IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. No. 3282 of 2022

Tigerhill Vinimay Private Limited & Ors.

Versus

Pankaj Ladia

For the Petitioners	:	Mr. Sandipan Ganguly, Sr. Adv. Mr. Anand Keshari, Adv. Mr. Soumen Mohanty, Adv. Mr. Ayan Poddar, Adv. Mr. Ayaan Ahmed, Adv.
For the Opposite Party	:	Mr. Satadru Lahiri, Adv. Mr. Safdar Azam, Adv. Mr. Jyotirmoy Talukder, Adv.
Heard on	:	31.07.2026
Judgment on	:	16.09.2026
Uploaded on	:	16.09.2026

Ajay Kumar Gupta, J.:-

1. The Petitioners have filed this instant Revisional application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), seeking quashing of the proceeding being complaint case being C.S. 107429 of 2018 instituted under Sections 138/141 of the Negotiable Instruments Act, 1881 (in short, 'N.I. Act') as amended up to date (Pankaj Ladia Vs. Tigerhill Vinimay Private Limited & Ors.) pending before the Learned Metropolitan Magistrate, 8th Court, Calcutta and also praying for setting aside an order dated 20.06.2022 passed therein.

2. The brief facts of the case are that the Petitioner nos. 2 and 3 are Directors of Petitioner no. 1/Company, engaged in real estate business. Petitioner no. 1, the absolute owner of 123.79 satak of land in J.L. No. 84, Mouza-Ramnagar, District Hooghly, sought to acquire adjoining plots to render the holding contiguous. In August 2018, the Opposite Party represented himself as the owner of an adjacent 179.25 decimal agricultural land in the same Mouza and offered it for the purpose of sale.

3. The Opposite Party furnished only photocopies of title deeds and the current ROR, failing to produce originals papers or the preceding 30 years' ROR. Pending verification, the Opposite Party sought for part-payment to secure the land against other buyers, assuring full refund if the deal fails through. Relying on this, the petitioners paid Rs. 1,58,45,971/- via post-dated cheque No. 816664 dated 03.09.2018 (Axis Bank, Dalhousie Branch), after refusing the Opposite Party's demand for cash.

4. On completing due diligence, the petitioners discovered that the land was not as represented and would not achieve contiguity. They cancelled the transaction and demanded return of the cheque, which the Opposite Party initially agreed to but instead deposited it. As the petitioners had already stopped payment/withdrawn funds following cancellation, the cheque was dishonoured with the endorsement "Funds Insufficient." Efforts to reach the Opposite Party thereafter proved futile.

5. The Opposite Party then filed C.S. 107429 of 2018 under Sections 138/141 of the Negotiable Instruments Act, 1881, before the learned Chief Metropolitan Magistrate, Calcutta, and cognizance was taken on 31.12.2018. A summon was issued by the Learned 3rd Metropolitan Magistrate, Calcutta, directing appearance on 21.02.2019, when the petitioners appeared and were released on bail on sureties of Rs. 10,000 each.

6. In the said proceeding, the Petitioners filed petitions under Sections 305 and 205 Cr.P.C. respectively, allowed by the Trial Court on 21.09.2019; on the same day, the petitioners were examined under Section 251 Cr.P.C. and pleaded not guilty.

7. The Opposite Party filed a petition under Section 143A of the NI Act seeking 20% of the dishonoured cheque amount as interim compensation. The Trial Court proceeded to hear and allow the Section 143A petition on 08.08.2022, directing the petitioners to pay 15% of the dishonoured cheque amount (Rs. 23,77,000/-) as interim compensation within 60 days from the date of passing of the order.

8. The petitioners' case, in essence, is that no transaction, debt, or liability ever crystallized between the parties given the cancellation of the deal prior to encashment, and that the impugned complaint under Sections 138/141 of the NI Act, 1881, represents a retaliatory and mala fide proceeding, instituted with an ulterior and oblique motive to harass the petitioners, upon a concocted version of the facts and absolute suppression of facts. Hence, the present revisional application seeks the aforesaid reliefs.

9. Mr. Sandipan Ganguly, learned senior counsel appearing on behalf of the petitioners, submitted that the whole case is false, frivolous, concocted and factually incorrect. While filing the complaint case under Sections 138/141 of the NI Act, 1881, the opposite party/de facto complainant also suppressed the actual material facts and circumstances with the ulterior motive to either extort the petitioners or to harass and/or tarnish their reputation.

