

# THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Revisional Jurisdiction)

DATED : 15<sup>th</sup> November, 2024

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**SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

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Crl.Rev.P. No.02 of 2024

**Petitioner/Revisionist** : Ugen Dorjee Bhutia

**versus**

**Respondent** : Pankaj Agarwal

Application under Sections 397 and 401 read with  
Section 482 of the Code of Criminal Procedure, 1973

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## **Appearance**

Mr. Jorgay Namka, Senior Advocate with Ms. Deempal Tamang,  
Advocate for the Petitioner/Revisionist.

Mr. S. S. Hamal, Senior Advocate with Mr. Leada T. Bhutia, Mr.  
Pradeep Sharma and Mr. Anirudh Gupta, Advocates for the  
Respondent.

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## **JUDGMENT**

Meenakshi Madan Rai, J.

**1.** The two questions that fall for consideration in this  
Revision are;

- (i) *Whether there was cause of action against the  
Revisionist;*
- (ii) *Whether there was a legally enforceable debt  
against the Revisionist.*

**2.** Learned Senior Counsel for the Revisionist raised the  
contention that, the Respondent/Complainant issued the Legal  
Notice, Ext-8, on 13-07-2020, which was served on the Revisionist  
on 11-08-2020, as duly confirmed by CW-3, the area postman,  
contrary to the claims of the Respondent that service was made on  
the Revisionist/Accused on 02-08-2020. In view of the date of  
service of notice, it is evident that the Complaint under Section 138  
of the Negotiable Instruments Act, 1881 (hereinafter, the "NI  
Act"), was filed prematurely, before the expiry of the period

mandated by the statute, hence no cause of action arises. To fortify this contention Learned Senior Counsel relied on ***Prem Chand Vijay Kumar*** vs. ***Yashpal Singh and Another***<sup>1</sup> and ***Yogendra Pratap Singh*** vs. ***Savitri Pandey and Another***<sup>2</sup>.

(i) In the second leg of his argument, Learned Senior Counsel canvassed that, there is no legally enforceable debt for the reason that, Ext 6 money receipt, relied on by the Respondent pertains to a loan of ₹ 10,00,000/- (Rupees ten lakhs) only, taken by the Revisionist from the wife of the Respondent on 10-10-2017 and Ext 7 money receipt pertains to a loan of ₹ 10,00,000/- (Rupees ten lakhs) only, taken by Revisionist from the Respondent on the same date. DW-1, the Branch Manager of Karnataka Bank, Gangtok Branch, has testified that vide Ext A, for the period 01-01-2020 to 30-06-2020, a sum of ₹ 10,00,000/- (Rupees ten lakhs) only, was deposited twice into the account of the Respondent on 02-01-2020 by the Revisionist, through Real Time Gross Settlement (RTGS). That, Ext B indicates that a sum of ₹ 23,00,000/- (Rupees twenty three lakhs) only, was again deposited into the account of the Respondent on 27-05-2020, through cheque clearance. Hence, a total sum of ₹ 43,00,000/- (Rupees forty three lakhs) only, was deposited into the account of the Respondent by the Revisionist. Consequently, the entire loan amount was repaid and no further debt remains to be paid by the Revisionist to the Respondent. The Courts below in their Judgments were therefore in error in directing the Revisionist to repay the sum of ₹ 24,00,000/- (Rupees twenty four lakhs) only,

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<sup>1</sup> (2005) 4 SCC 417

<sup>2</sup> (2014) 10 SCC 713

hence the impugned Judgment be set aside and the Revisionist acquitted.

**3.** Learned Senior Counsel for the Respondent repelling the arguments advanced, contended that admittedly the Notice was delivered on 11-08-2020, as has been noticed by the Courts below and reflected in the Judgment of the Learned Chief Judicial Magistrate, Gangtok District, Sikkim, dated 28-10-2022, in Pvt. Complaint Case No.24 of 2020 (*Pankaj Agarwal vs. Ugen Dorjee Bhutia*) and the Judgment of the Learned Sessions Judge, Gangtok, dated 12-10-2023, being Criminal Appeal No.07 of 2022 (*Ugen Dorjee Bhutia vs. Pankaj Agarwal*). Thus, the question of the time period as mandated by Section 138 of the NI Act not having been adhered to is a misleading submission advanced by Learned Senior Counsel for the Revisionist. That, Paragraph 6 of Ext-8 (Legal Notice under Section 138 of the NI Act) is also revelatory of the fact that the period of limitation prescribed in the statute was complied with. Opposing the arguments regarding repayment of the loan, Learned Senior Counsel sought to clarify that Ext A and Ext B (*supra*), pertains to repayment of another loan availed of earlier by the Revisionist from the Respondent and his wife and repaid on 02-01-2020 and 27-05-2020. That, indubitably the disputed cheque was issued on 29-06-2020, subsequent to the payments reflected above, which itself suffices to establish that the disputed cheque pertained to another unpaid loan, availed of by the Revisionist from the Respondent. The Learned Courts below duly considered this aspect and remarked that there would have been no necessity for the Revisionist to have issued the cheque dated 29-06-2020 if the loan had been repaid or for that matter, to deposit money in excess of what the Revisionist owed the

