IN THE COURT OF JUDICIAL MAGISTRATE, HALDIA, PURBA MEDINIPUR

Present : KAUSTABH BANDYAPADHYAY.
(J.O. Code no. W.B.01463)
Judicial Magistrate, Haldia.

C.R Case No.338 of 2019; CIS 338 of 2019
CNR No. : WBEM08-001409-2019

Alok Manna,
S/o Late Gourhari Manna of vill. & P.S – Bhabanipur,
P.O- Debhog, Purba Medinipur.
………………...Complainant

vs.

Dulal Pramanik,
S/o Late Amulya Charan Pramanik of vill.- Durgachak Block-C-26/3,
P.O + P.S – Durgachak, Purba Medinipur.
…………………Accused

Ld.Advocate for Complainant	Sri Samarpan Adhikary
Ld.Advocate for Accused	Sri Bimal Maji & Najrul Islam

Under Section 138 of the Negotiable Instruments Act
Date of delivery of Judgment 11/06/2026

JUDGMENT

The instant case is under section 138 of the Negotiable Instruments Act. This case was initiated on the basis of the written complaint, lodged by the complainant, Alok Manna.

The brief fact of the case, as alleged by the complainant, is that,-

(1) Accused Dulal Pramanik took a loan of Rs.4,00,000/- (***Four lakh only***) from the complainant. To discharge the liabilities to repay the loan, the accused issued two impugned cheques bearing nos.223437 & 223438 both dated 05.09.2019 drawn on Tamluk-Ghatal Central Co-Operative Bank Ltd., Haldia Branch for Rs.2,00,000/- each to the complainant. Accordingly, the complainant deposited the two impugned cheques on 06/09/2019 in his banker Punjab National Bank,

HPCC Branch. On 07/09/2019 he received two cheque return memos with information that the said two cheques have been dishonoured due to '***Funds insufficient***'.

(2) On 16/09/2019 the complainant sent a legal notice, demanding payment of the said amount within 15 days of the receipt of notice. On 17/09/2019 the same was delivered at proper postal address of accused (*postal track report filed & exhibited*).

(3) In spite of receiving the demand notice, accused neither repaid the money nor gave any reply to the demand notice of complainant. As such, cause of action arose on & from 02/10/2019 i.e., after the lapse of 15 days.

(4) As such, the complainant having no other alternative filed this case before the Ld. Additional Chief Judicial Magistrate- II, Haldia on 15.10.2019. Subsequently, the said case was transferred to this Court on 27.11.2019 for trial. S.A was done on 27.11.2019.

(5) The process was issued under section 138 of the Negotiable Instruments Act against the accused person. Thereafter, the accused person appeared before this Court and was enlarged on bail on 31.12.2019. The accused person was examined u/s 251 Cr.P.C on 08/02/2021. On being heard the substances of the accusation under section 138 of the Negotiable Instruments Act, the accused person pleaded not guilty and claimed to be tried by saying "nirdosh".

(6) Complainant got examined himself as PW1 & another PW2 was also adduced. The accused was examined under Section 313 CrPC on 10.02.2026.

(7) Accused did not adduce any defence witness and DW was closed on consent.

(8) Argument was heard in full on 04/06/2026.

PROSECUTION EVIDENCE :-

The complainant has adduced following witnesses:-

1.	P.W-1	Alok Manna (complainant)
2.	P.W-2	Shibu Bera (*Ld.Advocate of Haldia Sub-divisional Court*)

The complainant placed reliance upon the following exhibits:-

1.	Exhibit-1	The original cheque being no.223437 dated 05.09.2019 drawn on Tamluk-Ghatal Central Co-Operative Bank Ltd., Haldia Branch for Rs.2,00,000/-
2.	Exhibit-2	The original cheque being no.223438 dated 05.09.2019 drawn on Tamluk-Ghatal Central Co-Operative Bank Ltd., Haldia Branch for Rs.2,00,000/-
3.	Exhibit-3 Series	Two cheque return memos of Punjab National Bank, HPCC Branch both dated 07.09.2019
4.	Exhibit-4 Collectively	Two demand notices both dated 16.09.2019 along with postal receipts
5.	Exhibit-5 Collectively (**with objection**)	Two Track reports both dated 17.09.2019 (delivery confirmed)
6.	Exhibit-6 (**with objection**)	One hand written money receipt dated 16.05.2019.

