WBDD060002522016

Form A

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
GANGARAMPUR AT BUNIADPUR, DAKSHIND DINAJPUR**

Present : Saptabarna Sengupta (JO Code WB 01164)
Additional Chief Judicial Magistrate,
Gangarampur at Buniadpur

C.R Case No. 133 of 16
Reg no. 62 of 16

Allegation Under Section 138 of Negotiable Instrument Act of 1881.

Date of delivery of Judgment : the 5th Day of April, 2026

Complainant	Uttam Datta
REPRESENTED BY	Ld. Adv Swapna Roy
ACCUSED	Prasenjit Bhowmik
REPRESENTED BY	Ld. Adv Soumen Majumder

Form B

Date of Offence	04.02.2012
Date of complaint	01.03.2016
Date of Framing of charge/plea	08.04.2019
Date of commencement of Evidence	26.09.2022
Date on which Judgement is reserved	N.A.
Date of Judgement	05.05.2026

Accused details :

Rank of the Accused	Name of Accused	Date of arrested/ surrendered	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr.P.C
A1	Prasenjit Bhowmik	Not arrested	17.03.2017	**138 of Negotiable Instrument Act of 1881**	Convicted	Sentenced to undergo simple imprisonment of six months and to pay fine of Rs. 4,50,000/- (Rs. Four Lakhs Fifty Thousand) out of which Rs. 4,25,000/- to be paid to the complainant Swapna Dutta as compensation within one month from the date of judgment in default the convict is liable to undergo simple imprisonment for another three months.	N.A

A. Prosecution witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW 1	Swapan Roy	Complainant

B. Defence Witnesses :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW 1	Prasenjit Bhowmick	Witness
DW2	Pintu Sarkar	Witness

C. Court Witnesses : NIL

List of Prosecution / Defence / Court Exhibits

A. Prosecution :

Sr. No.	Exhibit Number	Description
1	Exhibit 1	Cheque bearing no. 474732.
2	Exhibit 2	Cheque deposit slip.
3	Exhibit 3	Cheque Return memo.
4	Exhibit 4 series	Demand notice along with postal receipt and envelop.
5	Exhibit 5 and 6	Certified copy of deed.
6	Exhibit 7	Copy of LRROR.
7	Exhibit 8	Cheque bearing no. 0379238.

B. Defence Exhibit :

Sr. No.	Exhibit Number	Description
1	Exhibit A	Cheque bearing no. 0236010124494
2	Exhibit B	Signature of DW1 and the proprietor of Prantik Publisher and book seller.
3	Exhibit C	Residential certificate of deceased complainant.

C. Court Exhibits : NIL.

D. Material Objects : NIL.

JUDGMENT

INTRODUCTION:

1. The present case has been instituted under Section 138 of the Negotiable Instruments Act, 1881, invoking the penal provisions relating to dishonour of cheque for insufficiency of funds. Section 138 of the Negotiable Instruments Act, 1881 aims to promote the efficacy, reliability, and integrity in commercial transactions conducted through negotiable instruments, particularly cheques. Section 138 was introduced to ensure greater financial responsibility by attaching a penal consequence for dishonest drawers. The object of the provision is to discourage drawers from issuing cheques without maintaining sufficient balance and to ensure promptness in payment obligations. Section 138 strengthens commercial morals through both compensatory and penal measures.

FACT OF THE CASE

2. Complainant of this case namely, Uttam Dutta, since deceased, filed this case against the accused. During the trial, complainant had demised and his wife namely Swapna Dutta was replaced as complainant. The brief facts of the case as set out in the complaint is that on 04.02.2012 at about 5.30 PM the accused purchased 130.2 gms of old gold ornaments (pearl and stone studded) from the complainant at the consideration of Rs. 3,70,045/-. At the time of purchase, an agreement was executed and the accused issued a cheque bearing no. 474732 of United Bank of India, Gangarampur Branch (impugned cheque) amounting to Rs. 3,70,045/- i.e the total sale amount in favour of the complainant. Complainant stated that after issuance of the impugned cheque, the accused repeatedly requested him not to deposit the cheque in the bank as the account lacks sufficient balance. It was assured by the accused that he will pay the entire sale amount in cash in due time. But in spite of repeated reminders, the accused did not pay the amount for which the complainant was ultimately compelled to deposit the impugned cheque with bank on 30.07.2012 just few days prior to its expiry. Unfortunately, the cheque was dishonoured on the same date on presentation. On 01.08.2012 the bank intimated the complainant about dishonour of cheque due to insufficient fund. After that, the complainant informed the accused about the dishonour of cheque over phone. Later, on 02.08.2012 complainant sent demand notice to the accused in registered post with A.D. The notice was duly sent to the correct address of the accused. The notice was received by one S. Sarkar who is one of the associates of the accused. It is the allegation of the complainant that in spite of receiving the demand notice, the accused failed to make payment of the considerations amount of purchased gold ornaments within the statutory period. It is the case of the complainant that the accuse has intentionally avoided making payments of the consideration amount of sale to the complainant which is a legally enforceable debt. Accordingly, the complainant prays that the accused may be convicted as per law under section 138 NI Act.

COGNIZANCE BY COURT:

3. On receipt of the complaint on 01.08.2016, this Court took cognizance of the matter and transferred the case in personal file for inquiry, trial and final disposal. Soon after receiving the record, the court examined the complainant on SA u/s 200 of Cr.PC on 21.09.2016 and found prima facie materials against the accused under section 138 NI Act. Accordingly, the Court issued process against the accused in view of section 204(1) Cr.P.C. Subsequently, the accused appeared before the court and prayed for bail.

The Court enlarged the accused on bail on furnishing bond.

PLEA

4. On 08.04.2019 the accused was examined under Section 251 of the Cr.P.C. The substance of the acquisition u/s 138 of NI Act was read over and explained to the accused to which he pleaded not guilty and claimed for trial.

EVIDENCE OF COMPLAINANT

5. To substantiate his case, the complainant namely Uttam Datta was examined as PW1. One Pankaj Kumar was examined as PW2. During the evidence complainant the following documents were admitted into evidence and marked as:

Exhibit 1: Cheque bearing no. 474732.

Exhibit 2: Cheque deposit slip.

Exhibit 3: Cheque Return memo.

Exhibit 4 series: Demand notice along with postal receipt and envelop.

Exhibit 5 and 6: Certified copy of deed.

Exhibit 7: Copy of LRROR.

Exhibit 8: Cheque bearing no. 0379238.

EVIDENCE OF DEFENSE:

6. After completion of the evidence of complainant, the accused namely Prasenjit Bhowmick was examined u/s 313 Cr.PC and his statement is recorded in a separate sheet. The accused pleaded his innocence during his examination under section 313 Cr.P.C. The accused expressed his willingness to adduce evidence on his behalf and accordingly flowing witnesses deposed for accused;

DW1: Prasenjit Bhowmik

DW2: Pintu Sarkar

During the evidence of DW 1, cheque book of account no. 0236010124494 of UBI from which the impugned cheque was issued was marked as **Exhibit A**. The accused also filed one ledger account of Prantik Publisher and book seller dated 01.12.2011 to 15.12.2011 as **Exhibit B**. Residential certificate of deceased complainant was marked as **Exhibit C**.

POINTS FOR CONSIDERATION

7. On the basis of the facts stated in complainant and considering the evidence adduced by both the parties, following points are taken up for consideration:

I. Whether this case is filed beyond the statutory period and thereby barred under law of limitation.

II. Whether the legal preconditions of Section 138 NI Act are fulfilled by the complainant prior to filing of this case.

III. Whether the impugned cheque was issued in discharge of existing liability or in discharge of legally enforceable debt.

