

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 969 of 2015

Kausik Barui

Versus

Kartick Chandra Basu & Anr.

For the Petitioner : Mr. Kallol Kr. Basu, Adv.
Mr. Anindya Sundar Das, Adv.
Mr. Jannat Ul Firdous, Adv.
Mr. Suman Haldar, Adv.
Mr. Prabuddha Mandal, Adv.

Heard on : 19.12.2025

Judgment on : 28.01.2026

Ajay Kumar Gupta, J.:

1. This instant Criminal Revisional application has been filed by the Petitioner under Section 482 of the Code of Criminal Procedure, 1973 (In short 'CrPC'), challenging the correctness, legality and propriety of the judgment and order dated 11.02.2015 passed by the Learned Additional District and Sessions Judge, 5th Fast Track Court at

Alipore, 24 Parganas (South) in Criminal Appeal No. 24 of 2011 (Kausik Barui Vs. Kartick Chandra Basu & Anr.).

- 2.** By the said Judgment and Order, the Learned Judge affirmed the judgment and order dated 29.01.2011 passed by the Learned Judicial Magistrate, 5th Court, Alipore in Case No. C-6282 of 2006 filed under Section 138 of the Negotiable Instruments Act, 1881 (In short 'N.I. Act') whereby and whereunder the petitioner herein was convicted for commission of an offence punishable under Section 138 of the NI Act and sentenced to undergo simple imprisonment for a period of two months and to pay fine of Rs. 8,00,000/-. Out of the fine amount, Rs. 7,95,000/- shall be paid to the complainant as compensation. The compensation amount shall be paid by the convict within 30 days from the date of the judgment, in default, he shall be sentenced to further S.I. for two months.

FACTS OF THE CASE:

- 3.** Brief facts of the present case in hand, relevant for the purpose of disposal of this case, are as follows:
 - a.** The opposite party no. 1/complainant averred that the accused person approached him for an accommodation loan of Rs. 6,00,000/- and the accused person was given accommodation loan as per request. To discharge the liability, the accused persons issued an account payee cheque of Rs. 6,00,000/- in favour of the

complainant. The cheque was dishonoured when it was presented to the bank with the endorsement “Insufficient Funds”.

- b.** Thereafter, the complainant sent a demand notice asking the accused persons to make payment of the aforesaid loan amount. However, the accused persons paid no heed.
- c.** The opposite party no. 1 filed a complaint against the accused persons for the alleged offence under Section 138 of the N.I. Act. Summons were issued against the accused persons.
- d.** The accused persons appeared before the Court below and were released on bail. Though the contention of the petitioner is that he is innocent and he has been falsely implicated in the case as he did not avail any loan from the complainant.
- e.** To substantiate the allegation made in the complaint, the complainant has examined himself as P.W. 1 and has brought on record documents which are marked as Exhibits 1 to 4. On the closure of complainant’s evidence, the accused person was examined under Section 313 of the CrPC, wherein he pleaded innocent and denied all allegations made in the complaint.
- f.** Upon conclusion of the trial and after hearing both sides, the learned Trial Court, by its order dated 29.01.2011, convicted the petitioner under section 138 of the NI Act and sentenced him as aforesaid and acquitted another accused person.

g. Being aggrieved by and dissatisfied with the aforesaid conviction and sentence, the petitioner herein filed an appeal before the learned District & Sessions Judge at Alipore, 24 Parganas (South), the same was registered being Criminal Appeal No. 24 of 2011. It was subsequently transferred to the Learned Additional District and Sessions Judge, 5th Fast Track Court at Alipore, 24 Parganas (South) for hearing and its disposal.

h. After hearing the parties, the learned Judge dismissed the said appeal on contest and affirmed the judgment and order dated 29.01.2011 passed by the learned Trial Court. Hence, this revisional application.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

- 4.** Learned counsel appearing on behalf of the petitioner submitted that the complainant miserably failed to prove the case in positive terms against the petitioner. No agreement or written document was produced to show an accommodation loan was taken by the petitioner from the complainant. In fact, no such liability was upon the petitioner to pay the accommodation loan.
- 5.** The learned counsel appearing on behalf of the petitioner further submitted that the cheque was issued only for security purposes. The petitioner had actually taken a loan of rupees one lakh from one Palash Chatterjee. However, the opposite parties utilise the said

cheque for discharging a loan of Rs. 6,00,000/-; therefore, no proceeding whatsoever under Section 138 of the N.I. Act can lie as the said cheque is not a cheque within the meaning of the Negotiable Instrument Act.

