

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

**PRESENT:  
THE HON'BLE JUSTICE UDAY KUMAR**

**C.R.R. 3073 of 2022**

**Samaresh Banerjee @ Sanjay Banerjee**

**- Vs -  
Panchu Gopal Sen**

For the Petitioner : Mr. Amit Ranjan Pati  
Ms. Swastika Chowdhury

For the Opposite Party : Mr. Navanil De  
Mr. Subhrajit Dey

Hearing concluded on : 23.05.2025

Judgment on : 30.06.2025

**UDAY KUMAR, J.: -**

**1.** This Criminal Revision Application has been filed by Samaresh Banerjee, hereinafter referred to as the petitioner, invoking Sections 401/397 read with Section 482 of the Code of Criminal Procedure, 1973. It challenges the judgment and order dated June 28, 2022, passed by the Learned Additional Sessions Judge, 2<sup>nd</sup> Court, Serampore, Hooghly, in Criminal Appeal No. 07 of 2021. This order affirmed the petitioner's conviction, originally passed by the Learned Judicial Magistrate, 5<sup>th</sup> Court, Serampore, Hooghly, in Complaint Case No. 118 of 2014 on February 11, 2020. The said conviction involved a fine of Rs.4,30,000/- with a default sentence of six months' simple imprisonment under Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act).

- 2.** The genesis of this dispute lies in a complaint lodged by Panchu Gopal Sen, (hereinafter referred to as the "complainant"), alleging an interest-free loan of Rs. 6,00,000/- extended to the petitioner. In ostensible discharge of this purported debt, the petitioner is alleged to have issued an account payee cheque (No. 684943) dated January 10, 2014, drawn on his U.C.O Bank account. Upon presentation, the cheque was dishonoured on the very same day with the endorsement "account closed." A demand notice was duly issued on January 20, 2014, and indisputably received by the petitioner around January 27, 2014. As no payment was effected within the statutory period, the complainant initiated the aforementioned criminal proceedings.
- 3.** Subsequently, the Learned Judicial Magistrate, 5<sup>th</sup> Court, Serampore, Hooghly, took cognizance of the offence. The Court recorded the complainant's testimony (P.W.1), afforded the petitioner the opportunity to plead innocence pursuant to Section 251 Cr.P.C., and heard his defence through testimony (D.W.1). Ultimately, the petitioner was convicted on February 11, 2020.
- 4.** Being aggrieved by this conviction, the petitioner preferred Criminal Appeal No. 07 of 2021. His defence before the Appellate Court rested on the premise that he had never received a loan of Rs.6 lakhs, contending instead that the transaction involved a mere Rs.20,000/-. He further advanced claims of cheque loss or misuse by the complainant. The Appellate Court, however, upheld the conviction and sentence by dismissing the appeal on June 28, 2022. This concurrent finding of guilt

by both courts now forms the bedrock of the present revisional application.

5. Mr. Amit Ranjan Pati, Learned Counsel appearing for the petitioner, strenuously contended that both lower courts erred by failing to adequately appreciate the facts and the legal principles governing statutory presumptions. He fervently submitted that the petitioner never borrowed Rs.6,00,000/-, asserting that he had merely secured a modest loan of Rs.20,000/- for his daughter's marriage. A cornerstone of the petitioner's defence, as presented by Mr. Pati, was the assertion that he had lost his cheque book, which the complainant purportedly acquired and illicitly completed for the larger sum, an amount for which the petitioner categorically denied ever issuing the cheque. Learned Counsel argued that this critical factual contention was regrettably overlooked, and its acceptance would fundamentally alter the complexion of the case. The petitioner, it was submitted, even expressed a willingness to repay the Rs.20,000/- if the complainant concurred. The petitioner's defence also included assertions of having signed blank papers and cheques as "security" for an earlier, unspecified transaction, or even that his cheque book was forcibly seized.
6. Mr. Pati vigorously stressed the rebuttable nature of the Section 139 presumption under the N.I. Act, asserting that the petitioner had presented a "strongly believable case" of cheque misuse or its deployment solely as a "security instrument" devoid of a genuine underlying debt. He critically pointed out the complainant's failure to

establish the "legally enforceable debt or liability" by neglecting specific loan details such as the date, place, manner, and mode of payment. As such, he prayed for the setting aside of the impugned judgment, alleging it suffered from inherent contradiction and was passed without proper factual consideration. While acknowledging that *Rangappa v. Sri. Mohan* (AIR 2010 SC 1898) confirms the presumption's inclusion of a legally enforceable debt, he stressed that both *Rangappa* and *Basalingappa v. Mudibasappa* [(2019) 5 SCC 418] establish the rebuttal standard as a "preponderance of probabilities" with merely an "evidentiary burden." He contended that his defence of cheque misuse or security constituted a probable case, sufficient to create doubt and shift the burden back to the complainant, especially given the complainant's lack of loan specifics. He further relied on *Bir Singh v. Mukesh Kumar* [(2019) 1 C Cr LR (SC) 513] to argue that even for blank cheques, a cogent misuse defence can rebut the presumption.

