

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

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

CRR 1371 OF 2024

**TUHIN GANGOPADHYAY
-VS-
STATE OF WEST BENGAL AND ANR.**

For the Petitioner : Ms. Sima Ghosh
Mr. Sayantan Rakshit

For the Opposite Party No. 2 : Mr. Sujoy Sarkar

Reserved on : 25.09.2026

Pronounced on : 30.09.2026

UDAY KUMAR, J.: –

1. By invoking the revisional jurisdiction of this Court under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973, the petitioner, Tuhin Gangopadhyay, has called in question the legality, correctness, and propriety of the concurrent findings of guilt, conviction and sentence recorded in the impugned judgment and order dated 22.02.2024 by the Learned Additional Sessions Judge, 1st Court, Suri, Birbhum, in Criminal Appeal No. 28 of 2021.
2. The First appellate court, by the impugned judgment, affirmed the judgment of conviction and sentence dated 22.09.2021 passed by the Learned Judicial Magistrate, 3rd Court, Suri, Birbhum, in Complaint Case No. 28 of 2016 under Section 138 of the Negotiable Instruments

Act, 1881, (hereinafter referred to as the "N.I. Act"), though with a modification reducing the substantive imprisonment period from three months to seven days and enhancing the fine/compensation component from Rs. 30,000/- to Rs. 35,000/- with a default stipulation.

3. The genesis of the litigation dates back to the year 2016, when the opposite party no. 2 (complainant) instituted a formal complaint case, registered as C. Case No. 28 of 2016, before the Court of the Learned Chief Judicial Magistrate, Suri, Birbhum. The core accusation levelled by the complainant was that the petitioner had approached him on 01.08.2015, seeking financial assistance of Rs. 30,000/- for his cloth business run under the trade name and style "Madhukari Textile", promising repayment within three months. To discharge this alleged existing debt, the petitioner is stated to have issued a self-signed cheque bearing No. 442632 dated 06.11.2015 for Rs. 30,000/- drawn on the State Bank of India, Suri Main Branch.
4. When the complainant presented the said cheque for encashment through his banker (Allahabad Bank, Suri Branch) on 06.11.2015 / 09.11.2015, it was returned unpaid with the bank memo citing the reason: *"Payment stop by attachment order/Court order"* (or stop payment instructions). Following such dishonour, the complainant caused a statutory demand notice to be issued through his advocate on 04.12.2015, which was received by the petitioner on 07.12.2015. Despite the receipt of the said demand notice, no payment was forthcoming within the statutory 15-day window, prompting the

complainant to file the criminal complaint under Section 138 of the N.I. Act.

5. Upon taking cognizance, the Learned Magistrate issued summons, secured the appearance of the petitioner, and formally explained the particulars of the accusation under Section 251 of the Cr.P.C. on 29.08.2016. The petitioner pleaded not guilty and claimed to be tried, setting up a distinct and categorical defence that neither had he borrowed any money nor had issued the cheque in question to the complainant. Instead, he claimed that on 06.11.2015, while returning home, he lost his money bag containing valuable documents, including his blank self-signed cheque, and promptly lodged a General Diary (G.D. Entry No. 334 dated 06.11.2015) at Suri Police Station, alongside notifying his bank to stop payment.
6. During the course of the trial, the complainant examined himself as P.W. 1 and brought on record documentary evidence including the disputed cheque, return memo, legal notice with postal receipts, A/D cards and reply to the notice (marked as Exhibits 1 to 4). In defence, the petitioner examined himself as D.W. 1 and the Deputy Branch Manager of the State Bank of India, Suri Branch as D.W. 2, besides exhibiting the copy of the General Diary and bank communications/stop payment instructions (Exhibits D1 to D3).
7. When examined under Section 313 of the Code of Criminal Procedure, the petitioner stoutly denied the incriminating circumstances, pleaded absolute innocence, and took a specific defence that he had lost his money bag containing a blank signed cheque leaf on 06.11.2015, the

very date appearing on the cheque, and that he had immediately lodged a contemporaneous General Diary (G.D. Entry No. 334) at the Suri Police Station while giving stop-payment instructions to his bank.

