IN THE HIGH COURT AT CALCUTTA

CRIMINAL APPELLATE JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 681 OF 2007

TRIPURESH KUMAR DEY

VS

TUSHAR KANTI JANA & Anr.

For the Appellant : Mr. Sujit Mitra, Adv.

For the State : Mr. Ratul Ghosh, Adv.

For the Opposite Party no. 2 : Mr. Amitabha Karmakar, Adv.

Last heard on : 10.12.2025

Judgement on : 13.02.2026

Uploaded on : 13.02.2026

CHAITALI CHATTERJEE DAS:-

1. This is an application for special leave to file under /section 378 Sub-Section (4) of the Code of Criminal Procedure,1973 against the judgement and order of acquittal dated May, 24, 2007 passed by the Learned Metropolitan Magistrate, 4th Court , Calcutta in case under Section 138 of the Negotiable Instrument Act.

Brief Fact

2. The present Opposite Party no. 2 took an emergency accommodation loan of Rs. 1,90,000 for his own business purpose in the following manner:-

a) On 28.04.2001	Rs. 1,00,000.00
b) On 03.05.2001	Rs. 30,000.00
c) On 14.05.2001	Rs. 60,000.00
	Rs. 1, 90, 000.00

The Opposite Party no. 2 issued receipts for such loan of Rs. 1, 90,000/- by his own hand writing. He took the said emergency loan for the purpose of prints and other miscellaneous expenses in releasing his film "Sesh Ashray" and the Opposite Party no. 2 also issued a Cheque dated June 8, 2007 being numbered 375355 in favour of the petitioner against the loan amount taken by him.

3. In re-payment of the said loan the Opposite Party no. 2 issued a cheque to the petitioner being cheque no. 375355 dated 08.06.2001 drawn on Punjab National Bank , New Market ,Branch. The petitioner deposited the said cheque in his bank on June 22, 2001 but the same was returned to the petitioner with the endorsement (insufficient fund). The petitioner intimated the Opposite Party no. 2 about the said fact of dishonour of the cheque given by him to the petitioner in discharge of his obligation to repay the loan and such intimation was given by issuing a demand notice dated 02.07.2001. By issuing such demand notice the petitioner demanded the payment of the cheque amount within 15 days from the date of receipt of the said legal notice which was duly received by the Opposite Party no, 2 on July 12, 2001.

4. It is the case of the petitioner that Opposite Party no. 2 despite receipt of such legal notice did not comply the same and did not pay to the petitioner the money against the dishonour cheque and made himself liable to be punished under Section 138 of the N. I. Act. Having no other alternative a complaint was lodged by the petitioner where Opposite Party no. 2 appeared in the proceeding and pleaded not guilty and the charge was framed and matter was tried by the Learned Metropolitan Magistrate, 4th Court, Calcutta.

5. Before the Learned Court the Opposite Party no. 2 was examined and cross-examined and as his defence he stated that it was given to the petitioner as security for the commission payable to the appellant/petitioner for exhibition proceeding of the said film "Sesh Ashray", as per agreement between the parties where the petitioner was investor and no transaction of loan took place between them. Therefore there had been no dischargeable liability of the accused and hence the Opposite Party no. 2 has not committed punishable offence under Section 138 of the Negotiable Instrument Act and he is not liable to be convicted.

6. It is the further case of the petitioner that no witness was examined on behalf of the Opposite Party no. 2 excepting himself. The petitioner adduced evidence and the documents were relied upon were marked with the exhibit but the Learned Court passed the judgement and order of acquittal which is bad in law contrary to evidence on record and perverse and not sustainable in the eye of law. Accordingly this appeal has been filed with the special leave of the Court.

Submission

7. The Learned Advocate representing the petitioner submits that an amount of Rs. 1,90,000/-was given as a loan in three different cheques. The demand notice was within statutory period of time the presumption under Section 139 of N.I, Act not complied. The judgement and order of acquittal suffers from surmise, conjecture and swiping observation which is prejudicial to the petitioner. It is an admitted fact that Opposite Party no. 2 took loan of Rs. 1,90,000/- for his own business purpose and a valid receipt was given by him. There was no agreement executed in between the parties but the document was exhibited. Civil disputes are pending between the parties. The learned Advocate put reliance upon a Decision of Madras High Court reported in ***J. Iqbal versus Azhagarsamy***[1] in order to establish that if a cheque issued, if dishonoured also attract Section 138 N.I. Act. Another judgement was relied upon reported in laws (Kar) 2006-3042 in this regard. Accordingly prayed for setting aside the judgement and order of Acquittal.

8. The Learned Advocate appearing on behalf of Opposite Party on the other hand would submit that no agreement was executed between them. The order of acquittal has been passed in connection with the case initiated by the complainant has been affirmed by the Co-Ordinate Bench. That apart the de-facto complainant failed to prove whether any legally enforceable debt was there or not since no evidence could be adduced to establish that any amount was actually paid and hence this appeal is not maintainable in the eye of law.