IV. Whether the demand Notice u/s 138 NI Act was properly served upon the accused.

VI. Whether complainant has succeeded to prove the offence u/s 138 NI Act against the accused beyond all reasonable doubt.

POINT NO. I

8. This point was framed upon the question whether the instant case is barred by the law of limitation.

9. Learned defence lawyer begun his argument by assailing the maintainability of the complaint on the ground of limitation. He submitted that the law of limitation under Section 142 of the Negotiable Instruments Act, 1881 is not a mere formality but it goes to the very root of maintainability of a complaint under Section 138. It is argued that section 142 prescribes that a complaint must be filed within one month from the date on which the cause of action arises. The cause of action itself is defined through a sequence under Section 138 which is presentation of cheque, its dishonour, issuance of statutory notice within 30 days, and failure of the drawer to make payment within 15 days of receipt of notice. Only upon the expiry of this 15-day period does the cause of action crystallize. Thus, limitation under Section 142 is intricately linked with the statutory scheme of Section 138 and ensures that the complainant acts with diligence at every stage.

10. It is pointed out by the Ld. Defense lawyer that the complaint was initially presented before the Court of Ld. CJM, Malda and after filing the complaint, it was transferred to Ld. Judicial Magistrate, 1st Court, Malda for trial. Ld. Advocate argued that though the case was filed before the court of Ld. CJM, Malda within statutory period but the complainant used a fake address of Nalagola, Malda to seek jurisdiction of Malda Court with a view to harass the accused though the impugned cheque was issued, presented and dishonored in Gangarampur that falls under the territorial jurisdiction of this Court. It is also argued that the complainant was never a resident of Malda. According to Ld. Defence lawyer, use of fake address by the complainant to file this case shows his intention of misleading the courts and harass the accused unnecessarily.

11. Ld. Defense lawyer submitted that the case which was filed before the Malda Court was defective due to lack of territorial jurisdiction as the case should have been filed in a Court under whose jurisdiction the impugned cheque was presented for clearance. In this point Ld. Advocate for accused

referred decision of Hon'ble Apex Court in Prakash **Chimanlal Sheth vs Jagruti Keyur Rajpopat, 2025 LiveLaw (SC) 769** in which it was held that the amendment in Section 142 (2)(a) specifies that an offence of dishonour of cheque must be tried by a Court under whose jurisdiction the payee maintains his account and the cheque was delivered for collection.

12. Ld. Defense Lawyer also referred to the decision of **Yogesh Upadhyay and anr vs. Atlanta Limited, 2023 LiveLaw (SC) 125.** The Hon'ble supreme Court held the same view in this case also and transferred the case for trial in a Court having appropriate jurisdiction where the cheque was delivered for collection i.e through the account in the branch of the bank where the payee or holder in due course maintains an account.
13. Ld. Defense lawyer pointed out that the objection regarding jurisdiction of Malda Court to hold trail of this case was raised by the accused when he appeared after receiving summons from the court. Upon hearing the objection of accused, the Court of Ld. Judicial Magistrate, 1st Court, Malda ordered for return of complaint vide order dated 25.02.2016. In view of such order, Ld. CJM, Malda also passed an order of return of complaint vide order dated 21.03.2016 with a liberty given to the complainant to re-file the complaint before jurisdictional court within 21.04.2016. Ld. Defence lawyer argued that the liberty given to the complainant was misused and the complainant choose to file a fresh application before this Court on 01.08.2016 i.e. almost after 04 months from the date of order of return passed by Ld. CJM, Malda.
14. Ld. Defence Lawyer draws my attention that in the instant complaint filed before this court, the complainant did not disclose about the filing of the same case in Malda Court and about the order of return of complaint. The copy of order sheet of Ld. CJM, Malda was also not filed along with this instant complaint. It is further pointed out that Ld. Addl. District and Session Judge, Malda vide order dated 16.06.2016 in Criminal Revision No. 27/2016 affirmed the order of Ld. Chief Judicial Magistrate, Malda for return of the complaint (admitted) . It is argued by the Ld. Defence lawyer that at the time of passing order in revisional application, the time frame fixed by Ld. CJM, Mlada to refile the complaint was not extended by the revisional court. Hence, it can be presumed that the complainant should have re filed the same complaint in this Court within the time frame fixed by Ld. CJM, Mlada i.e within 21.04.2016. But the complainant filed this case afresh on 01.08.2016. Ld. Lawyer contended that the present complaint, as filed before the jurisdictional court, is in fact a fresh complaint and not a continuation of the earlier proceedings. He also argued that once the complaint was returned, the earlier proceedings ceased to exist in the eye of law, and therefore, the complaint filed afresh before this court

must independently satisfy the requirement of Section 142(b) of the Negotiable Instruments Act.

15. Ld. Advocate also pointed out that at the time filing of this instant complaint, no application for condonation of delay was submitted by the complainant yet cognizance was taken. The accused was also not given any opportunity to present his case when the delay in filing of the instant complaint was condoned. In support of his contention, Ld. Advocate placed reliance on the judgement passed in **Sri Amitava Roy vs State of West Bengal and another reported in 2012 ACD 813 (CAL)**. In this referred case there was a delay of 15 days in filing the complaint. It was held by the Hon'ble Court that at the time of hearing of application for condonation of delay, an opportunity of hearing should be given to the accused. Without hearing the accused on the point of condonation of delay, the principle of natural justice is violated and the order of condonation delay should be set aside.
16. Ld. Defense lawyer also referred to the decision of **S. Nagesh vs Shobha S. Aradhya, 2026 Live Law (SC) 13.** where there was delay of two days which was condoned. It was held by the Hon'ble Supreme Court that the power conferred upon the court to take cognizance of a belated complaint is subject to the complainant first satisfying the court that he had sufficient cause for not making the complaint within time. The satisfaction in that regard resulting in condonation of delay must therefore precede the act of cognizance. It was also held that cognizance of offence before condoning delay is a non-curable irregularity.
17. By referring this case, Ld. Defense lawyer argued that this complainant also failed to give a satisfactory account regarding the delay in filing this case and no separate application for condonation of delay was also not filed. The accused was also not heard at the time of condonation of delay by this Court and hence, the instant complaint is defective ab initio and the irregularity in incurable.
18. Ld. Defense lawyer further referred to a decision of Hon'ble Apex Court in **H. S. Oberoi Buildtech Pvt. Ltd. and others vs M/s MSN Woodtech, 2025 Live Law (SC) 889** wherein it was held that there cannot be an automatic or presumed condonation of a complaint filed beyond the statutory time limit. It was held that a separate and proper application must be filed along with complaint disclosing the reasons for delay and the court is obligated to take note of a complaint being filed beyond the limitation period, consider the reasons disclose for delay and come to a judicious conclusion that condonation is justified before taking cognizance and issuance of summons.
19. According to Ld. Defence lawyer, this case was filed in the year 2016 for

dishonor of a cheque which occurred in the year 2012. The complainant failed to explain the reasons of delay or even reasons for noncompliance of order of Ld. CJM, Malda dated 21.03.2016. Accordingly, the case should be dismissed on the point of limitation.