8. Upon conclusion of the trial, the Learned Judicial Magistrate, 3rd Court, Suri, by judgment dated 22.09.2021, held that the petitioner failed to rebut the statutory presumptions under Sections 118 and 139 of the N.I. Act. Consequently, the Trial Court convicted the petitioner under Section 255(2) of the Cr.P.C. and sentenced him to undergo simple imprisonment for three months, alongside directing him to pay the cheque amount of Rs. 30,000/- as compensation under Section 357(3) of the Cr.P.C., with a default sentence.
9. Aggrieved by the judgment of conviction, the petitioner preferred Criminal Appeal No. 28 of 2021 before the Sessions Court at Suri. The Learned Additional Sessions Judge, 1st Court, Suri, Birbhum, upon re-appreciating the evidence, concurred with the findings of the Trial Court regarding the execution of the cheque in discharge of an existing debt/liability and the drawing of statutory presumptions in favour of the complainant/Opposite Party No. 2. However, vide judgment and order dated 22.02.2024, the first appellate court modified the sentence passed by the Trial Court, thereby reducing the substantive imprisonment period to 7 days and enhancing the financial penalty to a fine of Rs. 35,000/- to be disbursed as compensation under Section 357(1) of the Cr.P.C., with an alternate simple imprisonment of 15 days in default, alongside recovery mechanisms under Section 421(1) read with Section 431 of the Cr.P.C.

- 10.** Being dissatisfied with the judgments and orders passed by both the Magistrate as well as the Sessions Court, and contending that the findings of the said courts suffer from gross mis-appreciation of evidence, non-consideration of foundational legal principles regarding legally enforceable debt, and procedural flaws, the petitioner has approached this Hon'ble Court by filing the instant criminal revision petition, thus invoking the inherent powers seeking quashing and setting aside of the said two impugned concurrent judgments of conviction and sentence.
- 11.** The petitioner challenges the judgments on the core premise that the trial and first appellate courts committed grave perversity by failing to recognize that the statutory presumptions under Sections 118 and 139 of the N.I. Act was successfully rebutted by contemporaneous, unimpeachable evidence (G.D. Entry No. 334 dated November 6, 2015), that the complainant failed to establish a legally enforceable debt or his own financial capacity, and that mechanical reliance on Apex Court precedents like *Uttam Ram v. Devinder Singh Hudan & Anr.* [(2019) 10 SCC 287] resulted in a gross miscarriage of justice, necessitating urgent revisional intervention and an order of acquittal.
- 12.** Assailing the said concurrent judgments of conviction and sentence, Mr. Sayantan Rakshit, learned counsel appearing for the petitioner, contended that both the Trial Court and the First Appellate Court committed fundamental errors of law by misplacing the burden of proof and exhibiting egregious perversity in appreciating the materials on record.

- 13.** Mr. Rakshit vehemently argued that right from the inception, from the reply to the statutory demand notice, through his Section 313 Cr.P.C. examination, and finally by stepping into the witness box as D.W. 1, the petitioner maintained a consistent, unshakeable defence. He submitted that on the very day the cheque was allegedly lost (06.11.2015), the petitioner promptly lodged General Diary Entry No. 334 at Suri Police Station and instructed his bank to stop payment, establishing a watertight contemporaneous record, as corroborated by D.W.2 (SBI Deputy Branch Manager, Suri Branch).
- 14.** He urged that the Trial Court and the First Appellate Court acted mechanically in dismissing this cogent documentary material as a "self-serving document" by placing undue reliance on outdated interpretations of law while ignoring modern expositions of legal principles by the Hon'ble Supreme Court in cases like *Rajaram v. Maruthachalam* [(2023) 16 SCC 125] and *Rajco Steel Enterprises v. Kavita Saraff & Anr.* [(2024) 9 SCC 390], which reiterate that once an accused raises a probable defence, the initial burden shifts back to the complainant.
- 15.** Mr. Rakshit further underscored the total absence of a written loan agreement, accounting trail, or lack of reflection of the cash allegedly advanced to the petitioner in the complainant's Income Tax Returns (ITR), arguing that an unverified, clandestine cash transaction cannot constitute a legally enforceable debt. Additionally, relying on the Apex Court pronouncement in *Dilip Hariramani v. Bank of Baroda* [(2024) 15 SCC 443] learned counsel contended that a proceeding initiated by

criminal complaint under Section 138 of the N.I. Act against an individual proprietor without arraigning the commercial entity ("Madhukari Textile") is fundamentally non-maintainable.