10. It was further submitted that the opposite party had also filed an application under Section 200 of the Cr.P.C. against the petitioners alleging commission of offences punishable under Sections 420/473/120B of the IPC on the self-same cause of action. However, the actual fact of the petitioners' case is that there were ongoing negotiations between the petitioners and the opposite party for selling the opposite party's land. At the time of negotiation, the opposite party had displayed and handed over the photocopies of the title documents and the ROR of the Land for the purpose of examining the same before purchase without showing the original title deeds. The opposite party had also failed to provide the previous ROR, i.e., CS and RS. It is further alleged that the opposite party had deliberately chosen to suppress the fact that the cheque dated 03.09.2018 amounting to Rs. 1,58,45,971/- was issued as a result of mutual understanding between the parties and with assurance given by the opposite party, and that he would refund or return the entire sum paid by the petitioners without any demur in case the petitioners were not satisfied with the right, title and interest of the opposite party over the land and the transaction did not materialize.

11. Subsequently, upon searching and verifying the documents, the petitioners found that the opposite party is not the actual owner of the property which was under negotiation between the petitioners and the opposite party. As such, the petitioners refrained from entering into any arrangement or written agreement with the opposite party pertaining to the said land and asked the opposite party to cancel the deal and return the cheque which was just given to him. There was no agreement for sale, sale deed and/or transfer of any title deed or original documents between the petitioners and the opposite party. The negotiation did not materialise due to the ownership dispute. Subsequently, despite the opposite party's assurance, he did not return the post-dated cheque to the petitioners; rather, he submitted the said cheque before the bank for its encashment. The said cheque was returned with the endorsement "FUNDS INSUFFICIENT". No offence punishable under Sections 138/141 of the NI Act, 1881 is attracted. No ingredients are also fulfilled, even *prima facie,* towards those sections. Therefore, this proceeding is frivolous and malicious, and if it were allowed to continue, it would prejudice the petitioners and be an absolute abuse of process of law. To secure the ends of justice, the proceeding is liable to be quashed.

12. Learned senior counsel finally submitted that the learned Magistrate took cognizance mechanically without assessing the materials and in a casual manner. Learned counsel has further contended that when no agreement for sale or sale deed was executed or registered between the parties for any land, the question of liability or handing over the original deed does not arise and offence cannot be said to be committed by the petitioners as alleged. The proceedings under section 138/141 of the N.I. Act can only be triggered when the cheque is issued by the payee in discharge, in whole or in part, of any debt or other liability.

13. In the present case, there is no legally enforceable debt or other liability since there has been no transfer of title deeds, documents, execution of an agreement for sale or an execution or registered of a sale deed between the parties. When there is not legal debt and/or liability, question of initiation of proceedings against the petitioners are absurd and so inherently improbable that on the basis of which no prudent person ever reaches a just conclusion that there is sufficient ground for proceedings against the petitioners.

14. Learned Sr. counsel has placed reliance on a decision of the Supreme Court in the case of ***Indu Airways Private Limited and Others vs. Magnum Aviation Private Limited and Anr.***[1], particularly paragraph no.15, in support of his contention that a cheque issued towards advance payment at the inception of a contract, which is subsequently dishonoured upon cancellation of the underlying transaction, cannot be said to have been drawn against a legally enforceable debt or liability subsisting on the date of its drawal, to attract the penal consequences of Section 138 of the Negotiable Instruments Act, 1881. The observation from the judgment has been setout below:-

> *"15. The above reasoning of the Delhi High Court is clearly flawed inasmuch as it failed to keep in mind the fine distinction between civil liability and criminal liability under Section 138 of the NI Act. If at the time of entering into a contract, it is one of the conditions of the contract that the purchaser has to pay the amount in advance and there is breach of such condition then purchaser may have to make good the loss that might have occasioned to the seller but that does not create a criminal liability under Section 138. For a criminal liability to be made out under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. We are unable to accept the view of the Delhi High Court that the issuance of cheque towards advance payment at the time of signing such contract has to be considered as subsisting liability*

[1] ***(2014) 12 SCC 539***

and dishonour of such cheque amounts to an offence under Section 138 of the NI Act. The Delhi High Court has travelled beyond the scope of Section 138 of the NI Act by holding that the purpose of enacting Section 138 of the NI Act would stand defeated if after placing orders and giving advance payments, the instructions for stop payments are issued and orders are cancelled. In what we have discussed above, if a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise and material or goods for which purchase order was placed is not supplied by the supplier, in our considered view, the cheque cannot be said to have been drawn for an existing debt or liability."

