IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR

CRR 871 OF 2022

CRAN 3 OF 2023

SWAPAN KUMAR BHANDARI
-VS-
STATE OF WEST BENGAL AND ANR.

For the Petitioner	: Mr. Gunjan Shah Ms. Shreya Agarwal Mr. Chitra Bhanu Gupta
For the State	: Mr. Sagar Saha Ms. Nayana Mukhopadhyay
For the Opposite Party No.2	: Mr. Ayan Basu Mr. Sumit Routh
Reserved on	: 11.09.2026
Pronounced on	: 05.10.2026

UDAY KUMAR, J.: –

1. The instant criminal revisional application brings to the fore a classic, albeit intricate, interplay between a summary prosecution under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the "N.I. Act") and the subsequent fallout of a parallel substantive criminal trial under Sections 409 and 420 of the Indian Penal Code (hereinafter referred to as the "IPC"). The petitioner, Sri Swapan Kumar Bhandari, has knocked at the portals of this Court

invoking our revisional and inherent jurisdiction under Sections 401 and 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), praying for the setting aside of the judgment and order dated 14th December, 2021, passed by the learned Additional Sessions Judge (Re-designated Court), Bankura in Criminal Appeal No. 7 of 2019. By the said impugned appellate judgment, the learned Additional Sessions Court was pleased to affirm the judgment and order of conviction and sentence dated 7th March, 2019, passed by the 6th Court of the learned Judicial Magistrate, First Class, Bankura in Complaint Case No. 220C of 2017, whereby the petitioner was convicted under Section 138 of the N.I. Act and was sentenced to suffer simple imprisonment for six months, alongside a direction to pay ₹10,00,000/- as compensation under Section 357(3) of the Cr.P.C.

2. To properly comprehend the canvas of this litigation, I must first trace its genesis. The narrative unfolds with the lodging of a petition of complaint by the opposite party no. 1, Sanjib Goswami, before the learned Chief Judicial Magistrate, Bankura which was registered as Complaint Case No. 220C of 2017. The foundational premise of the complaint was that the father of the complainant had, from time to time, reposed immense trust in the petitioner, who was closely associated with postal savings and deposit schemes, by handing over hard-earned money for investment into Post Office Monthly Income Scheme (MIS) accounts standing in the names of the complainant and his relatives. Instead of depositing the said funds into the designated post office accounts, the petitioner dishonestly misappropriated the

entire corpus for his own use. To pull wool over the eyes of the complainant and his family and conceal his financial malfeasance, the petitioner periodically produced fake passbooks and statements, making them believe that their deposits were safe and intact. However, upon the unearthing of this colossal fraud, the petitioner realized the gravity of his culpability, acknowledged his misdeeds in writing, and solemnly executed a declaration coupled with a notarized non-judicial stamp paper agreement (marked during trial as Exhibits 6 and 7), explicitly admitting his monetary liability towards the complainant's family.

3. In partial or full discharge of such acknowledged and legally enforceable liability, the petitioner drew and issued a cheque bearing a specific date in November 2016 (10.11.2016) for a sum of ₹8,00,000/- in favour of the complainant (marked Exhibit 1 during trial). When the complainant presented this negotiable instrument for encashment through his banker, the State Bank of India, Harigram More Branch, on 2nd February, 2017 (Exhibit 2), it was met with dishonour. The bank returned the cheque unpaid on 13th February, 2017, bearing the categorical and unambiguous endorsement "Insufficient Funds" (Exhibit 3). Moving with statutory promptitude, the complainant caused a formal demand notice to be dispatched through his learned advocate on 9th March, 2017 (Exhibits 4, 4a, and 4b), calling upon the petitioner to liquidate the due sum of ₹8,00,000/- within fifteen days from the date of the receipt thereof. Upon the absolute failure of the petitioner to heed the notice or make the requisite payment within the statutory window,

the complainant instituted the formal statutory complaint under Section 138 of the N.I. Act on 30th March, 2017.

4. Upon taking cognizance, the learned Chief Judicial Magistrate transferred the case to the file of the 6th Court of the learned Judicial Magistrate, First Class, Bankura for trial and disposal. On 9th November, 2017, the learned Magistrate examined the accused under Section 251 of the Cr.P.C., to which he pleaded not guilty and claimed to be tried, thereby setting the adversarial wheels in motion. During the extensive course of the trial, the complainant adduced both oral and documentary evidence. The complainant himself stepped into the witness box as P.W. 1 on affidavit, meticulously detailing the entrustment of funds, the forged passbooks, the written confession, the issuance of the cheque, its presentation, subsequent dishonour, and the statutory notice. To formally establish the banking transaction and the return memo, the Branch Manager of the SBI Harigram More Branch was examined as P.W. 2. Alongside oral testimony, the complainant brought on record vital documentary exhibits, including the dishonoured cheque (Exhibit 1), the deposit slip (Exhibit 2), the bank return memo (Exhibit 3), the demand notice along with postal envelopes and A/D cards (Exhibits 4, 4a, 4b), the seizure list (Exhibit 5), the notarized agreement (Exhibit 6), and the written declaration executed by the petitioner (Exhibit 7).