16. *Per contra*, Mr. Sujoy Sarkar, learned counsel appearing for the opposite party No. 2-complainant, defended the concurrent findings of guilt with equal vigour, raising both preliminary and substantive arguments. Mr. Sarkar, relying on the legal principle laid down by the Apex Court in *Dalip Singh v. State of Uttar Pradesh & Ors.*[(2010) 2 SCC 114], contended at the threshold that the revisional application is not maintainable due to the doctrine of 'clean hands', pointing out a gross suppression of material facts and inconsistency in the petitioner's pleadings when describing himself as an "unemployed person belonging to a poor family" in his affidavit before the High Court while claiming to run a cloth business under the name and style "Madhukari Textile" during the trial thereby invoking the bar against grant of equitable relief in his favour.
17. On merits, Mr. Sarkar argued that the mere filing of a General Diary entry cannot take the place of substantive proof of loss, especially when the petitioner failed to examine any independent police investigator or initiate criminal proceedings for theft of the said cheque leaf in question, confirming it was an *ex post facto* fabricated shield engineered after receiving the statutory notice. Relying heavily upon contemporary pronouncements, including the recent ruling of the Apex Court in *Kuntegowda v. Thurubaiah* [2026 SCC OnLine SC 1485] and the recent ruling of the Calcutta High Court in *Samaresh Banerjee v. Panchu Gopal*

Sen [2025 SCC OnLine Cal 5408], learned counsel submitted that once the signature on the cheque is admitted, the statutory presumptions under Sections 118 and 139 of the N.I. Act operate with full rigor against the accused, and revisional courts cannot act as appellate courts to re-appreciate evidence unless patent perversity is writ large on the face of the record which, according to him, is entirely absent in the present case.

18. Based on the pleadings, rival submissions, and revisional parameters, the primary questions formulated for determination by this Court are as follows:

- i. Whether the instant Criminal Revisional Application is liable to be dismissed *in limine* on account of alleged suppression of material facts by the petitioner (shifting stances on employment versus running a proprietary business)?
- ii. Whether the petitioner successfully discharged his evidentiary burden to rebut the mandatory statutory presumptions under Sections 118(a) and 139 of the N.I. Act by establishing a probable defence through contemporaneous records (G.D. Entry No. 334), bank stop-payment instructions, oral testimonies (D.W. 1 and D.W. 2), and Section 313 Cr.P.C. examination?
- iii. Whether the absence of a written loan agreement and non-reflection of the cash advance in the complainant's Income Tax

Return (ITR) statements vitiates the existence of a "legally enforceable debt"?

- iv. Whether the failure of the complainant to arraign the petitioner's business firm ("Madhukari Textile") as a party-accused constitutes a fatal structural defect rendering individual prosecution non-maintainable?
- v. Whether the concurrent findings of guilt recorded by the Trial Court and affirmed by the First Appellate Court suffer from patent perversity, gross illegality, or glaring miscarriage of justice so as to warrant interference by this Revisional Court?

19. Having meticulously scrutinized the record, the judgments rendered by both the learned Trial Court and the First Appellate Court, and the extensive submissions and legal citations placed before this Court by the learned counsel for the contesting parties, I now proceed to resolve each of the formulated points for determination *in seriatim*.

20. At the very threshold of the hearing, a sharp and formidable preliminary objection was raised by Mr. Sujoy Sarkar, learned counsel appearing for the Opposite Party-Complainant, challenging the very maintainability of the instant Criminal Revisional Application on the doctrine of *suppression veri and suggestion falsi*. It was contended that the petitioner has indulged in a gross and deliberate suppression of material facts by shifting his stance regarding his occupational status. Specifically, it was pointed out that in the sworn affidavit filed in support of this Criminal Revision before this Court, the petitioner

described himself as an "unemployed person belonging to a poor family," whereas throughout the trial before the learned Trial Court, in his statement under Section 313 of the Cr.P.C., and in his earlier pleadings, he vehemently asserted that he was actively engaged in running a cloth business under the name and style of "Madhukari Textile." The Opposite Party argued that this shifting narrative demonstrates an active, calculated design from inception to mislead the judicial process, thereby disentitling the petitioner from invoking the discretionary, equitable revisional jurisdiction of this Court. To fortify this submission, the Opposite Party placed heavy reliance upon the celebrated Apex Court pronouncement in *Dalip Singh (supra)*.