Respondent, thereby disbelieving the claim of the Revisionist. That, the earlier loan amounts availed of by the Revisionist had been re-paid in January, 2020 and May, 2020, while the remaining amount of ₹ 20,00,000/- (Rupees twenty lakhs) only, was the outstanding loan. Learned Senior Counsel for the Respondent placed reliance on ***Prahlad Sharma vs. Dipika Sharma and Another***<sup>3</sup>. Hence, the impugned Judgment warrants no interference.

**4.** I have considered the rival contentions advanced *in extenso* by Learned Counsel for the parties, perused the documents relied on by the parties, the impugned Judgment and the citations made at the Bar.

**5.** Relevantly while perusing the records, it is seen that the Learned Trial Court vide its Judgment dated 28-10-2022, in Pvt. Complaint Case No.24 of 2020 (*Pankaj Agarwal vs. Ugen Dorjee Bhutia*), while discussing the facts of the case and evidence on record, was of the view that the legal notice was served on the Revisionist and proved by CW-3, hence the ingredients of Section 138 of NI Act had been proved against the Respondent. The Trial Court was not convinced by the argument of the Revisionist that he had repaid a sum of ₹ 43,00,000/- (Rupees forty three lakhs) only, against a loan of ₹ 20,00,000/- (Rupees twenty lakhs) only, holding it improbable and unusual for any person to return more than twice the amount availed of as loan. The Court found that the Revisionist had failed to rebut the presumptions against him and thereby convicted the Revisionist and sentenced him as under;

“.....  
The convict is sentenced to undergo simple imprisonment of 3 months under Section 138 of the N.I Act, 1881. He shall also pay a sum of ₹ 24,00,000/- (*Rupees twenty four lakhs only*), in total

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<sup>3</sup> 2022 SCC OnLine Sikk 74

to the complainant as compensation under Section 357 of the Cr.P.C., 1973.

The provisions of Probation of Offenders Act, 1958 is not considered and applied in this case for the convict.

.....”

**(i)** The Learned Appellate Court vide the impugned Judgment dated 12-10-2023, in Criminal Appeal No.07 of 2022 (*Ugen Dorjee Bhutia vs. Pankaj Agarwal*), upheld the Judgment of the Learned Trial Court and in Paragraph 16 of its Judgment observed that the Court was in agreement with the reasoning of the Learned Trial Court made at Paragraph 20 of its impugned Judgment. The Sentence imposed by the Learned Trial Court was however modified by the Appellate Court as follows;

**“18.** .....  
*The appellant shall pay a fine of ₹ 24,00,000/- (Rupees Twenty-Four Lakhs only) under Section 138 of the N.I. Act, 1881 and in default, he shall undergo simple imprisonment for one (1) year. The fine (supra) so recovered shall be made over to the respondent as compensation.”*

**6.** Having perused the Judgments of the Learned Courts below, it is imperative to remark that the Judgment of the Learned Trial Court in Paragraph 20 is rather unhappily worded and fails to discuss the application of Section 138 of the NI Act to the facts of the Revisionist’s case although the provision was duly extracted in the Judgment. The Judgment merely observed as follows;

**“20.** The receipt of legal notice/exhibit 8 was also disputed by the accused/respondent, however the same is proved by CW 3 who identified exhibit 4 as the postal receipt. The accused/respondent has also admitted to being the son of Shri P. Bhutia and resident of Sajong Rumtek, Sikkim during his cross-examination and exhibit 8 was also sent to the same address.....”

**7.** The Appellate Court while upholding the Judgment of the Trial Court attempted to elucidate on this aspect by recording a finding that the fact of delivery of notice was confirmed by CW-3. That, when the Revisionist did not repay the amount within the

prescribed period of fifteen days the Complaint was filed on 09-09-2020. That, Ext-1 was the cheque issued to the Respondent by the Revisionist for discharging a legally recoverable debt of ₹ 20,00,000/- (Rupees twenty lakhs) only.

