This revisional application has been filed under section 482 of the Code of Criminal Procedure challenging the judgment and order dated 31.8.2012 passed by the learned Additional Sessions Judge, Fast Track 6th Court at Alipore in Criminal Appeal no.44 of 2006 arising out of Judgment and conviction and order of sentence dated July 31, 2006 passed by the learned Chief Judicial Magistrate at Alipore in connection with the complaint case no.1934 /2000 under Section 138 of the N.I. Act.
2. The fact of the case in a nutshell is that, the petitioner was arraigned an accused in connection with the complaint case registered being registered under Section 138 of the N.I. Act filed before the Chief Judicial Magistrate at Alipore alleging, inter alia that the accused/petitioner received an excess amount of Rs.1,00,984/- in order to pay back the said amount arising out of the transaction and the petitioner had issued an account

payee cheque of Rs.1 lac vide no.128546 drawn on Central Bank of India, Jadavpore Branch in favour of complainant/opposite party. The said cheque was placed after one month for encashment on 15.5.2000 to his banker A.N.Z. Grindlays Bank at New Alipore but it was returned on the same day with the Memo of the bank intimating 'payment stopped' by the drawer and accordingly it was dishonored.

3. The petitioner deposed as P.W.1 and was also examined under Section 313 Cr. P.C. After the demand notice was served and received by the petitioner, the complaint was initiated and accordingly the proceeding was started. The learned Trial Court after hearing of the parties and assessing evidences adduced before the Court passed the order and conviction against the present petitioner and sentenced him to fine of Rs. 5,000/- in default to suffer simple imprisonment for six months and further directed to pay compensation of Rs.1, 50,000/- under Section 357 of the Code of Criminal Procedure to the complainant within two months from the date.

4. The petitioner challenged the said judgment and order of conviction before the learned Court and the learned appellate Court also considering the facts and circumstances, affirmed the said order of conviction by delivering the judgment on 31.8.2012.

5. Being aggrieved thereof, this revisional application was filed in the year 2012. The matter was admitted and kept pending since long. However, the interim order as granted at the

initial stage was not extended subsequently. On several occasions, an attempt was made to serve notice upon the opposite party no.2. None appeared to represent the respondent. Accordingly, Ms. Suparna Chatterjee was appointed as *amicus curie* to assist the Court in this case.

6. It is submitted by the learned counsel representing the petitioner that the learned sessions Judge did not apply his judicial mind and decided without appreciating the evidence in its true perspective. It ought to have been considered that both Sections 138 and 139 of the N.I. Act required that the Court “shall presume” giving liberty of the drawer of the cheques for the amount for which the cheques are drawn and it is obligatory on the Court to raise presumption in every case whether the factual basis for raising of the presumption has been established.

7. It is further submitted that the learned Court in order to appreciate the authority shows that even when the cheque was dishonored by reason of stop payment instruction, by virtue of Section 139 it is to be presumed the cheque was issued for in order to discharge the whole or in part, of any debt or number. No such evidence was adduced on behalf of the appellant/accused that it was in discharge any legal debt or liability however such presumption is rebuttable and the onus shifted upon the accused to rebut the same and this was not followed. Hence, prays for setting aside of such judgment.

8. Learned Amicus Curiae, on the other hand, would submit that the accused person, during his evidence, admitted his signature on the cheque, which was issued and also agreement entered into between him and the complainant and never denied his signature appearing in the said cheque. The demand notice was received within time and despite that the accused did not bother to pay the said amount and the return memo of the bank specifically endorse the reason and stop payment, which was the cause for returning the cheque.

9. It further submitted that no cogent ground has been assigned by the persons/present petitioner for which the concurrent view of the Court of learned Magistrate of Appeal should be unsettled.

10. Heard the submission and careful perusal of the report that both the Court of Learned Magistrate as well as learned Court of Appeal passed the order of conviction against the present petitioner for commission of offence under Section 138 N.I. Act.

11. On perusal of complaint under Section 200 Cr.P.C. as lodged by the complainant before the Court of Chief Judicial Magistrate, Alipore prima facie disclosed that the present opposite party along with other co-owners of land of premises No. 10/4 Elgin Road, Kolkata, 700020 intended to develop a land by construction of a building and they engaged the firm of the present petitioner/accused as supervisor to supervise the

construction of the said building and also to supply building materials which was intended to be constructed on the land of the premises in accordance with the sanctioned building plan. After such appointment of the said firm of the accused as supervisor of the construction was started and on various dates a total amount of Rs. 60,800/- was paid by the complainant to the accused persons up to March, 2000 against the cost of building material. During final scrutiny of the account on receipt of expenditure to the complainant it was detected that near about Rs.1, 00,984/- was received by the accused/petitioner in excess.

12. It was of his own accord the accused expressed to return the excess amount received and handed over to the complainant account payee cheque on 15.4.2000 of Rs, 1, 000, 00/- with the intention to refund the said excess amount to the complainant. The complainant placed such cheque drawn on Central Bank of India, Jadavpur Branch on 15.5.2000 but it was returned on 17.5.2000 as it was dishonored on the ground of "payment stopped by the drawee".

13. Subsequently the notice of demand through the learned advocate was sent on 20.5.2000 through registered post with A.D asking the accused persons to pay the said persons Rs. 1,000/- within 15 days. Letter was received on 22nd May, 2000 but despite receipt of such notice he did not pay the said amount within time and accordingly complaint had to be lodged. The

evidence which has been placed before the learned Trial Court and subsequently considered by the Appellate Court clearly manifests the demand.

14. On the part of the accused persons the verbal agreement and the payment of such amount and also issuance of such cheque was admitted before the court

15. In order to constitute an offence under Section 138 of the N.I. Act, 1881 the ingredients which are required to be fulfilled as follows :

16. In the decision of the Hon'ble Supreme Court in **2009 (14) SCC 683 Jugesh Sehgal Vs. Shamsher Singh Gogi** it was held:

“(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;

(ii) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount

arranged to be paid from that account by an agreement made with the bank;

(v) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the notice.”

17. In this case from the above discussion prima facie all the above are found to have been proved terms of Section 139 of N.I. Act and the petitioners failed to rebut such presumption as raised hence hence this Court do not find any reason to interfere judgement and order. Therefore, this revisional application stands dismissed without any order as to costs.

18. It is settled law that unless the Court found perversity or gross illegality in the judgement and order of concurrent finding of the Court that should not be interfered with. In this case, prima facie nothing could be found in order to arrive at a conclusion that there

was any perversity in the judgment passed by the Appellate Court affirmed judgement and conviction of the learned Trial Court.

19. Therefore the Judgment and order of conviction as affirmed by the learned Appellate Court is hereby further affirmed.

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

(CHAITALI CHATTERJEE (DAS), J.)