- 21.** I have considered the preliminary objection raised by the Opposite Party and the judicial mandate flowing from *Dalip Singh (supra)*. There can be no two opinions on the settled principle of jurisprudence that a litigant who approaches a superior court invoking extraordinary, discretionary, or revisional jurisdiction must come with absolute clean hands and a candid disclosure of material facts. Any intentional concealment or distortion of foundational facts to gain an unearned procedural advantage must be dealt with firmly.
- 22.** However, when examining the dual descriptions of employment status provided by the petitioner namely, being an unemployed individual struggling to manage a small proprietary cloth business venture ("Madhukari Textile"), in the specific context of a criminal trial for cheque dishonour, I am of the considered view that this semantic discrepancy does not scale the threshold of a fraudulent or material

suppression going to the root of the *lis*. An individual running a modest, financially distressed proprietary shop can very well be structurally unemployed or economically vulnerable in practical terms. It cannot be construed as a *mala fide* fabrication aimed at defrauding the judicial process or misleading the court on the core merits of the cheque dishonour. The description given in the revisional affidavit is a generalization of his socio-economic distress, rather than a fraudulent device engineered to gain an unfair procedural advantage.

23. While looseness in drafting affidavits is deprecated, it is too harsh a penalty to non-suit a petitioner in a criminal revision challenging a substantive sentence of imprisonment merely on a semantic inconsistency regarding employment status. Criminal jurisprudence demands that substantive justice should not be defeated by hyper-technical procedural objections unless the integrity of the judicial process itself stands severely compromised. The preliminary objection raised by the Opposite Party No. 2 regarding the maintainability of the Criminal Revision is accordingly overruled as insufficient to dismiss the present Criminal Revisional application *in limine*. The first question for determination is therefore answered in negative.

24. Moving forward to the second question, the central plank of defence of the petitioner before both the Learned Trial Court and the First Appellate Court is that his money bag containing a blank signed cheque was lost on 06.11.2015, and to prove *bona fides*, he promptly lodged a contemporaneous General Diary (G.D. Entry No. 334) at Suri Police Station, notified his bank, denied existing debt or liability in his Section

313 Cr.P.C. examination, and adduced evidence through himself (D.W. 1) and a bank official (D.W. 2) to corroborate the stop-payment communication. Both courts, however, concurrently considered and rejected this defence, holding that an uncorroborated G.D. entry is a self-serving document created *post litem motam*, wholly incapable of displacing the mandatory statutory presumptions under Sections 118(a) and 139 of the N.I. Act, which was automatically triggered the moment the petitioner's signature on the cheque (Exhibit 1) was admitted.

- 25.** The concurrent findings of both courts on this question are legally sound and unassailable. Under Section 139 of the N.I. Act, once the signature on the cheque is admitted, the court is bound to raise a presumption that the cheque was issued in discharge of a debt or liability. While the accused can rebut this by a preponderance of probabilities, a bare G.D. entry, uncorroborated by police investigators, unaccompanied by any independent investigation, public notice, or immediate legal action against the complainant upon receipt of the statutory demand notice remains an *ex post facto* creation of evidence.
- 26.** The reliance placed by the petitioner on *Rajco Steel Enterprises (supra)* and earlier Bench observations does not rescue the petitioner here, because unlike cases where the foundational transaction was completely disproved, the petitioner here failed to substantiate his defence as to how a blank signed cheque reached the hands of the complainant without any prior animosity. Furthermore, the Hon'ble Supreme Court, in its very recent and authoritative pronouncement in

Kuntegowda (supra), at Paragraphs 5.7 and 7.1 of the report, has emphatically reaffirmed:

“....

5.7. *A conjoint and harmonious reading of the aforesaid provisions clearly indicate towards the statutory presumption that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of the negotiable instrument is either approved or admitted. As soon as the complainant discharges the burden to prove that the instrument was executed by the drawer, the rules of presumption under Sections 118 and 139 of the NI Act help him and shift the burden of rebutting the said presumptions upon the said drawer....However, a bare denial of the passing of any consideration or existence of any debt does not support the defence of the accused and therefore to disprove the presumptions, some which is probable has to be brought on record for getting the burden of proof shifted back to the complainant....*

7.1. *.... the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the evidence.... And come to a conclusion contrary to the consistent one reached by the two courts below.....”*

Therefore, the learned Trial Court and the First Appellate Court committed no illegality or perversity in rejecting the defence of ‘lost cheque’ advanced by the petitioner before them. The second question for determination is accordingly answered in negative.