5. Upon the closure of the complainant's evidence, the petitioner was examined under Section 313 of the Cr.P.C., where he offered a wholesale denial of all incriminating circumstances, branding the

accusations as false and asserting that he never issued any such cheque. Crucially, the petitioner set up a specific, albeit uncorroborated, defence version: that when he had visited the State Bank of India branch at Bankura to withdraw a nominal sum of ₹300/-, a person named Sanjib was standing beside him who allegedly snatched, tore away, and retained a leaf from his cheque book. Significantly, despite being afforded full and fair opportunity, the petitioner declined to adduce any independent defence evidence (D.W.) and, most importantly, failed to lodge any contemporaneous police report, General Diary (G.D.), or First Information Report (FIR) concerning the alleged forcible seizure or theft of his signed cheque book.

6. The learned Trial Court, upon a meticulous appraisal of the evidence on record and the rigorous invocation of the statutory presumptions enshrined under Sections 118 and 139 of the N.I. Act, concluded that the complainant had successfully discharged his initial burden by establishing foundational facts, thereby shifting the onus onto the accused. The learned Trial Court evaluated the petitioner's improbable and uncorroborated "snatched cheque book" defence and found it completely devoid of judicial credibility, taking note of the total absence of any contemporaneous police complaint or G.D. Consequently, by its judgment dated 7th March, 2019, the learned Trial Court convicted the petitioner under Section 255(2) of the Cr.P.C. for the commission of the offence punishable under Section 138 of the N.I. Act, sentencing him to

simple imprisonment for six months and directing payment of ₹10,00,000/- as compensation under Section 357(3) of the Cr.P.C.

7. Feeling aggrieved by the judgment of conviction, the petitioner preferred Criminal Appeal No. 7 of 2019 before the Sessions Court at Bankura. During the pendency of this appeal, a significant development occurred on a parallel front: in an independent criminal proceeding bearing Bankura P.S. Case No. 63 of 2017 instituted under Sections 409 and 420 of the IPC concerning the underlying post office fund embezzlement, the 1st Court of the learned Additional Sessions Judge, Bankura, by a judgment dated 4th July, 2019, recorded an acquittal in favour of the petitioner, citing various prosecution shortcomings such as the failure to send MIS books for handwriting examination, non-production of original transaction records, and the lack of direct testimony from postal officials establishing his active accountability.

8. Seizing upon this subsequent acquittal in a parallel proceeding, the learned counsel for the appellant/convict vehemently argued before the Additional Sessions Court that the very foundation of the cheque debt stood legally demolished. It was further urged, relying upon prominent authorities such as *Rangappa v. Sri Mohan [(2010) 11 SCC 441]*, *D. Vinod Shivappa v. Nanda Belliappa [(2006) 6 SCC 456]*, *C.C. Alavi Haji v. Palapetty Muhammed & Anr. [(2007) 6 SCC 555]*, and *Basalingappa v. Mudibasappa [(2019) 5 SCC 418]*, that the statutory demand notice was never served because the petitioner was incarcerated in a correctional home at the time of dispatch, and that the statutory presumptions under Sections 118 and 139 of the N.I. Act were grossly misapplied.

9. *Per contra*, the learned counsel for the respondent/complainant, relying on *Indo Automobiles v. Jai Durga Enterprises & Ors. [(2008) 8 SCC 529]* and *C.C. Alavi Haji (supra)* countered before the Sessions Court, that the written notarized agreement and declaration (Exhibits 6 and 7) independently proved the acknowledged liability of the petitioner, that the statutory demand notice sent by registered post to a correct address establishes "deemed service" under Section 27 of the General Clauses Act, 1897 and that an accused cannot evade liability by ignoring the 15-day window after receiving court summons.

10. The learned Additional Sessions Judge, Bankura, upon a comprehensive re-appreciation of the record and the rival submissions, delivered its considered appellate judgment on 14th December, 2021, dismissing the appeal on contest and affirming the judgment of the learned Trial Court. The appellate court rightly reasoned that:

> **Firstly,** the appellant failed to produce any concrete documentary proof showing that he was actually inside a correctional home on the exact date the postal delivery of the notice was attempted, and noted that his official address in court records matched the notice address. Citing the dictum in *C.C. Alavi Haji (supra)*, the court observed that the appellant had a statutory window to make payment within 15 days of receiving court summons, which he also failed to do, thereby rendering his non-service defence hollow.