[1] 2005 (3) DCR 408

Analysis

9. Heard the submission. The genesis of the dispute rest upon issuance of cheque in question which is exhibited as 2. Both the learned court of Magistrate and the Learned Appellate court did not accept the case of the complainant however accepted that complainant discharged his initial burden of providing his case that the cheque was issued in discharge of his liability. The complaint was lodged by Opposite Party no. 2 where specific allegation was levelled against the present petitioner of taking loan of lumpsum amount from the complainant with the assurance to re pay the said loan within a certain time and one cheque of Rs. 1, 90,000/- was issued to liquidate the part of his liability bearing cheque no. 375355 dated June 8, 2001 drawn with Punjab National Bank , New Market Branch . The said cheque was dishonoured on deposit by the petitioner at Allahabad Bank, Kasba Branch on June 22, 2001 for encashment within the validity period for 'insufficient fund'. Demand for re-payment of such amount through the Advocate's letter dated July 2, 2001 was given with a request to the accused/Opposite Party no. 2 to make payment of the said amount within 15 days from the date of receipt of the said letter. Despite receiving the letter on July 12, 2001 the accused deliberately failed to pay the said amount. It is therefore assailed that the accused person had no intention to re pay the said amount from the very inception and dishonestly and deliberately failed to keep sufficient amount in his bank account. In order to substantiate this the complainant on S.A. was examined by the Learned Magistrate.

From his evidence it could be gathered that against the loan amount of Rs. 1, 90,000/- which was admittedly taken on different dates to the Opposite Party, the petitioner gave only single receipt. The petitioner was known to the accused since 2000 as the petitioner had his office adjoining the office of the Opposite Party 2 .The evidence would show that from the bank statement or from Income Tax statement the O.P no. 2 could not show that he gave that money as loan to the Opposite Party no 2.

10. It is settled law that in cheque bounce case the complainant enjoy a statutory presumption in their favour and at the outset not obligated to prove the financial capacity. The burden of rebuttal lies on the accused who need to substantiated by adducing evidence to challenge the presumption.

So the accused must rebut the presumption that the cheque was issued for a real debt. In this case the cheque was signed by the petitioner.

In the case of ***Rajaram s/o Srira mulu Naidu (since deceased) through LRS Maruth Achaleam (since deceased) through LRS***.[2] it is held that the presentation under Section 118 & 139 N.I Act can be rebutted by the accused examines the Income Tax Office and Bank Officials of the complainant. In this case no such evidence is adduced.

The petitioner has constantly taken stand that the amount given by him was received by the O.P. as personal loan and it was not related to the agreement entered into between him and Sukumar Nandy or Rankan Kundu. The complainant himself produced the agreement which was marked with “A” on admission. The accused tried to pay by money order in commission with the said agreement towards commission which was refused. The Ext. 1 that is the

[2] (2023) 16 SCC 125

document whereby the disputed loan amounts were received was duly signed by the Opposite Party/accused. His defence that it was obtained by force but no complaint was lodged by him.

So whether the complainant informed Sukumar Nandy or Ranjan Kundu becomes irrelevant in view of the fact that the amount received as loan by the accused is no way connected to that the P.W. 2 and 3 the bank official supports the version of the complaint that the cheque was placed and dishonoured due to insufficient amount.

Admittedly no agreement to that effect of loan was executed between the parties but in course of evidence he admitted execution of an agreement between him and one Sukumar Nandy with the accused person on 1st of January, 2001.

11. Mr. Alok Mukherjee, an Officer of PNB P.W. 2 deposed before the Court who produced statement of account of the accused /Opposite Party. He showed the credit balance in the account of T.K. Jana which of Rs. 8480.00 on June 8, 2001 and on June 22, 2001 the credit balance was of Rs. 25,480.55/-. He also said that there was insufficient fund in the account of Tushar Kanti Jana on 23.06.2001 to honour the cheque no. 375355 dated 8.06.2001 .They sent the cheque with return memo to the collecting bank.

12. The next witness Sanjib Kumar Talukder , Assistant Manager of Allahabad Bank, Kasba Branch, deposed that the last entry made on the statement on account of S.B. account no. 8146 for the period from 24.5.2001 to 30.6.2001 was on 25.6.2001. He also said that from the pay in slip it appears that the cheque was deposited in party account on 23.6.2001. They sent the cheque to drawer's bank for clearance. The cheque was dishonoured on the ground of insufficient fund. The accused/complainant was examined under 251 Cr.P.C and the incriminating materials were placed before him and he stated that he had issued the cheque for commission and not to repay the loan. He again said that he did not issue the cheque for loan re-payment.