- 27.** The third major limb of attack advanced by the petitioner before the appellate court, as well as before this Court, cantered on the contention that the complainant failed to prove a "legally enforceable debt" because no written loan agreement was executed and the cash advance of Rs. 30,000/- was not reflected in the complainant's Income Tax Return (ITR) statements. In support, the petitioner relied heavily upon *Rajaram (supra)* (specifically paragraphs 6, 9, 10, 12, 13, 14, and 20), arguing that the absence of IT return entries and lack of financial capacity documentation weigh heavily against the veracity of a cash loan. Conversely, the Opposite Party relied upon contemporary rulings, including *Kuntegowda (supra)*, contending that the absence of ITR reflection for a friendly or small hand loan cannot be treated as an absolute, rigid prerequisite that automatically invalidates a genuine holder-in-due-course claim, especially when the accused has failed to elicit any material admission from the complainant during cross-examination regarding the absolute lack of financial capacity.
- 28.** I have meticulously examined the rival submissions, the judicial authorities cited at the bar, and the evidentiary framework of this case. The proposition that a complainant must establish financial capacity when a serious and probable challenge to the existence of a legally enforceable debt is raised by the accused is a well-settled facet of N.I. Act jurisprudence. However, whether the absence of an ITR entry for a modest hand loan of Rs. 30,000/- operates as a fatal blow to the prosecution requires a balanced, context-driven appreciation.

- 29.** It is evident that while the lack of filing of an Income Tax Return or written loan agreement can be a relevant factor to substantiate existence of a legally enforceable debt in assessing a complainant's financial capacity in cases involving large sums of money, it cannot be elevated to an absolute, inflexible rule that invalidates every small hand loan (such as the modest sum of Rs. 30,000/- involved here). As clarified by the Hon'ble Supreme Court in *Kuntegowda (supra)*, minor discrepancies or the absence of formal tax disclosures regarding a modest hand loan do not displace the statutory presumption when the accused fails to cross-examine effectively or raise a probable foundation of financial incapacity of the complainant at the earliest opportunity(in this case, in the reply to the statutory demand notice). The ratio of *Rajaram (supra)*, being distinguishable on facts, is not apposite to decide the question as *Rajaram (supra)* dealt with massive unexplained cash transactions where the defence had successfully punched holes in the complainant's financial standing. Here, the concurrent findings indicate that the petitioner failed to discharge his initial burden of rebuttal, rendering the argument concerning ITR non-reflection legally insufficient to overturn the conviction. The third question is also accordingly answered in the negative.
- 30.** Adverting to the fourth question for determination, the petitioner raised a technical plea, for the first time before this Court, that the complainant advanced the loan to his business enterprise ("Madhukari Textile"), but the firm itself was not arraigned in the complaint, rendering the individual prosecution legally flawed. It was argued that

prosecuting the individual proprietor alone, while omitting the business entity itself, violates the procedural and substantive framework governing commercial liabilities under the NI Act.

31. This argument, though ingeniously crafted, is legally misconceived. A proprietary concern is not a distinct legal entity separate from its proprietor; unlike a registered company under the Companies Act or a partnership firm under the Partnership Act, a proprietary business is merely an alias or business style of the individual proprietor. Any liability incurred by a proprietorship is the personal and unlimited liability of the proprietor himself. Therefore, issuing a cheque from a personal/proprietary bank account for a business debt and failing to honour it attracts direct penal liability under Section 138 of the N.I. Act against the individual drawer. The non arraignment of the business name "Madhukari Textile" as a separate co-accused is neither a statutory violation nor a fatal defect. This ground is therefore rejected and the fourth question for determination is accordingly answered in the negative,