DEFENCE EVIDENCE :-

The accused did not adduce any witness.

1.	D.W-1	N.A

The accused did not file any document to be marked as exhibit.

Depending on the evidence on record, the accused person was examined u/s 313 of Cr.P.C and he stated that this is a false case and claims himself to be innocent. During recording the version of the accused person being examined under Section 313 CrPC, the rule laid down by the Hon'ble Supreme Court in **Raj Kumar Singh @ Raju @ Batya vs. State of Rajasthan; AIR 2013 SC 3150** was followed, viz., *'The purpose of empowering the Court to examine the accused under Section 313, Cr.P.C is to meet the requirement of the principle of natural justice* ***audi alteram partem*** *(that no one should be condemned unheard).This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated against him and the Court must take note of such explanation. In a case of circumstantial evidence, the same is necessary to decide whether or not the chain of circumstances is complete'.*

Points for Consideration

1. Whether the cheque in question was issued by the accused person for payment of a sum of money to the complainant?
2. Whether the cheque in question was issued for the discharge, either in whole or in part of any debt or other legal liability?
3. Whether the case is barred by law of limitation?
4. Whether the demand notice was valid and legal one?
5. Whether the demand notice was properly served upon the drawer of the impugned cheque?
6. Whether the drawer failed to make the payment of the said amount to the payee within fifteen days of the receipt of such notice?
7. Whether the complainant's case is proved?
8. Whether the accused person is liable to be convicted?

Decisions With Reasons

Now, this Court is to analyze, assess and to take into account of the total evidence and materials on record to have a clear decision of the case.

During the course of argument, the Ld. Advocate for the accused submitted that the case against accused is totally false and fabricated and the accused person has been implicated falsely. According to the Ld Defence Counsel, the accused person is entitled to be acquitted from the alleged charges.

The Ld. Advocate for the complainant submitted that the complainant has proved his case and is entitled to get presumption of law that the cheque was issued for legal liability of the accused and the accused could not rebut the said presumption and so, according to him, the accused should be punished.

Point no. 3 :- Whether the case is barred by law of limitation?

The Ld. Advocate for the accused did not deny or dispute the period of limitation and did not advance any argument as to whether the case is barred by law of limitation. On perusal of the record it appears that the impugned cheques, Exhibits-1 & 2, were issued on 05.09.2019. The same were deposited within period of validity. Then both the cheques were dishonoured on 07.09.2019. Within 30 days thereof, the complainant sent a legal notice (***Exbt.4***) dated 16.09.2019 to the accused, raising demand of the amount to be paid within 15 days from the date of receipt of the notice. The said notice was legally served upon the accused on 17.09.2019 as appears from the track report (***Exbt.5***). But the payment was not made within 15 days thereof. So, cause of action arose on & from 02.10.2019. The case was to be filed within 01.11.2019. Complainant filed the same on 15.10.2019 i.e., well within statutory limitation period.

So, this Court finds and holds that the case is not barred by the law of limitation.

Thus, the point nos.3 is decided in favour of the complainant.

<u>Point nos. 4 & 5</u>:- **Whether the demand notice was valid and legal one? & Whether the demand notice was properly served upon the drawer of the impugned cheque?**

On perusing the demand notice dated 16.09.2019 it appears that complainant has specifically demanded Rs.4,00,000/- from the accused against the dishonoured impugned cheques. Though at the time of argument the defence pointed out that two words viz., '*part payment*' has been mentioned in the 3rd paragraph of the demand notice and agitated that this has created severe dilemma regarding claimed amount and claimed acquittal on this point. On going through the demand notice as a whole, I am of the reasoned opinion that, if the same is read between the lines, there is no such apparent ambiguity and the claimed amount & specification of the dishonoured cheques are so clear that the demand notice indeed appears to be legal & valid.