7. In stark contrast, Mr. Navanil De, Learned Counsel for the opposite parties, steadfastly asserted the legitimacy of the Rs.6,00,000/- loan. He explained that this sum was extended out of mutual friendship, with the complainant even borrowing from his brother to facilitate the petitioner's urgent need. He contended that the cheque was legitimately issued by the petitioner to discharge his acknowledged liability and was, therefore, justifiably dishonoured, a finding correctly reached by both the Learned Trial Court and the Learned Appellate Court. Mr. De underscored that the complainant had successfully proven the foundational facts required

by Section 138 of the N.I. Act, thereby activating the powerful statutory presumptions under Section 139 read with Section 118 of the N.I. Act. He argued that once these initial facts, particularly the petitioner's undisputed signature on the cheque, are established, a compelling legal presumption arises: that the cheque was issued to discharge a legally enforceable debt or liability. This, he submitted, shifted a significant onus onto the accused.

8. He further contended that the petitioner had utterly failed to discharge this presumption by presenting any probable defence. Citing the Hon'ble Supreme Court's authoritative decision in *Rangappa v. Mohan*, AIR 2010 SC 1898, which unequivocally established that the presumption under Section 139 extends to the existence of a legally enforceable debt or liability, he maintained that the petitioner failed to discharge the shifted onus. While *Basalingappa* allows rebuttal on a "preponderance of probabilities," the respondent argued that the petitioner's defence was "confusing," "self-contradictory," and "factually inconsistent," thus lacking the requisite probability. Citing *Bir Singh*, the respondent maintained that even signed blank cheques attract the presumption, and the defence requires cogent evidence, which the petitioner's inconsistent claims failed to provide. Consequently, he prayed for the dismissal of this revisional application as being devoid of merit.
9. In light of the arguments advanced and the evidence adduced, this Court deems it vital for proper adjudication to address several crucial questions:

- a. whether the complainant successfully established all foundational ingredients necessary for constituting an offense under Section 138 of the Negotiable Instruments Act;
- b. whether the statutory presumption under Section 139, read with Section 118(a) of the N.I. Act, regarding a legally enforceable debt or liability, was correctly triggered and applied;
- c. whether the accused successfully rebutted this statutory presumption by raising a "probable case of defence" on a "preponderance of probabilities," particularly given apparent inconsistencies in his pleas; and finally,
- d. whether the impugned judgments of the lower courts suffer from any perversity, illegality, or fundamental procedural infirmity warranting this Court's intervention in its revisional jurisdiction.

**10.** It is indubitable that this case hinges upon the intricate interplay of Sections 138, 139, and 118 of the N.I. Act, coupled with the precise evidentiary standard required to overcome a statutory presumption. It must be emphasized that the exercise of revisional jurisdiction is not akin to an appeal; this Court's mandate is strictly confined to scrutinizing the legality, regularity, and propriety of the impugned orders, specifically to identify any fundamental legal errors, perverse findings (that is, findings that no reasonable person could arrive at on the given evidence), or grave procedural infirmities. This Court does not re-appreciate evidence *de novo* as if sitting in appeal.