6. It has further submitted that the Trial Court has not applied its judicious mind while deciding the case for conviction. It was only based on presumption of liability, though the petitioner is required to prove the transaction and its liability with cogent evidence; otherwise, the case itself fails.
7. The conviction and sentence passed by the learned Judicial Magistrate is illegal, arbitrary, and without any base as such, the same is liable to be set aside. The judgment and order passed by the Sessions Judge is also without considering the actual facts.
8. It was further submitted that PW-1, during his cross-examination, categorically admitted that no demand notice was properly served upon the petitioner, but the said facts have not been considered by either the trial court or the appellate court. The petitioner was also not given a proper opportunity to explain the real facts during the examination under Section 313 of the Cr.P.C. Therefore, the impugned order passed by the Sessions Judge is illegal, infirm, improper and without any basis, as such same is liable to be set aside.

9. None appeared on behalf of the Opposite Parties on call and despite service of notice.

DISCUSSION AND FINDINGS OF THIS COURT:

10. Heard the learned counsel appearing on behalf of the petitioner and upon perusal of the judgments passed by both the Courts below, this court finds that the present petitioner was convicted under Section 138 of the N.I. Act and sentenced as aforesaid. Considering the facts, law and submission made by the learned counsel appearing on behalf of the petitioner, the following questions emerge before this court to be determined as under:-

- i.** Whether there existed a legally enforceable debt or liability of Rs. 6,00,000/- against the accused in favour of the complainant?
- ii.** Whether the cheque in question was issued by the accused towards discharge of the said liability?
- iii.** Whether the accused successfully rebutted the statutory presumption raised in favour of the complainant?
- iv.** Whether the ingredients of Section 138 of the NI Act were duly complied with by the complainant?
- v.** Whether this Court, while exercising jurisdiction under Article 227 of the Constitution of India and/or section

482 of the Cr.P.C., has the power to re-assess the entire evidence adduced before the Trial Court for the purpose of setting aside the impugned judgment and order?

- 11.** It is not denied by the petitioner that he has not issued the cheque. However, he denied that the said cheque was issued to the tune of Rs. 6,00,000/-. He claimed he had taken a loan of Rs. 1,00,000/- from one Palash Chatterjee and issued a cheque to him only for the purpose of security, but the same was utilised by the complainant behind the back of the petitioner, and the same was dishonoured.
- 12.** It appears from the record that a Cheque No. 440697 dated 01.09.2006 in favour of the complainant drawn on Andhra Bank, 87, Rash Behari Avenue, Ballygunge Branch, Kolkata - 700 026 for Rs. 6,00,000/- was deposited for encashment with the complainant's Bank, U.B.I., Behala Branch, Kolkata, on 01.09.2006, but the said cheque was dishonoured by the Bank and returned unpaid to the complainant with a Banker's Memo dated 02.09.2006 with the endorsement "Insufficient Funds".
- 13.** After receiving the said memo, the complainant had sent a demand notice dated 07.09.2006 to the accused persons through registered A/D post through his Ld. Lawyer demanding the entire cheque amount from them and the said notice was duly served upon the

accused persons on 08.09.2006, and the acknowledgement due card for the same has returned with the Advocate for the complainant accordingly. The said cheque, memo of bank, demand notice and acknowledgement due card were produced before the Trial Court and exhibited.

- 14.** Despite such demand notice, no action was taken to repay the said amount to the complainant, and the petitioner wilfully and deliberately neglected to pay the cheque amount to the complainant within the stipulated period of time as prescribed in the statute. The petitioner neither disputed the contention of demand notice nor replied in due time.
- 15.** Having no other alternative, the complainant filed the case under Section 138 of the N.I. Act against the petitioner. The question raised by the petitioner was that there was no liability to pay the amount, and the cheque was issued only for security purpose to someone else, appearing baseless. No evidence whatsoever was produced or adduced from the side of the Petitioner to rebut the contention of the opposite party/complainant.
- 16.** It has argued that the complainant failed to place any written agreement with regard to seeking an accommodation loan or providing loan to the petitioner to the tune of Rs. 6,00,000/-. There may not be a written agreement but if there is a good relation