The accused has denied receipt of the demand notice. Now, on 10.02.2026 at the time of examination under Section 313 CrPC, the accused stated, '***<u>Yes, this is proper postal address of mine</u>***' on seeing the demand notice and the complainant has already produced the track report of demand notice to support delivery of the demand notice. In the case of ***Bhaskaran (K.) vs. Sankaran Vaidhyan Balan AIR 1999 SC 3762*** the Hon'ble Supreme Court has held that, *where a notice has been dispatched by post at the correct address, such notice shall be deemed to have been served on the sendee, unless the sendee proves that it was not really served and that he was not responsible for that non-service.* This is based on an interpretation of **Section 27** of the **General Clauses Act, 1897**. **<u>So, this Court finds and holds that the demand notice, Exhibit-3, has been properly served upon the accused at his proper postal address</u>**. On perusal of the said notice it appears that the said notice was drafted on 16.09.2019 and it was served on 17.09.2019 upon the accused person and 15 days time was given from the date of receipt of the notice to pay off the said amount. The accused got statutory period for making payment of the said amount but he did not pay off the said amount. So, this Court finds and holds that the said notice is valid, legal and properly served upon the accused person.

<u>Thus, the point nos.4 and 5 are decided in favour of the complainant.</u>

Point no. 6 :- Whether the drawer failed to make the payment of the said amount to the payee within fifteen days of the receipt of such notice?

It is an admitted position that the accused did not pay the said amount to the complainant within 15 days from the date of receipt of the demand notice.

Thus, the point no.6 is decided in favour of the complainant.

Point nos. 1, 2, 7 & 8 :-

 # Whether the cheque in question was issued by the accused person for payment of a sum of money to the complainant?

 # Whether the cheque in question was issued for the discharge, either in whole or in part of any debt or other legal liability?

 # Whether the complainant's case is proved?

 # Whether the accused person is liable to be convicted?

1. All the points being co-related and inter-linked with each other are taken up together for easy discussion.
2. Having heard learned counsel for the parties, this Court is of the view that it is essential to first outline the scope and intent of Chapter XVII (Sections 138 to 148) of NI Act which has been inserted by Act 66 of 1988 w.e.f. 1 st April 1989.
3. ***The Statement of Objects and Reasons of Act 66 of 1988 states***, "....to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of Criminal Appeal No.1755/2010 funds in the accounts or for the reason that it exceeds the arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers."
4. The provisions contained in ***Chapter XVII*** provide that where any cheque drawn by a person for the discharge of any liability is returned by the bank unpaid for the reason of the insufficiency of the amount of money standing to the credit of the account on which the cheque was drawn or for the reason that it exceeds the arrangements made by the

drawer of the cheque with the banker for that account, the drawer of such cheque shall be deemed to have committed an offence. In that case, the drawer, without prejudice to the other provisions of the said Act, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

5. Consequently, this Court is of the view that ***the intent behind introducing Chapter XVII is to restore the credibility of cheques as a trustworthy substitute for cash payment and to promote a culture of using cheques***. Further, by criminalizing the act of issuing cheques without sufficient funds or for other specified reasons, the law promotes financial discipline, discourages irresponsible practices and allows for a more efficient and timely resolution of disputes compared to the previous pure civil remedy which was found to involve the payee in a long-drawn out process of litigation.
6. Now, **once execution of cheque is admitted, presumptions under Sections 118 and 139 of the NI Act arise.**
7. In the present case, the cheque in question has admittedly been signed by the Accused. At the time of his examination under Section 313 CrPC on 10.02.2026, being referred to the two impugned cheques, the accused stated, '***The signatures are mine***'.
8. I am of the reasoned opinion that, once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arises against the accused. By this presumption, the law reinforces the reliability of cheques as a mode of payment in commercial transactions.
9. Needless to mention that the presumption contemplated under Section 139 of the NI Act, is a rebuttable presumption. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque [***Bir Singh vs. Mukesh Kumar, (2019) 4 SCC 197***].