Secondly, the written notarized agreement and declaration executed by the accused appellant constituted an independent, legally enforceable liability satisfying the core requirements of Section 138 of the N.I. Act.

Thirdly, the reverse onus under Section 139 of the N.I. Act requires a probable defence by a preponderance of probabilities, but the uncorroborated statement regarding a snatched cheque book failed to inspire judicial confidence in the total absence of any police complaint or FIR.

11. Undaunted by the concurrent findings of guilt returned by both the Trial and the Sessions Courts, the petitioner has now approached this Court by way of the instant revisional application under Sections 401 and 482 of the Cr.P.C. The core challenge of this revision rests on the premise that his acquittal in the parallel criminal proceeding under Sections 409/420 IPC acts as a total extinguishment of the underlying debt foundation, that the statutory presumptions and notice service requirements were misconstrued, and that the continuation of the conviction results in a manifest miscarriage of justice.

12. In course of the hearing of the instant criminal revisional application, the respective contentions of the parties have been advanced with considerable legal acumen. To properly evaluate the merits of the challenge mounted against the concurrent judgments of conviction, it is essential to set out, analyse, and juxtapose the rival submissions advanced by the learned counsels for the petitioner (convict-appellant)

and the opposite party (complainant-respondent), keeping in view the foundational facts, statutory provisions, and judicial precedents brought on record.

13. The learned counsel for the petitioner strenuously contends that the impugned judgment and order of conviction, as affirmed by the First appellate court, are entirely unsustainable in law and facts, having been rendered on surmises and conjectures without proper appreciation of material contradictions in the evidence. The primary plank of the petitioner's argument rests upon the foundational premise of the debt; it is submitted that the entire substratum of the complaint under Section 138 of the N.I. Act was rooted in the allegation that the petitioner had misappropriated money entrusted to him by the complainant's father for Post Office MIS deposits. In this regard, the petitioner places heavy reliance upon the judgment dated 4th July, 2019, passed by the 1st Court of the learned Additional Sessions Judge, Bankura in Bankura P.S. Case No. 63 of 2017 under Sections 409 and 420 of the IPC, whereby the petitioner was honourably acquitted. It is urged that once a competent criminal court, in a substantive trial concerning the identical factual matrix, recorded a categorical finding that the prosecution failed to prove entrustment, omitted to send MIS books for handwriting examination, produced no original transaction documents, and failed to establish any active responsibility or signed receipt, the "legally enforceable debt or liability" required under Section 138 of the N.I. Act stands legally demolished and obliterated.

14. Advancing further on the question of the statutory demand notice, the learned counsel for the petitioner contends that the mandatory requirement of service of notice under clause (b) to the Proviso appended to Section 138 was never fulfilled. It is submitted that at the precise time when the demand notice was dispatched by the complainant, the petitioner was actually confined in a correctional home in connection with another criminal proceeding, rendering personal receipt of the demand notice or knowledge thereof impossible.

15. Placing reliance upon authoritative pronouncements such as *Rangappa (supra), D. Vinod Shivappa (supra), C.C. Alavi Haji (supra),* and *Basalingappa (supra)*, the petitioner argues that the reverse onus clauses under Sections 118 and 139 of the N.I. Act impose only an evidentiary burden and not a persuasive one.

16. The standard of proof required to rebut the statutory presumption under Sections 118 and 139 of the N.I. Act is merely that of a "preponderance of probabilities." The petitioner submits that he successfully raised a probable defence by demonstrating through his Section 313 Cr.P.C. examination that his signed cheque book was unauthorizedly taken away by one Sanjib while he was at the SBI bank branch, and that the trial court and appellate court grossly erred in shifting the standard of proof into an insurmountable mountain of absolute certainty, thereby occasioning a grave miscarriage of justice.

17. *Per contra*, the learned counsel for the opposite party (private Opposite Party No. 2-complainant), supported by the learned Public Prosecutor for the State, vehemently urges that the revisional application is

thoroughly devoid of merit and represents a desperate attempt by a convicted fraudster to escape the rigors of law. It is submitted that the complainant successfully discharged his initial burden by stepping into the witness box as P.W. 1 and adducing robust documentary evidence, including the dishonoured cheque (Exhibit 1), the bank return memo reflecting "Insufficient Funds" (Exhibit 3), and most importantly, the written notarized agreement and declaration (Exhibit 6 and 7) wherein the petitioner unequivocally admitted his misappropriation of funds and acknowledged his monetary liability in favour of the complainant to the tune of ₹8,00,000/-. These documents, according to the learned counsel for the Opposite Party No. 2, constitute an independent, legally enforceable civil and monetary liability that squarely attracts the operation of Section 138 of the N.I. Act, irrespective of the procedural technicalities or different standards of proof in a separate police-investigated IPC trial.