32. The fifth, final and overarching question that falls for determination before this Court is whether the concurrent findings of guilt and conviction recorded by the Learned Trial Court and affirmed (with a modified sentence) by the First Appellate Court suffer from any patent perversity, gross illegality, jurisdictional error, or glaring miscarriage of justice so as to warrant interference under the narrow and circumscribed scope of revisional jurisdiction. While the petitioner earnestly prayed for the setting aside of impugned judgments of

conviction and sentence and an absolute order of acquittal, the Opposite Party-Complainant strongly resisted any such interference, pointing out that under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, a Revisional Court cannot function as a second appellate court to re-weigh or re-appreciate oral and documentary evidence. In support of his such contention, the Opposite Party placed reliance on the recent authoritative pronouncement of the Hon'ble Supreme Court in *Kuntegowda (supra)*, which reiterates the strict limitations of appellate and revisional review in N.I. Act proceedings when concurrent factual findings are recorded by the learned Trial Court and First Appellate Court.

- 33.** I have anxiously weighed the rival contentions and surveyed the well-entrenched parameters governing criminal revisional jurisdiction. It is a foundational tenet of criminal jurisprudence that a Revisional Court must exercise extreme restraint. It does not sit as a court of appeal to substitute its own view of the evidence merely because another view is conceivable. Interference is permissible only if the findings of the learned Trial Court and First Appellate Court are shown to be perverse, based on an utter misreading of evidence, or vitiated by a manifest error of law resulting in a gross miscarriage of justice. In the present case, a comprehensive review of the record demonstrates that both the Magistrate Court and the Sessions Court meticulously examined the oral and documentary evidence. The signature on the cheque (Exhibit 1) was unequivocally admitted by the petitioner, thereby triggering the mandatory statutory presumptions under Sections 118(a) and 139 of

the N.I. Act. The petitioner's endeavour to rebut this presumption through the "lost cheque" theory, backed by G.D. Entry No. 334 and testimonies of D.W. 1 and D.W. 2, was concurrently evaluated by both courts and found wanting, as it remained an uncorroborated assertion devoid of any proof of actual misuse or suspicious handling of the said cheque in question, prior to presentation before the Bank for encashment. The fifth question for determination is therefore answered in the negative.

- 34.** Furthermore, as underscored by the Apex Court in *Kuntegowda (supra)*, once the statutory presumptions under the NI Act operate and the accused fails to discharge the burden of rebuttal on a preponderance of probabilities, concurrent findings of conviction cannot be uprooted lightly in revision. However, considering the reformatory, compensatory, and commercial objectives underlying Section 138 of the N.I. Act, I must laud the Learned Sessions Court for already exhibiting a balanced approach by scaling down the substantive sentence of imprisonment from three months to a modest 7 days of simple imprisonment, while structuring a just and fair compensation of Rs. 35,000/- payable under Section 357(1) of the Cr.P.C. However, for the ends of justice, I am inclined to modify the said sentence of the Sessions Court to the extent of exempting the petitioner from suffering the substantive imprisonment for a period of 7 days while upholding the compensation component of the said sentence.
- 35.** This Court, to ensure that this penal directive operates with absolute fairness and prevents any undue financial hardship onto the petitioner,

finds it imperative to explicitly mandate that full credit and adjustment must be accorded for any interim amounts already deposited by the petitioner during the pendency of the trial, appeal, or revision.

- 36.** Having extensively examined the statutory framework of the Negotiable Instruments Act, 1881, alongside the rival contentions and judicial precedents cited at the bar, this Court deems it apposite to encapsulate the definitive findings on law that emerge from the holistic determination of the present *lis*:-

First and foremost, it is a well-entrenched proposition that the moment the execution of a cheque, specifically the signature of the drawer, is admitted or proved before a court of law, the mandatory statutory presumptions enshrined under Sections 118(a) and 139 of the N.I. Act instantly spring into action. By operation of law, it is conclusively presumed that the negotiable instrument was drawn for valid consideration and issued in discharge of a legally enforceable debt or liability. As authoritatively reiterated in contemporary jurisprudence, including the recent pronouncement of the Hon'ble Supreme Court in *Kuntegowda (supra)*, an admitted signature carries the inescapable legal corollary that the accused was fully conscious of the instrument's execution, thereby shifting a heavy reverse-onus onto the defence to dislodge this statutory foundation.