10. To rebut this presumption, the accused stated that, '**<u>I am innocent. I cannot say how he got these two signed cheques of mine</u>**' [*refer to 313 dated 10.02.2026*]. This is one form of evasive denial. The accused must prove by preponderance of probability that complainant mischievously collected the impugned signed cheques of him and with ulterior motive, otherwise the burden will not shift.
11. In cross-examination the defence has brought in lime light that complainant did not withdraw the said Rs.4,00,000/- from his bank account and also that he does not file Income Tax Return. During argument, the defence has stressed upon the point that complainant had no financial capacity to lent Rs.4,00,000/- to the accused. He referred to cross-examination of PW1 dated 08.04.2024 i.e., '***My monthly income is about Rs.20,400/-. Then says that amount is not fixed and it varies in between Rs.20,000-25,000/- approximately. My elder son has passed Higher Secondary Examination and younger son is doing Diploma in Higher Secondary level'***.
12. This kind of defence has been discussed and analyzed in **<u>SANJABIJ TARI vs. KISHORE S. BORCAR & ANR., 2025 INSC 1158</u>** by the Hon'ble Supreme Court where the Hon'ble Supreme Court has reiterated that, 'Recently, the Kerala High Court in P.C. Hari vs. Shine Varghese & Anr., 2025 SCC OnLine Ker 5535 has taken the view that a debt created by a cash transaction above Rs. 20,000/- (Rupees Twenty Thousand) in violation of the provisions of Section 269SS of the Income Tax Act, 1961 (for short 'IT Act, 1961') is not a 'legally enforceable debt' unless there is a valid explanation for the same, meaning thereby that the presumption under Section 139 of the Act will not be attracted in cash transactions above Rs. 20,000/- (Rupees Twenty Thousand). Criminal Appeal No.1755/2010 Page 5 of 1920. **<u>However, this Court is of the view that</u>** any breach of Section 269SS of the IT Act, 1961 is subject to a penalty only under Section 271D of the IT Act, 1961. Further neither Section 269SS nor 271D of the IT Act,

1961 state that any transaction in breach thereof will be illegal, invalid or statutorily void. ***Therefore, any violation of Section 269SS would not render the transaction unenforceable under Section 138 of the NI Act or rebut the presumptions under Sections 118 and 139 of the NI Act because such a person, assuming him/her to be the payee/holder in due course, is liable to be visited by a penalty only as prescribed.*** Consequently, the view that any transaction above Rs.20,000/- (Rupees Twenty Thousand) is illegal and void and therefore does not fall within the definition of 'legally enforceable debt' cannot be countenanced. **Accordingly, the conclusion of law in P.C. Hari (supra) is set aside**.'

13. Now, regarding defence of financial capacity of the complainant, in **SANJABIJ TARI vs. KISHORE S. BORCAR & ANR., 2025 INSC 1158** the Hon'ble Supreme Court has reiterated that, *'It is pertinent to mention that in the present case, the Respondent No.1- Accused has filed no documents and/or examined any independent witness or led any evidence with regard to the financial incapacity of the Appellant-Complainant to advance the loans in question. For instance, this Court in Rajaram S/o Sriramulu Naidu (Since Deceased) Through LRs. vs. Maruthachalam (Since Deceased) Through LRs., (2023) 16 SCC 125 has held that **presumptions under Sections 118 and 139 of the NI Act can be rebutted by the accused examining the Income Tax Officer and bank officials of the complainant/drawee**.'* Here, the accused did not examine any such witness to prove financial incapacity of the complainant.