18. Addressing the issue of the statutory demand notice and the invocation of statutory presumptions, the learned counsel for the Opposite Party No. 2 placed explicit reliance upon the landmark dictum of the Hon'ble Apex Court in *C.C. Alavi Haji (supra)*, as well as *Indo Automobiles (supra)* and forcefully contended that when a notice is dispatched by registered post with acknowledgment due to the correct and admitted address of the drawer, Section 27 of the General Clauses Act, 1897 read with Section 114 of the Indian Evidence Act, 1872 gives rise to a strong presumption of due service. The learned counsel for the Opposite Party No. 2 points out that the petitioner failed to bring on record any

concrete, contemporaneous documentary proof establishing that he was physically inside a correctional home on the exact date postal delivery was attempted, and notes that the address used for the notice perfectly matched with the address furnished by the petitioner himself in his bail bonds and court examinations. Furthermore, citing paragraph 17 of *C.C. Alavi Haji (supra)*, the learned counsel for the Opposite Party No. 2 emphasizes that even assuming, *arguendo*, there was any initial dispute regarding postal service, the petitioner was afforded a clear statutory window of fifteen days from the date of receipt of court summons (along with a copy of the complaint) to pay the cheque amount—a window he completely squandered.

19. Finally, regarding the defence of the "snatched cheque book," the learned counsel for the Opposite Party No. 2 submits that both the trial court and the First appellate court correctly appreciated that a sweeping, uncorroborated *ipse dixit* statement made under Section 313 of the Cr.P.C. cannot amount to a probable defence under the touchstone of preponderance of probabilities. The complete absence of any contemporaneous police General Diary (G.D.), FIR, or written intimation to the bank regarding a forcibly stolen or missing signed cheque book exposes the utter falsity and *mala fide* nature of the defence. Hence, the learned counsel for the Opposite Party No. 2 prays for the outright dismissal of the revisional application and the immediate execution of the concurrent judgments of conviction and sentence.

20. Upon a comprehensive evaluation of the rival submissions advanced by the learned counsel for the respective parties, a careful scrutiny of the evidentiary materials on record, and an analysis of the concurrent findings rendered by both the Trial and the First Appellate Court, this Court finds that the proper, conclusive, and judicious disposal of the instant criminal revisional application hinges upon the determination of the following pivotal questions of law and fact:

i. Whether an order of acquittal recorded in a separate, substantive criminal trial under Sections 409 and 420 of the IPC (concerning the underlying postal fund embezzlement) automatically and legally obliterates the existence of "legally enforceable debt or liability" required under Section 138 of the Negotiable Instruments Act, so as to vitiate a conviction based on an independently executed written acknowledgement, notarized agreement, and a dishonoured negotiable instrument?

ii. Whether the petitioner successfully discharged his "reverse onus" under Sections 118 and 139 of the N.I. Act by establishing a probable defence on a preponderance of probabilities through a mere uncorroborated statement under Section 313 of the Cr.P.C. regarding a "snatched cheque book," in the absolute absence of any contemporaneous police General Diary (G.D.), FIR, or written communication to his banker?

iii. Whether the mandatory requirements concerning the dispatch, delivery, and service of the statutory demand notice under clause (b) to the proviso appended to Section 138 of the N.I. Act

stood legally satisfied, particularly when the notice was sent to the correct address via registered post and the drawer failed to make payment within fifteen days of receiving the court summons, in light of the authoritative exposition of law in *C.C. Alavi Haji v. Palapetty Muhammed (supra)*?

iv. Whether the concurrent findings of fact and law returned by the learned Trial Court and affirmed by the First appellate court suffer from any patent perversity, gross illegality, procedural miscarriage, or manifest error warranting the invocation of the supervisory and corrective jurisdiction of the High Court under Sections 401 and 482 of the Cr.P.C.?