20. Counter argument made by the complainant is that the objection raised by the defence as to limitation is wholly misconceived and is an attempt to defeat a legally sustainable complaint on a technical ground. Complainant, appearing in person, submitted that on 04th February, 2012 at about 5.30 PM the accused purchased 130.2 Gm of gold ornaments (pearl as well as stone studded jewellery) from the deceased complainant and the price was fixed Rs. 3,70,045/-. In discharge of the liability, the accused issued the impugned cheque bearing no. 474732 of UBI, Gangarampur Branch for an amount of Rs. 370045/- (Exhibit 1). Complainant submitted that from 05th February 2012 to 30th July, 2012 the accused requested the complainant not to deposit the impugned cheque (Exhibit 1) for encashment due to insufficient fund. The accused assured to pay the sale amount in cash but the promise was made with a dishonest intention to pass the validity period of the cheque.
21. It is argued by the complainant that in spite of repeated reminders, the accused did not pay the sale amount and kept requesting the complainant to wait. But the complainant was compelled to deposit the impugned cheque with UBI, Gangarampur Branch on 30.07.2012. Later, on 01.08.2012 the bank concerned intimated the complainant about the dishonour of the cheque (Exhibit 3) with an endorsement “Funds insufficient”.
22. After the impugned cheque was dishonoured, the complainant informed the matter to accused over phone and on 02.08.2012 the complainant sent a demand notice to the accused (Exhibit 4 series). It is argued by the complainant that even after receiving the demand notice, the accused did not bother to pay the sale amount of Rs. 3,70,045/- within statutory period. Thereafter, the complainant had no other alternatives than to file a case u/s 138 NI Act against the accused well within the prescribed period. It is pointed out by the complainant that the demand notice was sent to the accused in registered post with AD at his actual and correct residential address but the accused cunningly had made the notice to be received by one S. Sarkar to avoid making any payment.
23. Complainant admitted that, the case was initially filed at the Court of Ld. CJM, Malda on 06.09.2012. Complainant submitted that at that relevant point of time the complainant, since deceases, was a resident of Nalagola under Malda District for the purpose of his work. This is why the complainant preferred the application before Ld. CJM Malda Court. According the complainant no fake address was used to file this case and the admitted factual position is that the complaint was initially filed within

the statutory period prescribed under Section 142 of the Negotiable Instruments Act. The defect, if any, arose only with respect to territorial jurisdiction, which is a procedural aspect and not a defect going to the root of the cause of action as argued by the complainant.

24. It is also submitted by the complainant that the instant case was re-filed before this court as per the order of Ld. JM, Malda as well as Ld. CJM, Malda which was later affirmed by Ld. Addl. District and Sessions Judge, Malda wherein it was categorically directed that complaint pending before the court should be returned to the complainant along with all documents for presentation of the same before the proper court having territorial jurisdiction. Accordingly, the complainant, on receiving the complaint from the Malda Court re filed the same before this Court. Complainant argued that this case was the continuation of the earlier case which was filed withing statutory period before Malda Court and hence, the instant case is not barred by limitation.
25. According to complainant, upon return of the complaint and documents, the deceased complainant acted with due diligence and refiled the complaint before the competent court. Therefore, the refiling relates back to the original institution and cannot be treated as a fresh complaint for the purpose of limitation. It is also argued that under such circumstances, fresh application for condonation of delay is not required.
26. I have heard the arguments raised by both the parties. On the point of jurisdiction, there is no dispute at this stage that this Court has jurisdiction to try this case. **Section 142 B** of the N.I Act provides that complaint of the offence u/s 138 NI Act has to be lodged within one month from the date on which the cause of action arises under clause C of proviso to section 138 of the Act. That means, the case under section 138 NI Act has to be filed within 30 days the computation of which will start on expiry of the 15 days demand notice period since receiving the same.
27. The law relating to limitation for filing a complaint under the Negotiable Instruments Act, 1881, particularly for an offence under Section 138, is carefully structured to balance the rights of the payee with fairness to the drawer of the cheque. The statutory timelines are not merely procedural; they are conditions precedent to the maintainability of the complaint.
28. A cause of action under Section 138 does not arise immediately upon dishonour of the cheque. The Act contemplates a sequence of mandatory steps. First, the cheque must be presented to the bank within its period of validity. Upon dishonour, the payee or holder in due course must issue a written demand notice to the drawer within thirty days from the date of receiving information from the bank regarding such dishonour. This notice is not an empty formality; it is intended to give the drawer an opportunity to

make payment and avoid criminal liability.

29. Once the notice is served, the drawer is granted fifteen days from the date of receipt of the notice to make payment of the cheque amount. It is only upon failure to pay within this fifteen-day period that the offence is deemed to be complete. Thus, the cause of action accrues on the 16th day from the date of receipt of notice by the drawer.

30. From this point, the complainant must act with diligence. As per Section 142(b) of the Act, the complaint must be filed within one month from the date on which the cause of action arises. This one-month period is crucial, and filing beyond this period would ordinarily render the complaint barred by limitation.

31. However, the legislature has also introduced a degree of flexibility. The proviso to Section 142(b) empowers the court to take cognizance of a complaint even after the prescribed period, provided the complainant satisfies the court that there was “sufficient cause” for not filing the complaint within time. This reflects a recognition that rigid adherence to limitation may, in certain circumstances, defeat the ends of justice.

32. It is true that the filing of a case under section 138 NI Act beyond statutory period has to be dealt with caution and any condonation of delay should be backed by cogent reason and I humbly agree to the decisions referred by Ld. Defense lawyer. The admitted position in this case is that the complaint was originally presented before the court of Ld. CJM, Malda within statutory period. After filing of the case, the accused appeared and raised his objection about jurisdiction of Malda Court in trying this instant case. It was pleaded by the accused that the impugned cheque was issued, presented and dishonoured within Gangarampur and hence the case should be tried by a Court having jurisdiction over Gangarampur. On the basis of objection raised by the accused, the court of Ld. JM and Ld. CJM, Malda passed an order of return of complaint to the complainant with a direction to present the same before the court having territorial jurisdiction over Gangarampur. The order of return was subsequently affirmed by the Ld. Addl. Dist. and Sess. Judge in the Criminal Revision. The basis of the order of return was the observations made by Hon’ble Supreme Court in **Dashrath Rupsing Rathore vs State of Maharastra AIR 2014 SCW 4798** in which the Hon’ble Court held that an offence u/s 138 NI Act should be tried by a court under whose jurisdiction the impugned cheque was deposited for encashment.

33. In view of the order of Ld. CJM, Malda the complaint along with all the documents were returned to the complainant for refiling the same before the court having territorial jurisdiction over Gangarampur which led to initiation of this case. In the order passed by Ld. CJM, Malda dated

21.03.2016 complainant was directed to re-file the complaint within 30 days i.e. 21.04.2016 (admitted position). It is pointed out by the Ld. Adv for the accused that the order of Ld. CJM, Malda was not followed by the complainant and he chose to file this instant petition on 01.08.2016 though no order of extension of time was granted to the complainant either by Ld. CJM, Malda or by Ld. Revisional Court. Accordingly, accused submitted that this case is barred by limitation as it is filed beyond the statutory period.

34. On scanning the case record I find that Ld. CJM, Malda on 21.03.2016 directed the complainant to file the complaint within 21.04.2016. But the said order was challenged by the complainant before the Court of Ld. Addl. Dist. & Sess. Judge vide Criminal Revision No. 27 of 2016. It is obvious that when an order was challenged before any higher forum, the LCR along with all the documents are called for by the Ld. Revisional Court and the LCR remains in custody of the Ld. Revisional Court till the disposal of the revision. Here, the revision filed before Ld. Dist. & Sess. Judgde, Malda was disposed on 16.06.2016. The order of Ld. District and Sessions Judge, Malda was not challenged and it is declared by both the parties on affidavit that at present no application in connection with this case is pending before the Hon'be High Court at Calcutta. Hence, it is presumed that till 16.06.2016 the complaint and other documents could not be handed over to the complainant.