between the parties, it can be safely accepted and presumed that the accommodation loan was given to the Petitioner and in discharge of his liability, the petitioner has issued cheque in the name of the opposite party no.1. The said loan was given to the accused person upon trust and belief that the accused persons will return the same. However, when he failed to return the same, a criminal case under section 138 of the N.I. Act was instituted. Upon considering the entire materials on record, both the courts found that the Petitioner is liable to pay the loan amount, and in discharge of his liability, he issued cheque of Rs. 6,00,000/-. A person cannot issue a cheque of Rs.6,00,000/- when he has taken a loan of Rs. 1,00,000/- only. The petitioner has not been able to rebut the statutory presumption raised by the law in respect of the issuance of the impugned cheque by him in favour of the complainant. It is not the case of the petitioner that he had issued a blank cheque. Even if someone issues blank cheque, for the sake of argument, it is very difficult to prove the same. Unless such fact is proved with reasonable evidence, court cannot give importance of such contention.

17. In the light of the submissions and arguments advanced by the learned counsel appearing for the petitioner and upon perusal of the complaint as well as judgments passed by both the courts below, this Court deems it appropriate to first refer to certain relevant provisions

hereinunder, for convenience, ready reference and for proper assessment before entering into the merits of this case:

Section 138 of the N.I. Act reads as under: —

“138. Dishonour of cheque for insufficiency, etc., of funds in the account. —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that 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 that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both :

Provided that nothing contained in this section shall apply unless—

(a) the 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;

(b) the payee or the holder in due course of the cheque, as the case may be, 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 thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation. — For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.”

18. The N.I. Act was enacted to define and amend the laws relating to promissory notes, bills of exchange and cheques. By virtue of the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988, Chapter XVII comprising sections 138 to 142 was inserted into the Act with effect from 01.04.1989. Section 138 of the Act provides the penalties in case of dishonour of cheques due to insufficient funds or similar reasons.

19. However, sections 138 to 142 of the Act were subsequently found to be inadequate in effectively dealing with dishonour of cheques. Sections 138, 141 and 142 were amended, and sections 143 to 147 were inserted in the Act aimed at ensuring the speedy disposal of cases relating to dishonour of cheque through summary trial and making the offences compoundable.

20. The Hon'ble Supreme Court in ***Electronics Trade & Technology Development Corporation Ltd., Secunderabad v. Indian***

Technologists & Engineers (Electronics) (P) Ltd.¹, observed that the object of introducing section 138 was to inculcate faith in the efficacy of banking operations and enhance the credibility of business transactions conducted through negotiable instruments. Section 138 intends to prevent dishonesty on the part of the drawer of a negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induce the payee or holder in due course to act upon it.

21. The Hon'ble Supreme Court again, in the case **Goa Plast (P) Ltd. v. Chico Ursula D'Souza**², while dealing with the objects and ingredients of Sections 138 and 139 of the Act, observed as under: —

“The object and the ingredients under the provisions, in particular, Sections 138 and 139 of the Act cannot be ignored. Proper and smooth functioning of all business transactions, particularly, of cheques as instruments, primarily depends upon the integrity and honesty of the parties. In our country, in a large number of commercial transactions, it was noted that the cheques were issued even merely as a device not only to stall but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions was eroded to a large extent. Undoubtedly, dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the

¹ (1996) 2 SCC 739

² (2004) 2 SCC 235

business transactions within and outside the country suffers a serious setback. Parliament, in order to restore the credibility of cheques as a trustworthy substitute for cash payment enacted the aforesaid provisions. The remedy available in a civil court is a long-drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee.”

22. The Hon'ble Supreme Court in the case of **Indian Bank Association v. Union of India (UOI)**³ also observed the following:-

“Sections 138 to 142 of the Act were found to be deficient in dealing with the dishonoured cheques. The legislature inserted new Sections 143 to 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 and earlier to this the Negotiable Instruments Act, 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 whereby a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque to encourage the culture of use of cheques and enhancing the credibility of the instrument.”

23. The Hon'ble Supreme Court, further in the case **Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.**⁴, laid down the following ingredients for taking cognizance under section 138 of the Act: —

³ Writ Petition (Civil) No. 18 of 2013 decided on 21.04.2014

⁴ (2000) 2 SCC 745

"(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 for the discharge of any debt or other liability

(ii) 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

(iii) 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

(iv) 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

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

(vi) The complaint is to be filed within one month from the date of expiry of the 15 days from the receipt of the notice."