15. Learned counsel Mr. Sataduru Lahiri, on the other hand, appearing on behalf of the opposite party, submitted that the petitioner no. 1 is a company and petitioner nos. 2 and 3 are the directors of the petitioner no. 1/company. The complainant is the absolute owner of the plot of land measuring about 179.25 satak at Ramnagar, Hooghly. The petitioners came to the office of the opposite party with a proposal to purchase his land and demanded his original documents. After being satisfied with the right, title and interest, they asked for the original documents of the land and negotiated to purchase the land upon handing over a cheque dated 03.09.2018 amounting to Rs. 1,58,45,971/- to the opposite party and requested that the sale deed be completed within a fortnight without agreeing to the sale. On such assurance, the opposite party handed over all the original papers and documents of the said landed properties to the accused persons.

16. It was further submitted that in discharge of the existing liabilities and towards the payment of the lawful consideration being the agreed consideration money in respect of the said landed properties, the accused persons issued the cheque as aforesaid and the same was placed for encashment. However, the same was dishonoured with the endorsement "FUND INSUFICIENT".

17. All Mandatory legal formalities have been complied with before filing the case under Section 138/141 of the N.I. Act. The Trial Court took cognizance against the petitioners. The Trial Court also proceeded to hear and allow the application filed under Section 143A on 08.08.2022, directing the petitioners to pay 15% of the dishonored cheque amount (Rs. 23,77,000/-) as interim compensation within 60 days from the date of passing of the order. Therefore, this instant criminal Revisional application is liable to be dismissed with a direction upon the Trial Court to proceed with the proceedings against the petitioners to uncover the truth and punish the petitioners in accordance with law.

18. Learned counsel has also placed reliance on the following judgments:

i. ***The Regional Manager v. Pawan Kumar Dubey[2];***

ii. ***NEPC Micon Ltd. v. Magma Leasing[3];***

iii. ***Ramachandra Hunasikatti v. Niraj Kumar Ladsaria[4];***

iv. ***M/s. DCS Ltd v. State of West Bengal[5];***

v. ***Rangappa v. Sri Mohan[6];***

vi. ***Renuka v. State of Maharashtra[7].***

19. Having heard the rival contentions of the parties and having gone through the materials on record, this court is of the view that a negotiation between the parties had been held to buy the land of the opposite parties measuring an area of about 179.25 decimals. The opposite party alleged that he handed over the original papers and documents of the land belonging to him. Being satisfied with the right, title and interest of the Opposite party, the petitioners had handed over a Cheque of Rs. 1,58,45,971/- via post-dated cheque No. 816664 dated 03.09.2018, in favour of the opposite party. It is an undisputed fact that neither a written agreement nor an agreement for sale

[2] ***(1976) 3 SCC 334***
[3] ***(1999) 4 SCC 253***
[4] ***2025 SCC OnLine Cal 7735***
[5] ***2017 SCC OnLine Cal 15997***
[6] ***(2010) 11 SCC 441***
[7] ***2026 SCC OnLine SC 533***

nor a sale deed has been executed between the parties as yet. It is also an undisputed fact that the total consideration amount fixed between the parties for materializing the deal was not finalised.

20. The Petitioners have admittedly issued the aforesaid cheque in favour of the opposite party. However, it is the claim of the petitioners that the deal was cancelled as subsequently, it was found that the opposite party was not the original owner of the property involved in the negotiation. Oral negotiation was held between the parties, but whether the oral terms and conditions were set out or agreed between the parties is a big question. None of the parties disclosed the actual terms and conditions settled between the parties. It is unexpected as to how a person can issue a cheque to the tune of Rs. 1,58,45,971/- without any final negotiation. It is settled law that even an oral agreement is permissible in law, if the same is proved with cogent and valid evidence before the court of law. This court does not find any documents to show deal or negotiation were cancelled. It was cancelled by oral information that needs to be proved in trial.