35. It is revealed from the case record that after the disposal of the revision the original complaint and the documents were returned to the complainant on 16.07.2016 (ref. order no. 3 dated 21.09.2016 of this court and copy of order dated 08.07.2016 by Ld. JM, Malda). After receiving the complaint from Malda Court, the complainant filed the same before this court on 01.08.2016. In the case of **Dasharat Rupsing Rathore (Supra)** it was held that "all other Complaints (obviously including those where the accused/respondent has not been properly served) shall be returned to the Complainant for filing in the proper Court, in consonance with our exposition of the law. If such Complaints are filed/refiled within thirty days of their return, they shall be deemed to have been filed within the time prescribed by law, unless the initial or prior filing was itself time barred."

36. In view of the above decision of Hon'ble Supreme Court, it appears that this case is filed by the complainant well within the statutory period. As the original complaint and documents were returned to the complainant on 16.07.2016 it cannot be expected that the complainant could filed the case before this court any time earlier as per the order of Ld. CJM, Malda dated 21.03.2016. As per the order of Hon'ble Supreme Court in **Dasharat Rupsing Rathore** the case should be filed within 30 days from the date of

return of complaint. This case was filed on 01.08.2016 which is well within 30 days from the date of return i.e. 16.07.2016.

37. In view of the above discussion, I am of the opinion that the instant case is filed well within the statutory limit. Moreover, it also appears that the instant case is continuation of the earlier case. The original complaint filed before the Ld. CJM, Malda was annexed with the complaint filed before this court. It is also pertinent to mention here that the accused, after making his appearance before this court, raised the issue of limitation and prayed for discharged. This court vide order dated 18.09.2017 dismissed this instant case as not maintainable. The order was challenged before the Ld. Addl. Dist. & Sess. Judge Gangarampur vide Crl. Revision No. 07/17 in which the order of dismissal was set aside and the case was reverted back to this court for trial.
38. In view of the above, this court of the opinion that the instant case is not barred by limitation and hence no application of condonation of delay is required. Accordingly, the issue is decided in favour of the complainant.

POINT NO. II

39. This issue is framed upon whether or not legal preconditions of 138 NI Act are fulfilled by the complainant prior to filing of this case. Section 138 of N.I.Act read as under:-

Dishonour of cheque for insufficiency, etc., of funds in the account—

40. 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.

41. In order to maintain a complaint under Section 138 of the Negotiable Instruments Act, 1881, strict compliance with the statutory requirements is essential, as the provision creates a penal liability. Therefore, before evaluating the evidence produced by the parties, this court must go through the compliance of legal requirements for filing a case U/s 138 of the NI Act as mentioned in the proviso to the said section. Such requirements are as follows :

i) The cheque in question is presented to the bank within the period of 6 months from the date on which it was drawn (Proviso a):

In this instant case, the complainant alleges that the accused had issued the impugned cheque amounting to Rs. 3,70,045/- drawn on UBI, Gangarampur Branch in favour of the complainant which on presentation to the bank got dishonored. The complainant filed the original cheque bearing no. 474732 which is marked as **Exhibit 1**. On perusal of the original cheque (Exhibit 1), I find that the cheque was issued on 04.02.2012. The complainant also filed the counter part of deposit slip (**Exhibit 2)** from which it will appear that the cheque was deposited for encashment on 30.07.2012 i.e. within 06 months from the date of issuance of impugned cheque as mandated by the statute itself. It is nowhere alleged by the accused that the cheque was deposited on expiry of its validity. Therefore, it is clear that the impugned cheque was presented to the bank well within six months of its issuance.

ii) The payee makes a demand for payment of the said amount of money by sending a notice in writing to the drawer within 30 days from the receipt of information by him from the bank regarding return of the cheque as unpaid (Proviso b).

The complainant has filed cheque return memo which were marked as **Exhibit 3**. It appears from the document that the fact of dishonor of cheque was endorsed by the bank on 30.07.2012 itself i.e. on the date of presentation of cheque. **Exhibit 4** i.e. the demand notice dated 02.08.2012 was sent to the accused by the complainant on 03.08.2012 by registry post. As per the proviso to section 138 NI Act, the demand notice should have been sent upon the accused within 30 days i.e within 30.08.2012 in this case and this complainant sent the demand notice on 03.08.2012. Therefore, it is clear that the notice was sent well within the period of 30 days from the intimation of dishonor received from the concerned bank.

iii) The drawer of such cheque fails to make payment of the said amount of money to the payee within 15 days of the received of the notice (proviso c).

42. It is admitted that the accused has not paid any amount to the complainant in respect of the cheque and the demand notice. Hence, this requirement is also fulfilled.

POINT NO. III

43. Point No. III was framed upon the question whether the impugned cheque was issued in discharge of existing liability or in discharge of any legally enforceable debt.

44. During argument, it was submitted by the Ld. Defense Lawyer that there was no transaction of sale of gold between the complainant and accused as alleged in the complaint. He submitted that the in a case under section 138 NI Act, the initial presumption lies in favor of the complainant that the impugned cheque was issued in discharge of a liability, but the complainant would be entitled to get the benefit of such presumption only if he is able to prove that he has capacity to give loan, financial assistance and in this present case ability to own 130.2 gms of gold ornaments. Ld. Advocate invited my attention an agreement dated 04.02.2012 which was produced by the complainant during his evidence allegedly documenting sale of gold by complainant to accused and issuance of the impugned cheque in leu of consideration money. According to Ld. Advocate, this so-called agreement produced by the complainant is extremely suspicious. It is pointed out that the stamp paper was purchased in the year 2005. According to Ld. Advocate, an agreement executed on a backdated stamp paper casts serious doubt on its genuineness. Ld. Defense lawyer argued that such documents are often created subsequently to give colour of legality to a non-existent transaction. According to Ld. lawyer the complainant must prove that there was actual delivery of gold. Complainant also has to prove that he was in possession of 130.2 gm of gold and pearl ornaments. It is submitted that until and unless the complainant could prove the actual transaction and the source of gold ornaments, the requirement of section 138 NI Act could not be fulfilled and presumption under section 139 does not come into play.

45. Ld. Defence Lawyer draws his support from the decision of **Hon'ble Calcutta High Court in M/s Sonodyne T. V. Company Ltd. vs Rajesh G Kalra, 2022 ACD 1032 (CAL)** where it was held that if there is no business transaction between the parties at any point of time or for a prolonged period, issuance of impugned cheque after a considerable period indicates that the cheque was issued for security purposes and it was misused by the complainant.

46. Ld. Advocate for the accused also referred the decision of Hon'ble Calcutta High Court in **M/s Rajco Steel Enterprises vs Kavita Saraff and another 2023 ACD 213 (CAL).** In this referred case, the accused was acquitted on the ground that there was no valid documentary evidence from the complainant side to prove the legally enforceable date on the part of the accused. It was held that the evidence adduced by the prosecution leads to several doubts regarding veracity of chain of events sought to be projected by prosecution which demolish the standard of pre-ponderance of probability.

47. Ld. Advocate for the accused pointed out that the complainant has not adduced evidence of any supporting documents to prove the transaction. The witnesses to the transaction are not brought before the court and hence according to Ld. Defence Lawyer the complainant cannot claim benefit of presumption u/s 139 of NI Act. By referring to the decision of Hon'ble Kerala High **Court D. Jyothish Kumar vs P. Sunil 2021 ACD 679 (Kerala)** he argued that existence of legally enforceable date has to be proved by the complainant. In absence of any proof regarding legally enforceable debt, the presumption of section 139 NI Act cannot apply in favour of the complainant. In the referred case, the accused was acquitted as the complainant could not establish that there was a long-standing acquaintance between them which prompted the complainant lent a huge sum of money to the accused and in the circumstances, in absence of full proof of evidence complainant is not entitled to draw any presumption.

