IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 1795 of 2019

Sk. Sahedul Islam
Vs.
Sri Arabindo Makar & Anr.

For the opposite party no.1 : Mr. Sourav Chatterjee,
Ms. Aditya Tiwari

Heard on : 08.01.2026

Judgment on : 19.02.2026

Dr. Ajoy Kumar Mukherjee, J.

1. The instant application has been preferred by the petitioner(Convict) challenging the judgment and order dated 2nd April, 2019 passed by the learned Additional Sessions Judge, 2nd Court Serampore in Criminal Appeal no. 7 of 2016. By the impugned judgment, court below dismissed the appeal and has affirmed the judgment and order dated 11th March, 2016 passed by learned Judicial Magistrate 4th Court Serampore in CR case no. 276 of 2013 by which the petitioner herein was convicted for commission of offence punishable under section 138 of the Negotiable Instrument Act, (in short

N.I. Act) and was sentenced to suffer simply imprisonment for a term of four months and also to pay fine of Rs. 12,50,000/-.

2. The fact which led to the aforesaid criminal proceeding is to the effect that opposite party no.1 is the business man who is carrying on business under the name and style "Tarama Stores". The petitioner herein carried on his business in the name of Pallishree Bakery who purchased goods on credit from the complainant from February 2012 to August 2012, against credit invoices and challans. The complainant's specific case is that towards discharge of outstanding liability, the petitioner issued a cheque bearing cheque no. 045012 dated 01.03.2013 for Rs. 10,03,559/- drawn on United Bank of India. On presentation, the said cheque was dishonoured on 02.03.2013 with the endorsement "no such account". The opposite party no.2/ complainant issued a demand notice on 12th March, 2013 upon the petitioner, which was duly served on him on 16.03.2013, but no payment was made within the statutory period, in terms of said notice

3. In the course of trial the complainant adduced the evidence of himself as PW-1 and proved 28 (Twenty eight) original invoice and challans with regard to which the payment was due, which are marked as exhibit 1 series. He has also filed and proved original impugned cheque deposits slips and cheque return memo which are marked as exhibit 2, 3 and 4 and the copy of demand notice sent to the petitioner and the postal receipt and A/D Card are marked as exhibit 5 and 6. On perusal of the judgment of the trial court, it appears that when the complainant proved 28 original invoice and challan with regard to which the payment was due, the petitioner herein as accused did not raise any objection. The Trial court below specifically observed that

the suggestion put by the petitioner herein that accused did not issue any cheque in favour of complainant is self contradictory to the suggestion that complainant received a blank cheque from the accused. Moreover defence adduced no positive evidence to disprove his signature in the impugned cheque. The relevant portion of the judgment of the Trial Court may be reproduced below:-

> *"However the suggestion that accused did not issue any cheque in favour of the complainant is self contradictory to the suggestion that complainant received a blank cheque from the accused. Again, defence adduced no positive evidence to prove that the signature in the impugned cheque was manufactured or did not challenged the signature of the impugned cheque neither filed any petition for sending the impugned cheque to hand writing expert to prove his contention. Moreover it was not the case of the defence that any cheque of the accused was lost or stolen by the complainant. Therefore a question remained unanswered as to how if no cheque at all were issued by the accused in favour of the complainant, then how the complainant got possession of the impugned cheque. Thus, except a mere denial no such evidence at all produced by the defence where from it can be inferred that the impugned cheque might not have been executed by the accused person.*
> *When execution of the impugned cheque has been controverted but could not be rebutted, presumption of existence of legally enforceable debt is in favour of complainant as per provision of Section 139 and Section 118(a) of N.I. Act."*

4. It is evident that the petitioner had a business relationship with the complainant and as I have stated above that the transaction with Pally Bakery as mentioned in the bills are admitted in evidence without any objection. Therefore the burden of proof was clearly upon the petitioner/ convict to prove that he does not owe any liability to pay the amount of the impugned cheque, since the complainant/opposite party herein has discharged his onus by proving those documents. Learned Trial court clearly held that the accused had cross examined the PW1 but failed to make out a case wherefrom inference of preponderous of probabilities can be drawn in his favour. The relevant observation of the trial court in this context may be reproduced below:-

> *"but in the instant case as discussed earlier, the defence has failed to rebut the presumption raised against him. Defence has denied the signature in the impugned cheque but made out no probable case where from it can be inferred as to how the impugned cheque reached the complainant especially when the defence already admitted that a blank cheque was received by the complainant from the accused. Defence has asked the complainant if he can produce any paper to show that accused is the proprietor of Pally Sri Bakery but in fact the burden was upon the accused to prove that he is not the proprietor of Pally Sri Bakery.*
> .....
> *It is very uncommon and unnatural for a person to remain calm and silent on receiving a demand notice of such a hefty amount of Rs. 10,03,559/- from a person with whom he denied to have any business relation, an absolute stranger to him."*

5. When the said judgment of the trial court was assailed before the appellate court i.e. the Court below he has fully agreed with the stand taken by the Trial Court and made the following observation:-