13. The Learned Trial Court considered that the petitioner issued the acknowledgement receipt on April 28,2001 of Rs. 100,000/- , Rs. 30,000/- on 3.5.01 and Rs. 60,000 on 14.5.2001.Therefore the acknowledgement receipt dated 28.04.2001 was issued in advance in respect of the amount paid on three different dates. It also prima facie established that the cheque in question dated 08.06.2001 was given to the complainant on the same date that is 28.4.2001 as post-dated cheque and when the cheque was issued the entire amount was not received since the amount of 30,000/- and Rs. 60,000/-was paid on 3rd May, 2001 and 14 the May, 2001 respectively which is after the said cheque was issued. Therefore the Learned Court was of the view that the cheque which was issued by the petitioner dated 28.04.2001 of Rs. 1,90,000/-in discharge of his liability in full regarding the amount covered by that cheque. This court is unable to accept such contention since the receipt showing acceptance of the amount as personal loan containing the signature of the accused is not denied. Even if the cheque is issued toward security it was placed as per the terms mentioned in the exhibit 1.

14. It was held by the Karnataka High Court in the case as relied upon that any cheque whether issued towards re-payment of date or liability as a security if dishonoured, the drawer of cheque incurs liability to prosecution under Section 138 of N.I. Act. Unlike other securities the cheque even it is issued as repayment it is very much negotiable instrument and with implied instruction for deferred on future if the date is unpaid as per agreement terms.

15. In the decision of ***Ashok Singh V. State of Uttar Pradesh and another reported in***[3] the legal position has been re-affirmed that once the drawer admits to send the cheque the presumption under Section 139 of the Negotiable Instrumental Act cannot be rebutted merely by questioning the complainants dated giving capacity. In the decision of ***J. Iqbal (Supra).***It was decided by Bench of Madras High Court taking note of the above decision that it is settled law that the onus is not on the complainant at the threshold to have been is capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour.

16. The presumption under section 139 will only arise when the complainant could established that against a legally enforceable debt the cheque was issued. In this case the factum of issuing the cheque in discharge to the lawful debt as claimed by the petitioner is proved as per exhibit 1 which has said to have been obtained by force. He never informed the police station about such incident. His account had a very paltry amount and being a mechanical Engineer he was well aware about the legal consequence of issuing a receipt showing acceptance of an amount of Rs. 1,90,000/- despite that he did not in force the price. .

17. *In the case of Anss Rajashekar v. Augustus Jeba Ananth18, a two-Judge Bench of this Court reiterated the decision of the three-Judge Bench of this Court in Rangappa v. Sri Mohan19 on the presumption under Section 139 of the NI Act. The Court held : Section 139 of the Act mandates that it shall be presumed,*

[3] 2025 Live Law (SC) 383

unless the contrary is proved, that the holder of a cheque received it, in discharge, in whole or in part, of a debt, or liability. The expression "unless the contrary is proved" indicates that the presumption under Section 139 of the Act is rebuttable. Terming this as an example of a "reverse onus clause" the three-Judge Bench of this Court in Rangappa (supra) held the standard of proof for rebuttal of the presumption under Section 139 of the Act is guided by a preponderance of probabilities.

18. 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. In this case the factum of issuance of cheque in discharge to legal debt is otherwise proved in terms of exhibit 1.

19. In a decision reported in ***State of Madras vs. A. Vaidyanathalyer***[4] it was held that *" it introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused"*

Conclusion

20. The accused /Opposite Party has disputed taking any loan but according to him that was in connection with the agreement executed between the parties over the commission in connection with the film "Sesh Ashray".This fact has not been established. The accused did not rebut the same by adducing any evidence. He did not deny his signature. The accused in his examination under Section 313 Cr.P.C said to adduce evidence but did not do the same. Merely by denial to issue cheque without challenging the signature

[4] AIR 1958 SC 61

the presumption under Section 139 N.I. Act cannot be invoked. He did not give any reply to the demand notice neither any complaint lodged thereafter. Therefore it cannot be said that the initial onus of proving that the cheque is not in discharge of any debt or liability is on the accused/drawer of the cheque is not proved by the accused.'

21. Hence the order of acquittal is liable to be set aside. The accused is convicted for the offence punishable under Section 138 of N.I. Act. 1881.

22. Tripuresh kumar Dey the accused is directed to pay an amount of Rs. 3 lacs in default to suffer simple imprisonment for 1 month and to pay compensation of Rs. 1 Lakh to be paid within 1 month in default it would incur an interest at the rate of 7% till it is paid. The fine amount as paid by the accused is directed to be disbursed by way of compensation.

23. From the record nothing reflects that any amount was deposited at the time of admission of appeal. The matter was pending since 2007.

24. The bail bond if any stands cancelled.

25. Let a copy of the order be forwarded to the concerned Court for necessary compliance.

26. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)