14. The Hon'ble Supreme Court in its judgment in ***APS Forex Services Private Limited (supra)*** laid down that, presumption under Section 139 of the NI Act is rebuttable and when the same is rebutted, the onus would shift back to the complainant to prove his financial capacity, more particularly, when it is a case of giving loan by cash.

15. The accused can always rely on material and/or evidence filed by the complainant in order to raise a probable defence which creates doubts

about the existence of a legally enforceable debt or liability (***Rangappa vs. Sri Mohan, (2010) 11 SCC 441***).

16. Here, the accused has failed to rebut the presumption set against him and it stands that both the impugned cheques were issued by him in discharge of lawful liability and there remains a due amount to be paid by him.
17. So, the impugned cheques were properly executed to repay the loan taken from the complainant and the complainant is entitled to get presumption u/s 118/139 of the N.I Act.
18. **Thus, this Court finds and holds that the two impugned cheques were issued by the accused for payment of money to the complainant and the same were issued for the discharge of legal liability of the accused**.
19. It further appears that the impugned cheques were properly deposited in the bank but were dishonoured for '***Funds insufficient***' in the account of accused. The said fact of dishonour of cheques was brought into the notice of the accused vide the demand notice and it was duly served upon the accused (***Deemed to be admitted as the postal address is admittedly proper***). As such, I am of the reasoned opinion that, the complainant has proved his case and the accused is liable to be convicted.

Thus, the point nos.1, 2, 7 and 8 are decided in favour of the complainant .

After giving anxious thought over the matter, this Court finds and holds that the accused has committed the offence punishable u/s 138 of Negotiable Instruments Act. ***All the points are thus answered accordingly***.

Resultantly, the accused is liable to be convicted for the offence punishable under Section 138 of Negotiable Instruments Act, 1881.

Hence, it is

o r d e r e d,

that the accused **Dulal Pramanik** is **found guilty** of committing the offence punishable under Section 138 of the Negotiable Instruments Act.

Accordingly, he is convicted under Section 255 (2) of the Code of Criminal Procedure,1973 for the offence committed under Section 138 of Negotiable Instruments Act,1881.

The accused is taken into custody.

This is an economic offence and if the accused is released on probation, the purpose of the Act would be frustrated. So, this Court would not like to take recourse of section 360 of Cr.P.C. or to release him on probation under the provision of Probation of Offenders Act. This Court further thinks that the accused should be punished according to law.

Accordingly, the accused is convicted of the offence under section 138 of Negotiable Instruments Act,1881 and the convict is sentenced to **simple imprisonment for a term of 01(one) month and also to pay compensation of Rs.5,20,000/-** (Rupees Five Lakhs Twenty Thousand only), **within thirteen months in equal monthly installments of Rs.40,000/- each starting from June, 2026, to the complainant.**

The cumulative amount in two cheques is Rs.4,00,000/- and more than five years (*almost six years*) have elapsed from the date of issuance of the cheques (***05.09.2019***) which merit imposition of interest to tune of 5% per annum which comes approx Rs.(400000 % 5 x 6)=Rs.1,20,000/- (for six years) totaling of Rs.5,20,000/- (Rupees Five Lakhs Twenty Thousand only) is awarded to the complainant.

The convict shall undergo simple imprisonment for a term of 01(one) year more, in default of the payment of such compensation in full, after thirteen months as explained before.

Let the copy of the judgment and order be given to the convict free of cost.

It is informed to the convict about his right to prefer appeal with legal aid and he responses that her Ld. Advocate will take appropriate steps. Let the copy of judgment be sent to the Ld. Chairman, S.D.L.S.C, Haldia for appointment of Ld. Advocate for the convict, if needed.

Let the copy of judgment be sent to the D.M., Purba Medinipur for information.

Thus, the case is disposed of on contest.

Dictated & Corrected by me.
SD/-
(Kaustabh Bandyapadhyay)
Judicial Magistrate, Haldia.

SD/-
Judicial Magistrate, Haldia
Purba Medinipur
11/06/2026