48. On the same point Ld. Advocate for the accused also referred decisions of Hon'ble Gujrat High Court in **Rao Maheshkumar Govindbhai vs. State of Gujrat and others 2022 ACD 770 GUJ** in which the accused was acquainted as the complainant failed to prove existence of legally enforceable date.

49. Further, reliance was placed by the defense upon the case of **Chloride Power Systems and Solutions Limited v. State of West Bengal and another 2023 ACD 299 (CAL)** which again affirms the position of law that the complainant must prove the existence of legally enforceable debt. The underlying principle as held in the case is that if the complainant failed to prove satisfactorily about the transaction between himself and the accused, the drawer of the cheque is not bound to make any payment.

50. During argument, Ld. Advocate for accused submitted that this complainant has to prove that he has capacity to sale 130.2 gms of gold to the accused. But the complainant has not filed any document to prove that he was the owner of gold amounting to 130.2 gm and hence, presumption under section 139 does not arise in favour of complainant. In this context, **Hon'ble Gujrat High Court in Mahesh Vai Ambala Patel vs State of**

Gujrat and others, 2022 ACD 110 (Gujrat) held that the complainant has to prove that he had sufficient capacity to lent money to the accused. It was further held that unless the complainant proves his capacity to enter in the alleged transaction with the accused, he cannot claim benefit of presumption u/s 139 NI Act. This case was also referred by the Ld. Defense lawyer during argument.

51. On the same point decision of Hon'ble Madras High Court in **Fathimuthu Bibi vs S. Venkatesh 2025 ACD 1029** was also referred wherein the conviction of the accused was set aside as the complainant failed to establish his case that he had enough resources to extend loan to the accused. Moreover, the complainant also had not furnished income tax as proof of his claim that he had wherewithal to extend such huge amount. It was held that the complainant had to establish his case that he had enough resources to extend loan supported by documentary proof.
52. Ld. Defense lawyer also placed his reliance upon the decision of Hon'ble Madras High Court in **M. Sampathkumar vs A. K. Khaja Imam 2021 ACD 649 (MAD)** in which it was held that the issuance of cheque by the accused was doubtful as the complainant failed to prove the details of money borrowed by the accused. In the referred case the accused rebutted presumption of pre-ponderance of probability and shifted the onus upon the complainant.
53. On the same point Ld. Advocate referred to the decision of Hon'ble Kerala High Court in **Raphy C. L vs Reji Thomas and another 2019 ACD 972 (Kerala)** wherein it was held that standard of proof required for rebutting the presumption under 139 of the Act is not as high as that required of the prosecution. So long as the accused can make his version reasonably probable, the burden of rebutting presumption would stand discharge.
54. Ld. Adv for the accused further referred to the case of **Basalingappa vs Mudibasappa, 2019 Law Suit (SC) 1037** wherein the Hon'ble Apex Court held that to rebut presumption, it is open for the accused to rely on evidence lead by him or he can also rely on the materials submitted by the complainant in order to raise a probable defence. It was held that interference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.
55. It was argued by the defense that the complainant of this case could not prove his capacity to sell 130.2 gm of gold ornaments to the accused and hence the accused is liable to be acquitted. Ld. Advocate pointed out that in this case the complainant had not submitted any contemporaneous account entries, invoices or independent witnesses to prove the alleged transaction. Regarding the cheque, the defence asserted that it was issued as a blank

signed cheque for a different purpose, e.g as security in a transaction involving a third party namely Prantik Prakashani. Allegedly, the complainant has misused the cheque by filling in the amount and presenting it for encashment. The lack of explanation as to how the complainant came into possession of the cheque further probabilism the defence version. It is argued by the Ld. Defense lawyer that the statutory presumption under Section 139 is rebuttable and the accused is only required to raise a probable defence, not to prove his case beyond reasonable doubt. By demonstrating that the alleged transaction is doubtful and unsupported by independent evidence, the accused discharges his initial burden, thereby shifting the onus back to the complainant.

56. The defence relied on the principle that if two views are possible, the one favourable to the accused must be adopted. Ld. Advocate for the accused also emphasized that penal liability under Section 138 cannot be secured unless the existence of a legally enforceable debt is established beyond doubt. Suspicious circumstances surrounding the agreement, lack of corroboration and plausible explanation regarding issuance of cheque collectively create reasonable doubt as argued by the Ld. Defence Lawyer.

57. Per contra, the submission of the complainant is that all foundational ingredients of Section 138 stand fulfilled. The issuance of cheque by the accused is not denied and consequently the statutory presumption arises in favour of the complainant under Sections 118 and 139 of the Negotiable Instruments Act that the cheque was issued in discharge of a legally enforceable debt or liability. The complainant has further fortified her case by producing a written agreement executed on stamp paper showing the transaction of sale of gold to the accused. The complainant submitted that the stamp paper was brought in the name of accused by the accused himself and hence the complainant cannot suffer prejudice for the back dated stamp paper. According to complainant, the existence of a written document acknowledging liability significantly strengthens the presumption under Section 139.

58. Complainant further argued that the defense of the accused that cheque was issued as a “blank security cheque” is legally untenable unless it is supported by cogent evidence. According to complainant, a blank cheque, if voluntarily signed and handed over, carries an implied presumption. According to complainant, this accused has failed to produce any material to substantiate his claim about any third-party transaction or to show that the complainant was not the holder in due course. Complainant also pointed out that the defence story about handing over the impugned cheque to the complainant for the purpose of delivering the same to a third party is not supported by any cogent evidence. Moreover, it is highly improbable that

the complainant coincidentally visited the shop of accused on the Sunday evening on the relevant date when the impugned cheque was being 'prepared' up by the accused in favour of third party. By referring to the evidence of DW 2 complainant argued that the shop of accused remains close on Sunday which is admitted by the defence witness and therefore the chances of visiting the shop of accused by complainant for the purpose of purchasing book on Sunday evening is very rare. Moreover, the accused did not explain why he failed to take any step when the impugned cheque was not handed over to the third party by the complainant.

59. Complainant argued that mere denial of transaction or liability does not rebut the statutory presumption. The accused must bring on record a probable defence, either by direct evidence or by demonstrating serious inconsistencies in the complainant's case. According to complainant, in the present case the existence of a written agreement, issuance of cheque, dishonour, and statutory notice cumulatively establish the offence.

60. It is further argued that the complainant used to purchased books from the shop of accused namely Subhas Library and for that purpose accused and complainant was previously acquainted and they developed a relationship faith and trust. Owing to such relationship, previously in the year 2009 the accused borrowed Rs. 60000/- from the complainant and as a security the accused issued a cheque bearing no. 0379238 of SBI, Rajibpur Branch. At that time, the accused had repaid the said amount within a short period and the cheque which was issued by the accused as security at that time was still kept under the custody of the complainant (**Exhibit 8**). Complainant argued that it was never the intention of the complainant to misuse any cheque issued by the accused for which the cheque amounting to Rs. 60000/- was kept safely in his custody till date. Thus, the complainant prayed that on the question of merits, the prosecution case stands proved beyond reasonable doubt and the accused is liable to be convicted.

61. A "legally enforceable debt or liability" is the very foundation of an offence under Section 138. It means a debt or liability which is valid, subsisting and recoverable by law on the date of issuance of the cheque. In other words, the obligation must arise out of a lawful transaction and must be capable of being enforced through a court of law. The scheme of the Negotiable Instruments Act, incorporates important statutory presumptions under Sections 118 and 139 to facilitate the efficacy of cheque transactions and to ease the evidentiary burden of the complainant.