21. From the perusal of the complaint and material information given therein, this court is satisfied that all the procedure as required under the law for initiation of the proceedings under

Section 138/141 of the N.I. Act has been fulfilled by the opposite party.

22. The Trial Court, further upon considering the materials, issued summons to the petitioners. They appeared and obtained bail from the Trial Court. Subsequently, on 08.08.2022, the Trial Court directed the petitioners to pay 15% of the dishonored cheque amount (Rs. 23,77,000/-) as interim compensation within 60 days from the date of passing of the order.

23. This Court finds that the decision in ***Indu Airways Private Limited v. Magnum Aviation Private Limited (Supra)*** relied upon by the learned senior counsel for the petitioners, stands on a distinguishable factual foundation. In that case, the cheque was admittedly issued as advance payment under the terms of a concluded purchase order, and it was that undisputed contractual matrix which permitted the Court to hold, without requiring any trial of disputed facts, that a subsequent cancellation of the order extinguished the liability for which the cheque was drawn. In the present case, as noted above, no written agreement, memorandum, or sale deed was ever executed between the parties; the terms of the oral negotiation, the stage at which it is said to have been called off, and whether the cheque represented part-consideration for a transaction that had in substance gone through or was merely a conditional undertaking that lapsed on cancellation, are all matters of disputed facts resting on the rival, unsubstantiated versions of the parties. The ratio in ***Indu Airways (Supra)*** cannot be transplanted onto a factual matrix that has not yet been tested.

24. It is not in dispute that the petitioners issued the cheque in question and that their signatures thereon are not questioned. Once issuance and signature are admitted, the twin presumptions under Section 118(a) and Section 139 of the N.I. Act, that the cheque was drawn for consideration and that it was received by the holder towards discharge, in whole or in part, of a debt or other liability, arise in favour of the complainant/opposite party. This presumption, being one the Court is statutorily obliged to draw, includes within its sweep the very existence of a legally enforceable debt or liability, and is rebuttable only by the accused adducing cogent evidence to the contrary; a bare denial or an unproved assertion of cancellation does not suffice.

25. It is equally well settled that this presumption cannot be dislodged in summary fashion at the pre-trial or revisional stage merely upon a contention that no legally enforceable debt subsisted. Such a defence, however plausible it may appear from the petitioners' narrative, must be raised and established through evidence at trial. It is not open to a Court exercising jurisdiction under Sections 397/401 read with Section 482 Cr.P.C. to itself weigh the competing versions and pronounce, without trial, that the presumption stands rebutted. To do so at this stage would be to extinguish the statutory presumption before the complainant has had any opportunity to substantiate the complaint by leading evidence.

26. In this context, it may be apposite to quote paragraphs 8-10 of the decision of the Supreme Court in the case of ***Renuka v. State of Maharashtra (Supra):-***

> ***8.*** *It is to be borne in mind that at the stage of issuance of process by the learned Metropolitan Magistrate, what is prima facie required to be seen is the issuance of cheque by the drawer in favour of the complainant, its dishonour on presentation by the payee, issuance of statutory notice under Section 138 of the N.I. Act and filing of the complaint within the prescribed statutory period. If the drawer does not dispute issuance of such a cheque nor does he deny his signature on the dishonoured cheque, the statutory presumption as contemplated under Section 139 of the N.I. Act comes into play. As a result, the burden would shift on the drawer of the cheque to prove that the cheque was not issued for any legally enforceable debt or liability. This exercise has to be undertaken during the trial either by relying upon the material brought on record by the complainant or by the drawer leading evidence in rebuttal. At the stage of issuance of process, the statutory presumption under Section 139 of the N.I. Act cannot be*

dislodged in a summary manner merely by contending that the cheque issued was not for any legally enforceable debt or liability.

9. *We may in this regard refer to two decisions of this Court that have reiterated the view that once the basic ingredients of Section 138 of the N.I. Act are duly satisfied by the complainant, the rebuttal of statutory presumption by the drawer can only be made during the course of trial.*

In Rangappa v. Sri Mohan[3], it has been explicitly reiterated that the presumption mandated by Section 139 of the N.I. Act includes the presumption as regards existence of a legally enforceable debt or liability. It has been held that Section 139 is an example of a reverse onus clause that has been included in furtherance of the legislative object of improving the credibility of negotiable instruments. The presumption is rebuttable and the accused can raise a defence wherein the existence of a legally enforceable debt or liability can be contested.