24. So far as the fifth issue herein is concerned, it is a well-settled principle of law that the power of superintendence conferred upon the High Court under Article 227 of the Constitution of India and the inherent powers vested under Section 482 of the Code of Criminal Procedure, 1973, are of an extraordinary and discretionary nature.

These provisions are intended to ensure that the process of law is not abused and that justice is secured in cases where no other efficacious remedy is available.

25. However, the scope of interference under these provisions is narrow and circumscribed. The High Court, while exercising its supervisory jurisdiction, does not act as a court of appeal to re-appreciate or re-evaluate evidence adduced before the Trial Court or to substitute its own findings of fact for those recorded by the subordinate courts. Interference is justified only when there is a patent error of law, a manifest miscarriage of justice, or where the findings are perverse or based on no evidence at all.

26. The Hon'ble Supreme Court, in several judgments including ***State of Haryana v. Bhajan Lal***⁵, particularly paragraphs 102, 103; ***Surya Dev Rai v. Ram Chander Rai***⁶, particularly paragraphs 38, 39, 41; and ***Shalini Shyam Shetty v. Rajendra Shankar Patil***⁷, particularly paragraphs 64-69 and 89, have consistently held that the supervisory and inherent powers are not to be invoked for routine correction of errors or for a re-appraisal of evidence. These powers are meant to keep the subordinate judiciary within the bounds of its

⁵ **AIR 1992 SC 604**

⁶ **(2003) 6 SCC 675**

⁷ **(2010) 8 SCC 329**

authority and to prevent gross injustice arising from illegality, irregularity, or arbitrariness in judicial proceedings.

27. Furthermore, in ***Amit Kapoor v. Ramesh Chander***⁸, particularly paragraphs 12, 13, 20 and 27, the Hon'ble Supreme Court reinforced that section 482 of Cr.P.C. cannot be invoked to reassess the credibility of evidence or the correctness of findings.
28. Accordingly, this Court, in the present case, cannot reassess or re-appreciate the entire evidence as if sitting in appeal over the Trial Court's findings. Its interference would be warranted only if the petitioners succeed in demonstrating that the impugned judgment suffers from a jurisdictional error, a violation of due process of law, or a patently perverse conclusion unsupported by the record or wholly an abuse of process of law.
29. Even though the Petitioner contends that the complaint was not maintainable in the absence of a written agreement, the complainant has established its claim and the liability of the Petitioner. Ultimately, the petitioner has issued a cheque of the Rs.6,00,000/- to discharge his liability. Therefore, the complaint is well maintainable unless it is rebuttable.
30. The judgment and order passed by both the courts below are found to have no infirmity or illegality since the courts below have given

⁸ (2012) 9 SCC 460

detailed and cogent reasons therein. The complainant has fully satisfied all the ingredients to prove the case filed under section 138 of the N.I. Act by the oral and documentary evidence. On the contrary, the petitioner has not been able to rebut the statutory presumption raised by the law in respect of the issuance of the impugned cheque by him in favour of the complainant. The petitioner herein also fails to substantiate his contention or points as raised by any cogent or reliable evidence either oral or documentary evidence. Therefore, there is no illegality committed by the complainant. The Trial Court has rightly decided the case upon satisfying all the questions as pointed out by this Court hereinabove with great details. This Court does not prefer to describe only to avoid repetition.

31. The Learned Sessions Judge has rightly held that the Trial Court has not passed any speaking order relating to the acquittal of accused no. 2, namely, Smt. Madhumita Barui, indicating therein that “The accused person namely, Smt. Madhumita Barui is held not guilty for the offence punishable under Section 138 N.I. Act and she is acquitted from this case under Section 255(1) of the Cr.P.C. and she is also released from her bail bond and set at liberty”. The remaining part of the ordering portion shall remain the same. Actually, the complainant fails to show that the accused No. 2 Smt. Madhumita Barui had any joint liability with the petitioner herein.

- 32.** This Court, therefore, finds no sufficient or cogent reason to interfere with the concurrent findings of both the learned courts below.
- 33.** Consequently, **C.R.R. 969 of 2015** stands **dismissed**. Connected applications, if any, are also, thus, disposed of.
- 34.** Interim order, if any, stands vacated.
- 35.** Registry shall send a copy of this judgment to the Learned Trial Court for information and taking necessary action against the petitioner in accordance with law forthwith.
- 36.** All parties shall act on the basis of server copy of this judgment duly downloaded from the official website of this court.
- 37.** Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)