21. The first question forms the cornerstone of the petitioner's assault on the concurrent judgments of conviction. To resolve this seminal question conclusively, I must consider the factual backdrop and the evidentiary material that emerged during the course of the trial. The undisputed factual matrix reveals that the opposite party no. 2, Sanjib Goswami, instituted Complaint Case No. 220C of 2017 under Section 138 of the N.I. Act upon the dishonour of a cheque bearing a date in November 2016 (10.11.2016) for an amount of ₹8,00,000/- (Exhibit 1), which was returned unpaid by the State Bank of India, Harigram More Branch (Exhibit 2), with the bank memo citing "Insufficient Funds" (Exhibit 3). However, the genesis of this financial instrument is deeply intertwined with a broader ledger of transactions wherein the petitioner, Swapan Kumar Bhandari; who was entrusted with postal savings and deposit schemes, received funds from the complainant's father for

investment into Post Office Monthly Income Scheme (MIS) accounts. When the financial defalcation came to light, the matter did not rest merely on oral assertions. The complainant brought on record vital documentary evidence, most notably a solemn written declaration and a notarized non-judicial stamp paper agreement executed by the petitioner himself (admitted and marked during trial as Exhibits 6 and 7), wherein the petitioner unequivocally acknowledged his monetary liability towards the complainant's family and undertook to repay the entire misappropriated sum.

22. Concurrently, it is a matter of record that a separate criminal prosecution was set in motion against the petitioner vide Bankura P.S. Case No. 63 of 2017 dated 23.02.2017 under Sections 409 and 420 of the IPC concerning the underlying postal funds embezzlement. In that substantive criminal trial, the 1st Court of the learned Additional Sessions Judge, Bankura, by a judgment dated 4th July, 2019, recorded an acquittal in favour of the petitioner. A careful perusal of the grounds of that acquittal demonstrates that the criminal court exonerated the petitioner not because the financial transaction was proved to be non-existent or false, but purely on account of technical prosecution shortcomings and evidentiary lacunae specifically, the failure of the prosecution to send the original MIS passbooks for expert handwriting examination, the non-production of primary institutional transaction records, and the omission to examine high-ranking postal officials who could legally establish direct penal accountability of the petitioner under Section 409 IPC.

23. Seizing upon this acquittal, the learned counsel for the petitioner has pleaded that the criminal court's finding of non-proof in the IPC case cuts the very ground from under the feet of the Section 138 proceedings, rendering the cheque a mere instrument without any "legally enforceable debt or liability." This submission, though superficially attractive, is fundamentally flawed when tested against the touchstone of statutory interpretation and established criminal jurisprudence.

24. I have examined the distinct legal character and statutory anatomy of a prosecution under Section 138 of the N.I. Act vis-à-vis a prosecution under Sections 409/420 of the IPC. A proceeding under Section 138 is a unique species of statutory offence introduced by the legislature to maintain credibility and commercial sanctity in financial transactions involving negotiable instruments. It is essentially of a civil-penal character, operating on strict liability principles once the foundational facts, namely, the drawing of a cheque, its presentation within validity, its dishonour due to insufficiency of funds or exceeding arrangements, and the failure to make payment within fifteen days of receiving a statutory demand notice, are established. The expression "legally enforceable debt or liability" under the Explanation appended to Section 138 of the N.I. Act refers to any debt or liability that is valid and binding in law. It does not demand that the debt must be established through a rigorous, long-drawn police-investigated trial for criminal breach of trust or cheating.

25. In the instant case, the finding of the existence of a "debt or liability" by the learned Trial Court did not depend solely on the oral testimony of the complainant or the outcome of the police investigation into the postal schemes, it derived its absolute legal force and unassailable validity from the voluntary act of the petitioner himself, who executed a formal, notarized agreement and a written declaration (Exhibits 6 and 7) recognizing such liability. It is a well-settled principle of law that a civil or monetary liability can be independently acknowledged, confessed, and secured through a written contract or promissory note. Once an accused person explicitly acknowledges his monetary liability in writing and issues a negotiable instrument in partial or full discharge thereof, a subsequent acquittal in a parallel criminal case grounded strictly on procedural lapses, failure of handwriting analysis, or lack of institutional proof by the prosecution cannot magically wipe out the written acknowledgment or render the debt legally non-existent.

26. Furthermore, it is an elementary axiom of criminal jurisprudence that the standard of proof, rules of evidence, and objectives governing a trial under the IPC are vastly different from those governing a summary trial under the N.I. Act. An acquittal in a criminal case under Sections 409/420 IPC on a finding that the prosecution failed to prove the specific ingredients of criminal breach of trust or cheating beyond reasonable doubt under the strict standards of criminal law does not constitute a judicial declaration that no financial transaction ever took place, nor does it invalidate a distinct civil-commercial liability or a negotiable instrument issued for consideration. To hold that an

acquittal in an IPC cheating case automatically nullifies a cheque bounce case would introduce a dangerous absurdity into commercial law, enabling dishonest drawers to escape summary liability simply because the police or the prosecution failed to dot their 'i's' and cross their 't's' in a separate, unrelated criminal trial.