62. Section 118 lays down general presumptions as to negotiable instruments. In the context of cheque dishonour cases, the most relevant is the presumption that every negotiable instrument was made or drawn for consideration and that it was executed on the date it bears. This means that

once execution of the cheque is admitted or proved, the court shall presume, unless the contrary is shown, that the cheque was issued on the date as mentioned in the cheque and in favour of the payee.

63. Section 139 of Act provides a specific presumption in favour of the holder of a cheque. It mandates that the court shall presume that the cheque was received by the holder for the discharge, in whole or in part, of any debt or other legally enforceable liability. This presumption is mandatory in nature, though rebuttable.

64. These presumptions significantly reduce the burden on the holder of the instrument, particularly in proceedings under Section 138 of the Act. Once the execution of the cheque is admitted or proved, the court will presume consideration and other attendant facts under Section 118. The burden then shifts to the accused to rebut these presumptions by bringing on record such evidence which would make the non-existence of debt or liability probable. A case under section 138 NI Act is different from other criminal cases where in accused is treated as innocent till the guilt is proved and the burden is upon the prosecution to prove the guilt of the accused. Reversely, in a case under section 138 NI Act the onus is on the accused to prove his innocence.

65. The scope and nature of these presumptions have been authoritatively explained by the Hon'ble Supreme Court in **Rangappa v. Sri Mohan**, **AIR 2010 SUPREME COURT 1898**, wherein it was held that the presumption under Section 139 includes not only the issuance of the cheque but also the existence of a legally enforceable debt or liability. The Court further clarified that the accused can rebut this presumption on the standard of "preponderance of probabilities," and not beyond reasonable doubt.

66. This position was earlier considered in in **Hiten P. Dalal v. Bratindranath Banerjee, (2001) 6 SCC 16,** where it was observed that because both Sections 138 and 139 require that the Court `shall presume' the liability of the drawer of the cheques for the amounts for which the cheques are drawn, it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption has been established. 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. Such a presumption is a presumption of law, as distinguished from a presumption of fact which describes provisions by which the court may presume a certain state of affairs.

67. In this context, further reliance can be placed on **Prahald Singh vs. State and another 2021 ACD 939 (Del)** where it was held that the cheque signed by the accused raised presumption unless contrary is proved that the holder of the cheque received said cheque for discharge, in whole or in part, of

debt or other liability and onus is on accused to rebut presumption by leading evidence.

68. Similarly, in **Muni Lal (Kanoongo) vs. Manisha Chaudhury, 2022 ACD 145 (P&H)** it was held that when the accused had not denied his signature on the cheque and accused also had not come out with a convincing explanation as to how the cheque came in the hands of the complainant, his conviction is proper.

69. The same position of law was reiterated in the case of **K.N. Beena vs Muniyappan and Another reported in AIR 2001 SC 2895.** Hon'ble Apex Court held that, under Section 118, unless the contrary was proved, it is to be presumed that the Negotiable Instrument (including a cheque) had been made or drawn for consideration. Under Section 139 the Court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge, in whole or in part of a debt or liability. Thus, in complaints under Section 138, the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused.

70. In the case of **Bir Singh vs. Mukesh Kumar reported in (2019)4SCC 197 Hon'ble Supreme Court** held that, a meaningful reading of the provisions of the Negotiable Instruments Act including, in particular section 20, 87 and 139 makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduced evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is also held in this case that it is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provision of Section 138 would be attracted.

71. As per the explanation to section 138 NI Act "debt or other liability" means legally enforceable debt or other liability. It is the case of the complainant that accused purchased 130.2 gms of old gold from the complainant. Complainant filed two written agreements between himself and the accused dated 04.02.2012 and 25.04.2012 to prove the transaction. However, none of these agreements were admitted in evidence. Complainant failed to bring the witnesses of the agreement before this Court. But the defence has thoroughly cross examined the complainant regarding the agreement dated 25.04.2012 and also referred those agreements in the course of argument to convince the Court that the agreements were executed on back dated stamp paper which shows its illegality. Therefore, the Court has to examine the said agreement dated 25.04.2012, if not as a proof of the transaction, but to determine the conduct of the accused. It is significant to note here that

though the accused had challenged validity of the agreement dated 25.04.2012, but he did not deny his signature on the agreement. It was never explained by the accused how the complainant got his hands on a stamp paper of 2005 bought in the name of accused and how the signature of accused is obtained on such stamp paper.

72. In a case under section 138 NI Act, the complainant gets benefit of presumption under section 139. Once the impugned cheque was produced from the custody of the complainant and the signature of the accused in the cheque is not disputed, the presumption under section 139 arose in favour of the complainant. In this case also, the impugned cheque bears the name of the complainant as payee and it is not disputed that it is the signature of accused in the cheque. Hence, as per section 139 NI Act the presumption arose in favour of the complainant that the cheque was issued in discharge of legally enforceable debt.

73. Now the burden shifts on the accused to rebut the presumption. It is the case of the accused that he was the owner of a book shop namely Subhas Liabrary which was engaged in business dealings with one Prantik Publishers of Kolkata. Accused stated in his evidence that the impugned cheque was actually issued in favour of Prantik Prakashani as security towards payment of advance order. Accused further stated that on 04.12.2011 this complainant visited the shop of accused to purchase some books and at that time the accused was preparing the impugned cheque for Prantik Prakashani. Accused stated that the complainant assured him that he will hand over the cheque to Prantik Prakashani in Kolkata as he is travelling to Kolkata on the same night. Accused alleged that on such assurance, he handed over the blank signed cheque to the complainant which was eventually misused by him. This is the overall explanation given by the accused about the possession of complainant over the impugned cheque.

74. The accused had admitted his signature on the impugned cheque but the clarification of accused regarding handing over the impugned cheque to the complainant and subsequent misuse of the same does not seem to be very convincing to this Court. The accused claimed that the impugned cheque was actually issued in favour of Prantik Prakashani but in the impugned cheque name of the drawee is not Prantik Prakashani but this Complainant. It is hard to believe that the accused issues blank signed cheque and uses it for business transaction and then keep no track of the blank cheque. Accused stated (ref para 13 of written examination in chief of DW1) that he ordered some book from Prantik Prokashoni. The accused also mentioned the valuation of pre ordered book in his written evidence but still he kept the amount portion of the impugned cheque blank for an unknown reason.

Accused failed to explain why he did not mention the name of Prantik Prokashani in the impugned cheque as payee, especially, when it was meant to be issued for Prantik Prokashani. It is also not explained why the amount portion was blank when the accused were aware of the cost of the books. The ledger (**Exhibit B**) sheet produced by the accused though admitted in evidence but it is not formally proved. No one from the Prantik Prokashani was called to adduce his evidence to substantiate the claim of accused that they were engaged in business transaction at the relevant time or that they used to accept blank cheque from the accused as security or that books were actually pre ordered by the accused from them. Moreover, the accused also did not file any receipt or voucher to prove that he ordered books from Prantik Prokashani on 07.12.2011 and 24.12.2011 as claimed in his written examination in chief. It is also pertinent to mention here that the accused also did not file any receipt counterpart to prove that on 04.12.2011 complainant visited the shop of accused and purchased books therefrom.

75. The accused also did not make any explanation as to why he did not connect with Prantik Prokashani subsequently to check whether they actually received the cheque from complainant. It is also not explained why the accused did not ask for return of the cheque from Prantik Prokashani when he made payments to them in cash or otherwise. Further it was not explained by the accused why he did not take any step when the impugned cheque had gone out of his possession and was not handed over to Prantik Prakashani.