- 11.** Upon meticulous scanning of the materials on record, it appears that the complainant effectively discharged the initial burden under Section 138 of the N.I. Act. The essential elements—the issuance of the cheque, its presentation, dishonour due to "account closed," and the proper issuance and receipt of a legal demand notice followed by non-payment—were all established by documentary evidence and the complainant's consistent testimony. This foundational proof duly activated the statutory presumptions under Sections 118(a) and 139 of the N.I. Act. As confirmed by the Hon'ble Supreme Court in *Rangappa v. Sri. Mohan*, the presumption under Section 139 specifically encompasses the existence of a legally enforceable debt or liability, thereby imposing a significant legal burden on the petitioner. The onus then squarely shifted to the petitioner to rebut these presumptions. As clarified by *Basalingappa v. Mudibasappa*, this rebuttal is achieved on a "preponderance of probabilities," requiring merely an "evidentiary burden." The accused can discharge this by presenting a probable defence through his own evidence or by highlighting inconsistencies in the complainant's case.
- 12.** The petitioner's defence involved denying the Rs.6 lakh loan, claiming a Rs.20,000/- transaction, and alleging misuse of a lost cheque book or a cheque given for "security." However, a critical examination of this defence reveals inherent weaknesses. The petitioner's narrative, articulated through his testimony and various pleas, was characterized by "confusing and self-contradiction and factual inconsistencies." The

petitioner presented multiple, disparate accounts of the circumstances surrounding the cheque: initially, a loan claim of only Rs.20,000/- for his daughter's marriage; subsequently, an assertion of a Rs.2,00,000/- loan with 7% interest; a claim that he had lost his cheque book, which the complainant then illicitly completed; an assertion that he signed blank papers and cheques as "security" for an earlier transaction; moreover, a further claim that his cheque book was forcibly seized; and ultimately, a general denial of the ₹6 lakh loan. Such a shifting and inconsistent defence undermines its own credibility and fails to meet the "preponderance of probabilities" standard. A mere inconsistent denial, without consistent and reliable supporting facts, is insufficient to counteract a strong statutory presumption. Furthermore, the principles enunciated in *Bir Singh v. Mukesh Kumar* are pertinent here: even a voluntarily signed blank cheque attracts the Section 139 presumption unless the drawer provides cogent evidence that it was not issued for a debt. The petitioner's inconsistent claims of misuse or limited liability failed to provide such cogent evidence. The factual discrepancies in his account meant his assertions did not create the necessary probability to dislodge the robust statutory presumption.

**13.** The demand notice was duly dispatched and served, and the complaint was filed within the statutory period, thereby meeting all the procedural prerequisites of Section 138. The defence raised a minor point concerning the bank's reason for dishonour being "account closed" versus the complainant's mention of "insufficient funds." This point has

been definitively settled by the Hon'ble Supreme Court in *NEPC Micon Ltd. Vs. Magna Leasing Ltd.* ((1999) 4 SCC 253) and reaffirmed in *Laxmi Dychem Vs. State of Gujrat* ((2012) 13 SCC 375), wherein it has been unequivocally clarified that the expression "account closed" for the purpose of Section 138 of the N.I. Act squarely falls within the meaning of "insufficient funds" or "no funds." Thus, the complainant unquestionably met all essential preconditions for an offense under Section 138.

14. These fluctuating positions, particularly concerning the alleged initial loan amount, cheque possession, and relevant dates, profoundly undermined the defence's credibility and "probability." For a defence to attain the "probability" threshold, it demands coherence, consistency, and a plausible alternative narrative. The accused's inability to maintain a clear and consistent account, offering contradictory explanations for the cheque's presence, significantly weakened his assertion that the cheque was not issued against a legally enforceable debt. Furthermore, while initially valid, the defence's argument regarding the complainant's failure to detail the ₹6 lakh loan specifics largely dissipates once the statutory presumption under Section 139 is triggered, shifting the burden squarely to the accused to demonstrate the improbability of the complainant's case. The accused's own conflicting narratives failed to achieve this.
15. Finally, in assessing whether the impugned judgments warrant interference by this Court, it is crucial to reiterate the limited scope of

revisional powers. This Court does not function as a second appellate forum to re-examine or re-appreciate evidence. Its mandate is strictly confined to scrutinizing the legality, regularity, and propriety of the impugned orders, identifying fundamental legal errors, perverse findings, or grave procedural infirmities. The Trial and Appellate Courts arrived at their consistent findings based on meticulous consideration of the evidence and correct application of the pertinent legal principles. Significantly, this Court finds no errors or infirmities compelling revisional intervention. The petitioner simply failed to present a credible and probable defence capable of dislodging the formidable legal presumption operating against him.

**16.** Therefore, the petitioner failed to discharge his burden of rebutting the presumption under Section 139 of the N.I. Act. His defence, due to its inherent inconsistencies and lack of cogency, did not create the "preponderance of probabilities" required to cast doubt on the existence of a legally enforceable debt. Consequently, the principal question for determination is answered in the negative; the petitioner did not successfully rebut the statutory presumption. Both courts, having correctly found that the complainant established all requisites of Section 138, and having duly considered and rejected the accused's inconsistent defence, cannot be said to have erred in their appreciation of facts or application of law. Their findings are neither perverse nor suffer from any material irregularity or illegality warranting revisional interference.