27. Both the learned Trial Court and the First Appellate Court correctly appreciated this legal distinction. The appellate court rightly noted that the written agreement and declaration (Exhibits 6 and 7) stood independently proven and formed a rock-solid foundation of a legally enforceable debt, in discharge of which the cheque was issued by the petitioner. The petitioner's attempt to piggyback on his acquittal in Bankura P.S. Case No. 63 of 2017 to annihilate the statutory operation of Section 138 of the N.I. Act is legally untenable and must be unequivocally rejected.

28. Accordingly, in view of the facts, the documentary evidence (Exhibits 1 to 7), the testimony of the witnesses (P.W. 1 and P.W. 2), and the established principles governing negotiable instrument jurisprudence, this Court conclusively determines that an order of acquittal in a separate, substantive criminal trial under Sections 409/420 IPC, resting on technical proof shortcomings, does not legally obliterate or extinguish the independently acknowledged 'legally enforceable debt or liability' underpinning a prosecution under Section 138 of the Negotiable Instruments Act and accordingly answers the first question in the negative, against the petitioner.

29. I shall now take up the second question for consideration and determination and in order to resolve this question with judicial precision, it is imperative to revisit the statutory framework governing a prosecution under Section 138 of the N.I. Act, 1881. Once the foundational facts, namely, the drawing of the cheque, the signature thereupon, and its presentation and dishonour, are admitted or proved, the provisions of Sections 118(a) and 139 of the N.I. Act mandate the raising of a mandatory statutory presumption in favour of the holder of the cheque. Section 139 explicitly stipulates that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.

30. The legal nature of this presumption has been authoritatively expounded by the Hon'ble Supreme Court in a catena of decisions, most notably in *Rangappa (supra)* and *Basalingappa (supra)*, wherein it is well settled that the standard of proof required to rebut this statutory presumption is not that of proof beyond reasonable doubt, which is normally expected of a prosecution in a criminal trial, instead, the accused is called upon to establish a probable defence on a preponderance of probabilities. The accused can either directly adduce evidence to prove that the debt or liability did not exist, or rely upon the materials brought on record by the complainant himself to create a tangible and reasonable doubt in the mind of the court regarding the existence of the presumed liability. However, a "probable defence" cannot be raised on the bedrock of vague, bare denials, fanciful

hypotheses, or uncorroborated oral assertions. There must be some material, circumstance, or consistent line of defence that lends credence to the version put forward by the accused.

31. Let me examine the nature of the defence set up by the petitioner in the present case. Throughout the trial and during his examination under Section 313 of the Cr.P.C., the petitioner did not adduce a single shred of independent defence evidence (D.W.). He chose not to examine any witness, nor did he enter the witness box himself as a witness on oath under Section 315 Cr.P.C. or subject himself to cross-examination. Instead, his entire defence rested on a solitary, sweeping *ipse dixit* statement that when he had visited the State Bank of India branch at Bankura to withdraw a nominal sum of ₹300/-, an individual named Sanjib stood beside him and forcibly snatched, tore away, and retained a leaf from his signed cheque book without his consent.

32. When this somewhat exotic theory of a "snatched cheque book" is weighed against the ordinary course of human conduct and common sense, it simply crumbles. A careful revisiting of the trial records reveals a deafening silence as there is a total and absolute absence of any contemporaneous police complaint, G.D., FIR, or written intimation to the SBI branch by the petitioner regarding any such forcible snatching or theft of a cheque leaf. The petitioner woke up to this novel theory only when he was cornered during the criminal trial under Section 138. Both the learned Trial Court and the First appellate court rightly branded this belated defence plea as an uncorroborated, afterthought concoction engineered solely to wriggle out of statutory liability.

33. The learned counsel for the petitioner argued that the both the Trial and Sessions courts placed an impossible burden of proof upon the accused, virtually requiring him to establish his innocence beyond reasonable doubt, thereby violating the principles laid down in *Rangappa (supra)* and *Basalingappa (supra)*. This argument is entirely fallacious. The courts below did not shift the burden of proof to an absolute standard; rather, they evaluated the material placed by the petitioner to see if it even met the minimum threshold of a "probable defence on a preponderance of probabilities." An uncorroborated, self-serving oral assertion under Section 313 Cr.P.C., completely unsupported by any contemporaneous documentary or institutional record (such as a police diary or bank notice), does not constitute a "probable defence." It remains a mere bald assertion incapable of dislodging the robust statutory presumptions operating under Sections 118 and 139 of the N.I. Act.

34. My judicial conscience is thus entirely satisfied that the petitioner has miserably failed to discharge the reverse onus cast upon him by law. The concurrent findings of both the Trial and the Sessions courts holding that the statutory presumptions under 118 and 139 of the N.I. Act remained completely unrebutted are anchored in sound legal reasoning and unassailable appreciation of evidence. Accordingly, viewing the facts, the statutory provisions, and the binding precedents, I am convinced that a bare, uncorroborated statement under Section 313 Cr.P.C. regarding a "snatched cheque book," unsupported by any contemporaneous police G.D., FIR, or bank intimation, falls woefully

short of establishing a probable defence on a preponderance of probabilities. The second question is accordingly answered in negative, against the petitioner.