> *"considering the aforesaid gamut of observation as made by the said Hon'ble Courts, this court is of the view that appellant shrugged off his legal responsibility to disprove the respondent no.1's case and thereby accepted the same. Not only that the colour of different inks on the said cheque as pleaded by the appellant is very childish. Moreover, the plea as taken by the appellant in respect to his original name and nick name was not rebutted by him by adducing cogent evidence and certainly the same plea goes against him. The dichotomy in regard to the said name was not cleared by the appellant by adducing cogent evidence as admissible under law."*

6. In the above facts and circumstances, of the case the only point that needs to be considered in the present context is whether the view taken by both the courts below is a possible view or not. In other words whether the view taken by the courts below are supported by good reasons and is not based on erroneous findings. I have already stated that both the Courts below have taken a definite stand that the complainant by proving exhibit 1 has primarily discharged his onus to establish before the court that the amount involved in the cheque is a legally enforceable debt and the petitioner herein inspite of getting sufficient opportunity has failed to discharge his burden in terms of section 139 of N.I. Act. The petitioner/ convict did not represent himself before this High court at the time of

hearing. The defence of the petitioner/convict which have been taken before the courts below has also been appropriately dealt with by them and the petitioner failed to establish any of his defence. The courts below rightly held that section 139 of the Act has introduced reverse onus and it raises presumption in favour of a holder of a cheque that the same has been issued in discharge of any debt and liability. The opposite party complainant has also proved bank slip and demand notice and its proper service upon the complainant. It is not the law that if the cheque dishonoured on the ground that no such account is in operation, it does not attract the offence under section 138 of the N.I. Act. Even notwithstanding with the fact that petitioner had closed the account before the date of issuance of cheque, it can still attract offence punishable under section 138 of N.I. Act on dishonour of cheuqe issued in discharge of legally enforceable debt. The petitioner also did not dispute the service of due notice and though during trial the petitioner has tried to raise some evasive denial but fact remains that inspite of receipt of demand notice, he kept mum and did not bother to give any reply to the said notice which rightly led courts below to observe that it raised a strong circumstance to draw an inference that the amount involved in the cheque was a legally enforceable debt.

7. Needless to say under section 3 of Evidence Act read with section 118 (a) of N.I. Act, the court shall presume a negotiable Instrument to be for legally enforceable debt unless and until after considering the matter before it, court either believes that legally enforceable debt does not exist or considers that the non existence of legally enforceable debt is very much probable in the facts and circumstances of the case. For rebutting such

presumption accused needed to raise a probable defence against complainants challan marked ex-1 series.

8. Under section 118(a) of N.I. Act, the initial burden in this regard lies on accused to prove non existence of legally enforceable debt by bringing on record such facts and circumstances, which would lead the court to believe that the claim of legally enforceable debt is improbable, doubtful or illegal.

9. In the present case the Trial Court as well as the Appellate Court have found that cheque contained signature of the appellant/convict and it was given for presentation in the bank and therefore presumption under section 139 was rightly raised which was not rebutted by the appellant herein. The Appellant failed to adduce any documentary or oral evidence to rebut the aforesaid presumption. Appellant even did not give reply to the notice. The Appellant has miserably failed to create doubt in the mind of the Court with regard to the existence of legally enforceable debt or liability, even from the materials supplied by complainant or from evidence adduced by complainant, though under the law in his case, standard of proof for doing so is that of pre-ponderance of probabilities.

10. The jurisdiction of the High Court in this respect is warranted if the approach made by the courts below to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and for which liable to be characterised as perverse. Therefore the first and foremost question raised before this court in the instant application is whether the trial court and the court below thoroughly appreciated the evidence on record and gave due

consideration to all material pieces of evidence and thereafter to consider whether the finding of the trial court is affected by an error of law or fact.

11. In the abovementioned facts and circumstances of the case and on perusal of oral and documentary evidence I have no other option but to conclude that the concurrent view taken by the trial court and the appellate court that the cheque was issued by Appellant in discharge of his legally enforceable debt are fairly possible view and does not suffer from illegality or perversity and therefore does not call for interference by this High Court. It is well settled that in exercise of revisional jurisdiction under section 482, the High Court does not in the absence of perversity upset concurrent factual findings. It is not for the Revisional Court to reanalyse or re interpret the evidence on record.

12. Supreme Court has time and again examined the scope of section 397/401 Cr.P.C. and the ground for exercising the revisional jurisdiction by the High Court. In ***State of Kerala Vs. Puttumana Illath Jathavedan Namboodiri***, reported in **(1992) 2 SCC 452**, it was observed by Apex Court

> *".....In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence....."*

13. In such view of the matter **CRR 1795 of 2019** stands **dismissed**.

14. The judgment and order passed by the court below dated 02.04.2019 in criminal appeal no. 7 of 2016 and the judgement and order dated 11.03.2016 passed by the learned Judicial Magistrate 4th Court Serampore in CR 276 of 2013 are hereby affirmed. The petitioner/convict is directed to surrender before the Trial Court within a period of 30 days to serve out the sentence, in default the Trial Court will be at liberty to take all necessary steps including issuance of warrant of arrest to secure the attendance of the convict/ petitioner before the court below, in order to serve out the sentence. Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)