76. It is also pertinent to mention here that the complainant produced two deeds (**Exhibit 5 and 6**). Both these deeds are sale deeds in favour of this accused. It is the case of the complainant that the accused kept two deeds as security in respect of the impugned cheque. Though the agreement dated 25.04.2012 is not considered as proof of transaction, but the accused could not explain how the certified copies of two deeds of accused came in possession of the complainant when they have no other dealings as claimed by accused.

77. Accused produced one of his employees namely Pintu Sarkar as DW2. He deposed that he was present at the shop when the impugned check was handed over to the complainant to deliver it to Prantik Prokashani. According to Ld. Advocate for the accused, the evidence of DW2 is of immense importance as he appeared as a neutral party and deposed about the actual incident. LD. Advocate for accused referred to decision of **O.C. Doegar vs. Ganesh Dutta Sharma, 2011 ACD 1282 (HP).** In this case it was held that when the accused pleaded that the cheque was misplace and misused, evidence of employees are relevant for the just decision of the case.

78. The defence of “misuse of cheque” is a recognised defence in a case under section 138 NI. Act, but it is not sufficient to merely raise such a plea; it must be supported by cogent, consistent and probable evidence. Where the accused takes the specific plea that the impugned cheque was misused by the complainant, the primary burden lies upon him to establish the foundational facts of such mishandle. The accused should give a clear, credible and convincing account of the circumstances under which the cheque went out of his possession. This court wants some level of contemporaneous behavior, such as filing a general diary, directing stop payments, or at the very least offering a coherent account of how misuse was made feasible.
79. If, in such a situation, the accused himself fails to inspire confidence, the evidentiary value of the supporting witness, such as an employee, becomes significantly weak. A corroborative witness cannot improve or repair a fundamentally unreliable version of the principal witness. The testimony of an employee is generally treated as an interested or dependent witness. While such evidence is not to be discarded outright, it is subjected to careful scrutiny and ordinarily requires independent corroboration from reliable circumstances.
80. In this context, when the accused’s own evidence suffers from several inconsistencies and fails to establish credible or believable defence, the employee’s testimony cannot, by itself, discharge the reverse burden cast upon the accused. The evidentiary value of accused’s testimony is much higher than any other supporting witness. When the core of the defence is found hollow, the ancillary evidence loses much of its persuasive force. It is true that the accused need not to prove his defence conclusively. For an accused the standard is “preponderance of probability”. A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence that the Court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the prudent man.
81. Mere denial or unsubstantiated explanations on the part of the accused is not sufficient to rebut the presumption raised in favour of the complainant. The acts of the accused to hand over blank signed cheque to the complainant and his subsequent activities is not appearing to be believable as discussed above. All the unanswered questions and unexplained facts raised serious doubt on the defense taken by the accused. The omission on

the part of accused to take appropriate measures regarding alleged missing cheque is not appearing to be convincing.

82. It is true that the complainant has to prove his capacity to sell 130.2 gms of gold to the accused. But the question of ability or capacity of complainant comes after the accused could successfully rebut the presumption raised under section 139 NI Act. If the accused is able to induct doubt in the mind of the Court about the existence of legally enforceable debt, the onus shifts upon complainant and under sch circumstances, complainant has to prove his capacity. The position of law does not warrant every complainant to prove his capacity at the first place. If the preponderance of probability acts in favour of accused, these questions emerge consequently. Once the signed cheque of accused is presented before the Court, the presumption under section 118 and section 139 is automatically drawn. The burden initially lies upon accused to rebut the presumption and once the presumption is rebutted, the burden again shifts back to complainant.

83. Coming back to this case, the defense of the accused does not inspire the confidence of the Court due to lack of documentary evidence and subsequent conduct of the accused. The circumstances as described by the accused regarding misuse of cheque is not believable due to several reasons already discussed above. Under such facts and circumstances, this Court holds that the accused has failed to rebut the presumption drawn in favour of the complainant under section 139 N.I Act. Complainant is not duty bound to prove the existence of legally enforceable debt conclusively. He is hereby protected by presumption under section 139 of the Act once the accused admits his signature or issuance of cheque. Once, the impugned cheque is produced from the custody of complainant presumptions under section 118 and 139 protects him. The burden basically lies upon the accused to inject doubt in the mind of the Court about nonexistence of legally enforceable debt. The induction of doubt is enough to rebut the presumption. But mere denial or presenting a theory of misuse of cheque is not enough without any convincing evidence. The conduct of the accused is doubtful enough and unreasonable which makes the entire defense case weak and improbable.

84. In view of the above discussions, it is presumed that the impugned cheque was issued by the accused in favour of the complainant in discharge of the legally enforceable debt or liability. Hence, this issue is decided in favor of the complainant.

POINT NO. IV

85. The next point taken up for consideration is that whether notice u/s 138 NI Act was properly served.

86. It is argued by the Ld. Advocate for the accused that the demand notice was not serve upon the accused. By referring to exhibit 4 series it was submitted by the Ld. Advocate that the A.D Card shows that one S. Sarkar had received the demand notice. According to Ld. Advocate, this is a trick played by the complainant by which the demand notice was made to receive by a person who is not a family member of the accused and hence it cannot be said that the statutory requirement of serving notice upon the accused is fulfilled. In this context, reliance was placed by the defense upon the decision of **Hon'ble Jharkhand High Court in Hariprakash Sing vs State of Jharkhand 2022 ACD 884 (JHA)** in which it was held that the essential facts of service of notice upon the accused has to be proved and unless this statutory requirement is proved by the complainant, the conviction of accused is bad in law.
87. In this case, Exhibit 4 series suggested that the complainant dispatched the demand notice to the accused on 03.08.2012. The accused took plea that he did not receive the notice. However, AD card (Exhibit 4) shows that the demand notice was received by one S. Sarkar. The accused submitted that he has no acquaintance with this S. Sarkar and hence, statutory requirement of serving demand notice to the accused was not fulfilled by the complainant.
88. In a proceedings under Section 138, the requirement is that the payee must "give" notice upon the accused demanding payment within the stipulated time. The emphasis here is on dispatch of the notice and not its actual receipt. In the case of **K. Bhaskaran vs Sankaran Vaidhyan Balan And Anr, IR 1999 SUPREME COURT 3762** it was stated that "The words in clause (b) of the proviso to Section 138 of the Act show that payee has the statutory obligation to `make a demand' by giving notice. The thrust in the clause is on the need to `make a-demand'. It is only the mode for making such demand which the legislature has prescribed. A payee can send the notice for doing his part for giving the notice. Once it is despatched his part is over and the next depends on what the sendee does."
89. In the decision of **V. Raja Kumari v. P. Subbarama Naidu (2004) 8 SCC 774** it was held that the presumption under Section 27 applies when the notice is sent to the correct address, and it is for the accused to prove that the notice was not really served and that he was not responsible for such non-service.
90. In **C C Alavi Haji vs. Palapetty Muhammed 2007 LawSuit (SC) 705** it was reiterated that when a notice is sent by registered post to the correct address of the drawer, a presumption of service arises under Section 27 of the General Clauses Act. The Court clarified that it is not necessary for the complainant to prove that the notice was actually served upon the accused.

If the accused claims non-receipt, the burden shifts upon him to rebut the presumption by leading cogent evidence. Mere denial is insufficient.

91. Thus, once the complainant proves that the notice was duly sent by registered post to the correct address, the court will presume proper service. The burden then shifts to the accused to rebut this presumption by credible evidence. This doctrine of deemed service plays a crucial role in ensuring that the penal provision under Section 138 of the NI Act is not rendered ineffective due to deliberate avoidance or manipulation by the drawer.