35. Moving on to the third question for determination, I must now examine clause (b) to the Proviso appended to Section 138 of the N.I. Act, which stipulates that the payee or holder of the cheque must make a demand for the payment of the said amount of money by giving a notice in writing, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. Furthermore, clause (c) to the said Proviso mandates that to attract liability under Section 138, the drawer of such cheque must fail to make the payment of the said amount of money to the payee within fifteen days from the date of receipt of the said notice. The service of a statutory demand notice is a mandatory condition precedent for instituting a complaint under Section 138; however, the law has also evolved practical safeguards to ensure that a dishonest drawer cannot frustrate the legislative intent behind the enactment by resorting to clever tactics of evading service or by manipulating postal delivery receipts.

36. In the present case, the record reflects that upon the dishonour of the cheque on 13th February, 2017, the complainant caused a formal statutory demand notice to be dispatched to the petitioner through his learned advocate on 9th March, 2017, by registered post with acknowledgment due (Exhibits 4, 4a, and 4b). The petitioner, however, raised a vehement objection during the trial and appellate stages, contending that the statutory demand notice was never legally served

upon him because he was physically confined inside a correctional home / judicial custody at the relevant time when postal delivery was attempted, thereby rendering receipt of the said notice impossible and vitiating the cause of action.

37. This defence of non-service must be evaluated against the bedrock of the authoritative and binding decision of the Hon'ble Supreme Court in *C.C. Alavi Haji (supra)*, as well as earlier principles governing postal service under Section 27 of the General Clauses Act, 1897. It is a well-settled principle that when a notice is sent by registered post to the correct and admitted address of the drawer, a statutory presumption of due service arises under Section 27 of the General Clauses Act read with Section 114 of the Indian Evidence Act. An accused cannot be permitted to take advantage of his own wrong by avoiding postal delivery, refusing to accept the letter, or claiming non-receipt when the notice has been dispatched to his correct address.

38. More importantly, the Hon'ble Supreme Court in *C.C. Alavi Haji (supra)* carved out a definitive, common-sense rule to put an end to technical evasions regarding notice service. The Apex Court categorically held that even where an accused raises a genuine dispute regarding the service of notice, if the said accused receives a summons from the court along with a copy of the complaint, nothing prevents him from paying the requisite cheque amount within 15 days of receiving such summons. If the accused fails to make the payment within 15 days of receiving the court summons, he cannot thereafter contend that there was no proper service of notice under Section 138, as the receipt of

summons serves as a clear notice of the claim, affording him an opportunity to liquidate the liability and escape prosecution.

39. Applying this binding principle to the facts of the case at hand, we find that the petitioner's plea of non-service collapses on two distinct counts:

> **Firstly,** the petitioner failed to bring on record any concrete, contemporaneous institutional or documentary proof demonstrating that he was actually incarcerated inside a correctional home on the exact date postal delivery of the demand notice was attempted. Furthermore, the address to which the notice was dispatched matched the permanent and correct address furnished by the petitioner himself in his official court bonds and proceedings.
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> **Secondly,** even assuming *arguendo* that the postal envelope was returned or unclaimed due to his temporary absence, the petitioner undisputedly received the formal summons from the learned Trial Court along with a copy of the complaint. He had a clear statutory window of fifteen days from the date of receipt of the summons to pay the sum of ₹8,00,000/-, which he completely ignored, choosing instead to contest the matter on technicalities. Under the mandate of *C.C. Alavi Haji (supra)*, such failure disentitles him from raising the defence of non-service.

40. Both the learned Trial Court and the First appellate court meticulously examined this aspect and correctly applied the law laid down by the Hon'ble Supreme Court in a catena of authoritative pronouncements. The Sessions court rightly concluded that the procedural safeguards of Section 138 of the N.I. Act stood fully satisfied, and the petitioner's technical objections regarding notice service were nothing more than a dilatory stratagem.