In Rajesh Jain v. Ajay Singh[4], it has been held as under:

*"**34.** The NI Act provides for two presumptions: Section 118 and Section 139. Section 118 of the Act inter alia directs that it shall be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that 'unless the contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liability'. It will be seen that the 'presumed fact' directly relates to one of the crucial ingredients necessary to sustain a conviction under Section 138.*

35. Section 139 of the NI Act, which takes the form of a 'shall presume' clause is illustrative of a presumption of law. Because Section 139 requires that the Court 'shall presume' the fact stated therein, it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. But this *does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary as is clear from the use of the phrase 'unless the contrary is proved'.*

36. The Court will necessarily presume that the cheque had been issued towards discharge of a legally enforceable debt/liability in two circumstances. Firstly, when the drawer of the cheque admits issuance/execution of the cheque and secondly, in the event where the complainant proves that cheque was issued/executed in his favour by the drawer. The circumstances set out above form the fact(s) which bring about the activation of the presumptive clause. [Bharat Barrel v. Amin Chand] [(1999) 3 SCC 35 : (1999) 97 Comp Cas 786]

xxxxxxxxxxxxxxxxxxx

38. *As soon as the complainant discharges the burden to prove that the instrument, say a cheque, was issued by the accused for discharge of debt, the presumptive device under Section 139 of the Act helps shifting the burden on the accused. The effect of the presumption, in that sense, is to transfer the evidential burden on the accused of proving that the cheque was not received by the Bank towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further."*

27. The inherent power under Section 482 Cr.P.C., and the revisional power under Sections 397/401 Cr.P.C., are both to be exercised with circumspection and only in those cases where the allegations, taken on their face, do not disclose the commission of any offence, or are so absurd or inherently improbable that no prudent person could ever reach a conclusion that there is sufficient ground to proceed, or where the proceeding is demonstrably actuated by mala fides on facts that are not in dispute. That is plainly not the position here. The admitted facts, i.e., the issuance of a cheque for a substantial sum, its presentation, its dishonour on the ground of insufficient funds, service of statutory notice, and institution of the complaint within time, satisfy the basic ingredients of Section 138 of the N.I. Act. Whether the underlying negotiation was in fact called off, whether such cancellation extinguished a subsisting liability, and whether the opposite party suppressed material facts regarding title to the land, are all questions that turn on an appreciation of oral and documentary evidence, and are singularly unsuited to determination in this jurisdiction.

28. The submission that the complaint is a retaliatory counterblast to the petitioners' own grievance regarding suppression of title is equally not a matter this Court can resolve at this stage. The existence of cross-litigation between the parties, without more, does not establish mala fides sufficient to warrant interference under Section 482 Cr.P.C. The petitioners remain at liberty to raise every one of these defences the alleged suppression of the previous ROR, the absence of original title deeds, the alleged assurance of refund, and the alleged cancellation of the negotiation, before the Trial Court, where they will have full opportunity to lead evidence and rebut the statutory presumption in the manner contemplated by law.

29. For the reasons aforesaid, this Court is not inclined to exercise its jurisdiction under Sections 397/401 read with Section 482 Cr.P.C. to quash the proceedings being C.S. 107429 of 2018, or to set aside the order dated 20.06.2022 passed therein. The revisional application, accordingly, fails as this court finds that the Petitioners have fulfilled the prima facie conditions for the commission of offence punishable under Section 138/141 of the N.I. Act; the same may be considered in the proceedings under Section 138 of the Negotiable Instruments Act. Whether there is any genuine liability/debt against the petitioners or the cheque was issued or not for discharging such debt/liability requires a full-fledged trial to uncover the truth.

30. Accordingly, **CRR No. 3282 of 2022** is **dismissed**. Connected applications, if any, are also, thus, disposed of.

31. Consequently, Interim order, if any, stands vacated.

32. Let a copy of this Judgment be sent to the Learned Trial Court for information and taking necessary steps in accordance with law.

33. All parties will act on the server copies of this Judgment uploaded from the official website of this Court.

34. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J.)

(P.A.)