Secondly, as regards the standard and quality of evidence required to dislodge these statutory presumptions, this Court

finds that a mere bald denial, a vague assertion, or a routine explanation will not suffice; the accused is mandated to establish a probable defence strictly on the touchstone of preponderance of probabilities. In this context, the evidentiary weight to be attached to a contemporaneous General Diary (G.D.) entry reporting a lost cheque or money bag needs absolute clarity. While lodging a prompt police diary demonstrates initial alertness, such a G.D. entry, standing by itself, is merely a unilateral recording of information supplied by the informant. Unless it is fortified and corroborated by independent, substantive material, prompt public notifications, or the examination of investigating officers to establish actual misuse or theft of the cheque in question prior to presentation, it remains an *ex post facto* shield incapable of shattering the robust shield of Section 139 presumptions.

Thirdly, concerning the complex interplay between the enforceability of a debt, the financial capacity of a complainant, and the absence of Income Tax Return (ITR) disclosures, the legal position must be applied with pragmatism and contextual balance. While the lack of written loan agreements or ITR entries substantiating cash advance can severely dent a complainant's case in massive, unexplained commercial transactions, it cannot be elevated to an absolute, inflexible rule of law that invalidates every modest hand or accommodation

loan (such as the Rs. 30,000/- transaction involved herein). Minor accounting omissions or tax-related irregularities by a lender does not automatically destroy the legal enforceability of a debt unless the accused discharges the primary burden of demonstrating that the complainant was utterly and financially incapable of sparing the specific modest sum.

Fourthly, on the technical aspect concerning the legal status of proprietary business concerns under the N.I. Act, the law is distinct and unambiguous. A proprietary concern is not a juristic person or a distinct legal entity separate from its individual proprietor; it is merely an alternative business name or trading style adopted for commercial convenience. Any debt incurred or cheque drawn from a proprietary bank account creates a direct, personal, and unlimited liability for the individual proprietor. Consequently, the omission to formally arraign the business trade name of a proprietary concern as a separate co-accused in a Section 138 complaint does not constitute a fatal structural defect, nor does it violate any statutory provisions governing criminal prosecution.

Fifthly and finally, on the jurisdictional parameters governing revisional courts, it is firmly established that in an application under Section 401 read with Section 482 of the Code of Criminal Procedure, a Revisional Court does not function as a second appellate court. Revisions are strictly meant to correct

patent illegalities, procedural perversities, or gross miscarriages of justice. A Revisional Court is legally prohibited from undertaking a *de novo* re-appraisal of oral and documentary evidence to substitute its own view for that of the Trial and Appellate courts, especially when concurrent findings of guilt have been recorded and sustained within the parameters of law.

- 37.** In light of the aforesaid detailed analysis and determination of all questions against the petitioner, the criminal revisional application being **C.R.R. 1371 of 2024** is **dismissed on merits**.
- 38.** The concurrent judgments and orders of conviction passed under Section 138 of the Negotiable Instruments Act by both the courts below are hereby **affirmed**.
- 39.** The modified sentence of **7 days of simple imprisonment** is **further modified to exempt** the petitioner from undergoing the SI imprisonment period of 7 days **while upholding payment of compensation** amounting to **Rs. 35,000/-** passed by the Learned Additional Sessions Judge, 1st Court, Suri, Birbhum, in Criminal Appeal No. 28 of 2021, subject to the explicit clarification and direction that **full credit and adjustment shall be given by the Trial Court for any monetary sums already deposited** by the petitioner during the pendency of the trial, appeal, or revision. The default sentence of the Sessions Court is upheld.
- 40.** The petitioner is directed to clear any unpaid financial dues in terms of the judgments of the Ld. Trial Court and First Appellate Court.

41. Upon realization or deposit of the full compensation amount, the Trial Court shall disburse the same immediately to Opposite Party No. 2 (**Benukar Sikdar**) as statutory compensation.
42. In the event of default in making the payment, the Trial Court shall immediately invoke coercive measures in accordance with law under Section 421 read with Section 431 of the Cr.P.C. to execute the sentence and realize the compensation as arrears of fine.
43. Connected pending application, if any, stands disposed of accordingly.
44. Interim order, if any, stands vacated.
45. There shall be no order as to costs.
46. Let a copy of this judgment along with the Trial Court Records (TCR) be transmitted to the learned Magistrate Court and learned Sessions Court forthwith for necessary information and immediate compliance.
47. Case diary, be returned to the Learned Counsel for the State.
48. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)