41. Consequently, the challenge mounted by the petitioner on the ground of non-service of notice is entirely devoid of substance. Accordingly, this question is answered in the affirmative and determined conclusively against the petitioner, as the mandatory requirements concerning the dispatch, delivery, and service of the statutory demand notice under clause (b) of the proviso to Section 138 of the N.I. Act stood fully satisfied, as the notice was dispatched to the correct address via registered post, and in any event, the petitioner's failure to make payment within fifteen days of receiving the court summons squarely cured any alleged service defect in terms of the authoritative principles enunciated in *C.C. Alavi Haji (supra).*

42. Turning finally to the last pivotal question for determination, I must remind myself of the well-trodden and cautious path that marks the discretionary exercise of revisional jurisdiction. It is an elementary and cardinal principle of criminal jurisprudence that the revisional power of a High Court under Section 401 read with Section 482 of the Cr.P.C. is not that of a second appellate court. A High Court, while sitting in revision, does not re-appreciate evidence as a matter of routine, nor

does it substitute its own view for that of the Trial and Sessions courts unless the concurrent findings are shown to be perverse, based on no evidence or contrary to the evidence on record, or vitiated by glaring legal errors and gross procedural illegality resulting in a miscarriage of justice.

43. In the present case, a meticulous scrutiny of tidings and judgments rendered by both the Trial and Sessions courts reveals a thorough, comprehensive, and balanced appreciation of the entire factual canvas and evidentiary record. The learned Trial Court, upon assessing the oral testimony of the complainant (P.W. 1) and the bank official (P.W. 2) alongside the unimpeachable documentary evidence namely the cheque (Exhibit 1), the bank return memo (Exhibit 3), the statutory demand notice with postal receipts (Exhibits 4, 4a, 4b), and most importantly, the written declaration and notarized agreement executed by the petitioner himself (Exhibits 6 and 7) returned a clear, reasoned finding of guilt. This finding was subsequently re-evaluated, scrutinized, and affirmed in its entirety by the First appellate court.

44. Search as I must through the records, I am unable to trace any patent perversity, arbitrary exercise of judicial discretion, or glaring legal infirmity in the concurrent findings arrived by the said Courts. The defence sought to be raised was a fragile construct built upon an uncorroborated statement under Section 313 Cr.P.C. regarding a "snatched cheque book" and an attempt to exploit an acquittal in a separate, technical IPC trial, both of which have been thoroughly dismantled through established legal principles in the preceding

discussions. There being no procedural miscarriage or error of law, the foundational basis for invoking our extraordinary supervisory jurisdiction stands completely eliminated.

45. To summarize the judicial determinations arrived at across the four pivotal questions governing this revisional application, this Court arrives at the following legal propositions:

(i) An order of acquittal recorded in a separate criminal trial under Sections 409 and 420 of the IPC, resting strictly on technical prosecution shortcomings or lack of institutional proof, does not automatically or legally obliterate the independent finding of legally enforceable debt or liability acknowledged through a written contract, notarized agreement, and a negotiable instrument under Section 138 of the N.I. Act.

(ii) The robust statutory presumptions under Sections 118 and 139 of the N.I. Act cannot be dislodged or rebutted by a bare, uncorroborated statement made under Section 313 of the Cr.P.C. regarding a "snatched cheque book," in the absolute absence of any contemporaneous police G.D., FIR, or written intimation to the bank.

(iii) The requirements concerning the dispatch and service of the statutory demand notice under Section 138(b) of the N.I. Act stand fully satisfied when sent to the correct address via registered post, and in any event, the failure of the drawer to liquidate the cheque amount within fifteen days of receiving the

court summons cures any alleged service defect in terms of the binding mandate in *C.C. Alavi Haji (supra)*.

(iv) Concurrent findings of fact and law returned by the Trial and the Sessions Courts, being founded on sound appreciation of evidence and correct application of statutory provisions, are free from any perversity or illegality, thereby precluding any interference under our revisional jurisdiction of Sections 401 and 482 of the Cr.P.C.

46. In light of the foregoing discussions, the instant criminal revisional application, being **C.R.R. No. 871 of 2022** (arising out of Complaint Case No. 220C of 2017 and Criminal Appeal No. 7 of 2019 originating from Bankura), stands **dismissed**.

47. Consequently, the concurrent findings of conviction and sentence recorded against the petitioner in the impugned judgments by the Trial and the Sessions Courts are hereby affirmed in their entirety.

48. Connected pending application for extension of interim order, being CRAN 3 of 2023 is also disposed of accordingly.

49. Interim orders, if any, stand vacated.

50. Bail bonds, if furnished during the pendency of this revision, stand cancelled.

51. The petitioner is directed to surrender before the learned Trial Court within four weeks from date to serve out the sentence imposed upon him and satisfy the compensation directives, failing which the Learned

trial court shall take immediate coercive steps in accordance with law to execute the warrant of commitment and ensure compliance.

52. There shall be no order as to costs.

53. Let a copy of this judgment along with the Trial Court Records (T.C.R.) be transmitted to the learned Trial Court forthwith for necessary compliance and execution.

54. Case diary, be returned to the Learned Counsel for the State.

55. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)