The complainant's case, supported by unrebutted presumptions, stands affirmed.

**17.** In view of the preceding analysis and evaluation of the evidence and legal principles, I conclude that in a prosecution under Section 138 of the Negotiable Instruments Act, the potent statutory presumption mandated by Section 139 (read with Section 118) is firmly activated when the complainant conclusively establishes cheque issuance and dishonour (even where the reason is "account closed") and the accused's signature on the instrument stands undisputed. This activated presumption affirms the existence of a legally enforceable debt, inexorably shifting the burden to the accused to rebut it by presenting a "probable defence" on a "preponderance of probabilities." A defence is fundamentally insufficient to rebut the presumption if it is riddled with multiple, material inconsistencies and self-contradictions across the accused's various explanations, particularly concerning the nature of the alleged transaction or the circumstances of the cheque's possession. Such an inconsistent defence inherently collapses, failing to achieve the requisite coherence and credibility necessary for rebuttal. In such circumstances where the accused's defence is internally inconsistent and demonstrably lacking evidentiary weight to displace the statutory presumption, concurrent findings of conviction by the lower courts are rendered unassailable, standing immune from challenge as perverse, illegal, or procedurally infirm. Thus, this Court mandates no interference in revisional jurisdiction.

- 18.** In culmination, I convince that the complainant satisfied all essential ingredients for a Section 138 N.I. Act offense, thereby activating the formidable Section 139 statutory presumption of a legally enforceable debt. The petitioner's burden to rebut this presumption on a "preponderance of probabilities" was, however, fundamentally unmet. As meticulously detailed by the lower courts and confirmed by above assessment, the accused's defence was fatally undermined by critical inconsistencies and self-contradictions across his various statements, conspicuously lacking the coherence and evidentiary weight necessary to displace the formidable statutory presumption. Therefore, the concurrent findings of conviction by the Learned Judicial Magistrate and affirmed by the Learned Additional Sessions Judge are legally sound and factually justified. This Court finds no perversity, illegality, or procedural infirmity warranting revisional interference.
- 19.** Therefore, the Criminal Revision Application, being CRR 3073 of 2022, is found to be entirely without merit and is hereby dismissed.
- 20.** Accordingly, the judgment and order dated June 28, 2022, passed by the Learned Additional Sessions Judge, 2<sup>nd</sup> Court, Serampore, Hooghly in Criminal Appeal No. 07 of 2021, affirming the conviction and sentence imposed on the petitioner under Section 138 of the Negotiable Instruments Act, 1881, passed by the Learned Judicial Magistrate, 5<sup>th</sup> Court, Serampore, Hooghly, in connection with Complaint Case No. 118 of 2014 on February 11, 2020, stands upheld and confirmed in its entirety.

- 21.** The petitioner, Samaresh Banerjee, is hereby directed to surrender before the Learned Judicial Magistrate, 5th Court, Serampore, Hooghly (Trial Court), within two (2) weeks from the date of this judgment, to undergo the sentence as imposed and affirmed.
- 22.** The Learned Judicial Magistrate, 5<sup>th</sup> Court, Serampore, Hooghly, is directed to take all necessary steps to ensure the execution of the sentence as affirmed by this Court, in accordance with law, without being influenced by any observations made herein, which pertain solely to the determination of this revisional application. Should the petitioner fail to surrender or comply within the stipulated period, the Learned Trial Court shall proceed to issue appropriate warrants or other coercive measures to secure his presence and enforce the sentence.
- 23.** The connected interlocutory applications, if any, arising out of this Criminal Revision Application, stand disposed of in terms of this judgment.
- 24.** Let a copy of this order be immediately sent to the Court of the Learned Additional Sessions Judge, 2<sup>nd</sup> Court, Serampore, Hooghly, and the Learned Judicial Magistrate, 5<sup>th</sup> Court, Serampore, Hooghly, for their records and requisite action.
- 25.** The interim order(s), if any, stand vacated forthwith.
- 26.** There shall be no order as to the costs.
- 27.** The original records, if any, shall be returned forthwith to the respective lower courts.

**28.** Urgent photostat copies of this order be supplied to the parties, if applied for, upon compliance with usual formalities.

**(Uday Kumar, J.)**