92. In the present case, **Exhibit 4** shows that the demand notice was sent to the correct address of the accused by registered post. The address was not denied by the accused. Hence, it can be presumed that the service was proper. Mere denial by the accused that he is not acquainted with S. Sarkar cannot rebut the presumption of deemed service. Accordingly, the presumption under section 27 of General Clauses Act will come into play and this Court do hold that the notice u/s 138 NI Act was properly served upon the accused.

93. In view if the above, this issue was also decided in favour of the complainant.

POINT NO. V

94. The last point left for discussion is whether complainant has succeeded to prove the offence u/s 138 NI Act against the accused beyond all reasonable doubt.

95. It was pointed out by the Ld advocate for the accused that in the demand notice the complainant did not mention about the sale of 130.02.gms of gold. According, to Ld. Advocate, demand notice must contain all the essential details of the debt. But the complainant did not provide any account of such debt in the notice.

96. I have perused the demand notice dated 02.08.2012 (Exhibit 4). It was held in the case of **Central Bank of India and Anr. v. Saxons Farms and Ors., [1999] 8 SCC 221** that the object of the notice is to give a chance to the drawer of the cheque to rectify his omission. The demand in the notice has to be in relation to 'said amount of money' as described in provision.

97. In the case of **K.R. INDIRA –VS- DR. G. ADINARAYANA, (2003) 8 SCC 300** Hon’ble Supreme Cour held that “Though no formal notice is prescribed in the provision, the statutory provision indicates in unmistakable terms as to what should be clearly indicated in the notice and what manner of demand it should make. In this referred case a consolidated notice was sent by the complainant which came up for challenge before the Hon’ble Court. It was observed that if notice is found to provide sufficient information envisaged by the statutory provision and there was a specific

demand for the payment of the sum covered by the cheque dishonoured, mere fact that it was a consolidated notice, and/ or that further demands in addition to the statutorily envisaged demand were also found to have been made may not invalidate the same.

98. Proviso (b) to Section 138 pinpoints two vital elements of the notice demanding payment. The notice must be in writing and it must demand payment of the "said amount of money" meaning the amount of the dishonoured cheque. The provision does not speak of any other requirement as to its content. In this present case, the notice (Exhibit 4) clearly describes the details of cheque, the amount to be paid and also makes a clear demand about payment. In my opinion, non-mentioning of context of debt is not fatal to the prosecution as the provision does not make it mandatory. It appears that the language of the notice (Exhibit 4) is clear, unambiguous and sufficient to make the accused understand the context and consequences.

99. It was also argued by the LD. Defense lawyer that in the cheque return memo (Exhibit 3) two possible reasons for dishonour of cheque were ticked by the Bank concern. Both "Funds insufficient" and "payment stopped by drawer" were marked as reasons for dishonour of cheque. Hence, the actual ground for dishonour of cheque was doubtful.

100. It is true that in Exhibit 3 two columns were ticked, but this is a mere technical fault and does not hit the core of the case. Once the complainant proves the foundational fact such as issuance of cheque, dishonour, service (or deemed service) of notice, and failure to pay within the stipulated period, the complaint ought not to be dismissed for trivial or technical defects. It is pertinent to mention here that the entire document i.e Exhibit 3 including tick mark in Code no. 1 is written with same ink but code no. 20 is written with a different. Be that as it may, both the grounds attracts offence under scetion1 38 NI Act.

101. By referring to Exhibit 5 and 6, Ld. Defense Lawyer argued that the complainant took two deeds of accused as security though he was not licensed to take mortgage of any property. It was also submitted that the complainant was a habitual pursuer of cheque bounce cases and during his life time he filed several other cases against several people under section 138 NI Act. Hence, the misuse of cheque by the complainant can be assumed.

102. In the cross examination of Complainant (PW1) it was admitted that the complainant filed many cases under section 138 NI Act. However, legally there is no bar. Nothing this there in the Statute to disentitle the complainant to pursue genuine cases. Hence, this defense of accused is also not convincing.

103. The court in preceeding points already held that legal requirements of section 138 NI Act are fulfilled by the complainant prior to filing of the case, the impugned cheques were issued in discharge of existing liability, the impugned cheques got dishonored and the notice u/s 138 was properly served. It was also held that this instant case is not barred by Limitation.

104. In view of all the discussions, it is clear that the complaint is successful in proving the offence u/s 138 of the Act against the accused beyond all shadow of reasonable doubt. Accordingly, the accused is held guilty of the office u/s 138 of the N.I.Act.

Hence,

It is

ORDERED

105. That the accused namely Prasenjit Bhowmik is found guilty of offence punishable under Section 138 of Negotiable Instrument Act and he is convicted under Section 255(2) of Code of Criminal Procedure.

106. Convict is taken into custody after canceling his bail bond.

107. The record be put up on second half for hearing on the point of sentence.

108. The convict be kept in intermediate custody till then.

Later:

109. The accused/convict Prasenjit Bhowmik is represented by his Ld. Advocate.

110. Heard Ld. Advocate on the point of sentence. He prays for minimum punishment or fine.

111. On the other hand, complainant submitted that the sentence should be adequate to meet ends of justice.

112. Hearing on the point of sentence is thus concluded.

113. Considering the overall facts and circumstances of this case along with status of the accused, I do not find it necessary to release the accused on probation of good conduct under section 325 and 360 Cr.P.C

114. The object of Section 138 of the Negotiable Instruments Act is primarily compensatory with a punitive element. Though Section 138 constitutes a criminal offence, its underlying purpose is not merely to punish the drawer of a dishonoured cheque, but to ensure credibility and reliability in commercial transactions by securing payment to the payee. Though the provision provides imprisonment for the accused but at the same time the intent of legislature to compensate the complainant cannot be overlooked. It was held in **Damodar S.Prabhu vs Sayed Babalal H 2010 (5) SCC 663** "it is quite evident that the legislative intent was to provide a strong criminal remedy in order to deter the worryingly high incidence of dishonour of cheques. While the possibility of imprisonment up to two

years provides a remedy of a punitive nature, the provision for imposing a `fine which may extent to twice the amount of the cheque' serves a compensatory purpose. What must be remembered is that the dishonour of a cheque can be best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments. The impact of this offence is usually confined to the private parties involved in commercial transactions".

115. Section 138 embodies a hybrid mechanism. While it criminalizes the act of cheque dishonour to maintain the sanctity of commercial transactions, its dominant purpose is to ensure that the complainant is adequately compensated.

116. Now, considering the facts and circumstances of the case, the nature of the transaction, the amount involved and long pendency of the case, this Court finds it appropriate to impose a sentence:

It is hereby

ORDERED

117. that convict Prasenjit Bhowmik is sentenced to undergo simple imprisonment of six months and to pay fine of Rs. 4,50,000/- (Rs. Four Lakhs Fifty Thousand) out of which Rs. 4,25,000/- to be paid to the complainant Swapna Dutta as compensation within one month from the date of judgment in default the convict is liable to undergo simple imprisonment for another three months.

118. A copy of this judgment be furnished to the convict free of cost.

Later

119. After pronouncement of above sentence, I have informed the convict that he has right to prefer appeal against this judgment before higher forum and that he is entitled to get legal aid at the expense of State to present his appeal through Legal Services Authority.

120. He submitted that he will prefer appeal.

121. The convict is at liberty to make formal application of bail. In such case, he will comply the provision of Section 437A Cr.P.C.

122. The case is thus disposed of in terms of the above.

123. Note in the register.

D/C by me

Saptabarna Sengupta(WB01164)
Addl. Chief Judicial magistrate,
Gangarampur at Buniadpur.
05.05.2026.

Saptabarna Sengupta(WB01164)
Addl. Chief Judicial Magistrate,
Gangarampur at Buniadpur.
05.05.2026.