**8.** Pertinently, the Judgment of the Learned Trial Court fails to discuss specifically the time limits prescribed by the provision and the compliance or not thereof. In this context, the Hon'ble Supreme Court has repeatedly expounded that Judgments must exhibit clarity. In ***State Bank of India and Another vs. Ajay Kumar Sood***<sup>4</sup> it was observed that incoherent Judgments have a serious impact upon the dignity of our institutions. While Judges may have their own style of Judgment writing they must ensure lucidity in writing across these styles. In ***Shakuntala Shukla vs. State of Uttar Pradesh and Another***<sup>5</sup> it was observed as follows;

**"9.5.** The judgment replicates the individuality of the Judge and therefore it is indispensable that it should be written with care and caution. The reasoning in the judgment should be intelligible and logical. Clarity and precision should be the goal. All conclusions should be supported by reasons duly recorded. The findings and directions should be precise and specific. Writing judgments is an art, though it involves skilful application of law and logic. We are conscious of the fact that the Judges may be overburdened with the pending cases and the arrears, but at the same time, quality can never be sacrificed for quantity. Unless judgment is not in a precise manner, it would not have a sweeping impact. There are some judgments that eventually get overruled because of lack of clarity. Therefore, whenever a judgment is written, it should have clarity on facts; on submissions made on behalf of the rival parties; discussion on law points and thereafter reasoning and thereafter the ultimate conclusion and the findings and thereafter the operative portion of the order. There must be a clarity on the final relief granted. A party to the litigation must know what actually he has got by way of final relief. The aforesaid aspects are to be borne in mind while writing the judgment, which would reduce the burden of the appellate court too. We have come across many judgments which lack clarity on facts, reasoning and the findings and many a times it is very difficult to appreciate what the

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<sup>4</sup> (2023) 7 SCC 282

<sup>5</sup> (2021) 20 SCC 818

learned judge wants to convey through the judgment and because of that, matters are required to be remanded for fresh consideration. Therefore, it is desirable that the judgment should have a clarity, both on facts and law and on submissions, findings, reasonings and the ultimate relief granted.”

**(i)** Thus, it is the duty and responsibility of every Court to pronounce a Judgment with clarity ringing through its reasoning and conclusion. The parties should not leave the Court with the impression that the Court has been indolent or inept in spelling out its reasoning for the conclusions arrived at and articulating it in the Judgment. Hence, the Trial Court would do well to abide by the directions of the Hon’ble Supreme Court.

**(ii)** That having been said in a Revision Petition, the High Court is to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, by any inferior Criminal Court situate within its jurisdiction and examine the regularity of any proceedings of such inferior court, while thus examining the impugned Judgment, appositely, the statutory provision of Section 138 of the NI Act is extracted hereinbelow for easy reference;

**“138. Dishonour of cheque for insufficiency, etc., of funds in the account.**—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six

months from the date on which it is drawn or within the period of its validity, whichever is earlier;

- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

*Explanation.*—For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.”

From a bare perusal of the statute, it is evident that the penalty prescribed in the provision will not be applicable unless proviso (a), (b) and (c) (*supra*) kick into place.

**9.** Hence, while taking up the first question formulated (*supra*) for consideration;

- (a) The records and evidence reveal that the Legal Notice Ext-8, dated 13-07-2020, was delivered to the Revisionist on 11-08-2020.
- (b) CW-3 the postman deposed that he delivered the consignment at the house of the Revisionist on 11-08-2020. This testimony was not decimated by any other evidence.
- (c) The cheque in dispute, Ext-1 was made out to the Respondent on 29-06-2020.
- (d) The cheque was presented by the Respondent to the Bank vide Ext-2 on 03-07-2020 i.e., within six months from the

date on which it was drawn, thereby complying with Section 138(a) of the NI Act.

- (e) Vide Ext 3, the Bank returned the cheque dishonoured, on 06-07-2020.
- (f) Pursuant to such return, Legal Notice Ext-8 was issued on 13-07-2020, by the Respondent to the Revisionist, i.e. within thirty days of the receipt of the information by him from the Bank regarding the return of the cheque as unpaid, in terms of Section 138(b) of the NI Act.
- (g) Notice having been delivered on 11-08-2020, fifteen days on receipt of the notice by the Revisionist would be completed on 26-08-2020 as envisaged by Section 138(c) of the NI Act.
- (h) The cause of action would thus arise from 27-08-2020. The Respondent chose to take action and file the Complaint on 09-09-2020.

**(i)** The above facts indicate that the timelines prescribed in Section 138(a), Section 138(b) and Section 138(c) of the NI Act were duly complied with and no evidence to the contrary emanates.

**(ii)** At this juncture notice may be taken of the provisions of Section 139 of the NI Act which provides as follows;

**"139. Presumption in favour of holder.**—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 discharge, in whole or in part, of any debt or other liability."

**(iii)** The Revisionist did not discharge the burden cast on him, hence the cheque is presumed to have been issued in the discharge of a debt or liability.

**10.** The judgments relied on by Learned Senior Counsel for the Revisionist in **Prem Chand Vijay Kumar** (*supra*) and **Yogendra Pratap Singh** (*supra*) are of no avail to his case. In view of the foregoing discussions, the first question is given a quietus.

**(i)** As regards the second question, the argument that Ext-6 and Ext-7 were for different loans advanced also hold no water as the Complainant has specifically mentioned that when he failed to refund the amount even after two years, the Respondent requested the Revisionist to repay the money, to which the Respondent requested him to wait for a few months. The amount deposited by the Revisionist into the account of the Respondent as per the evidence of DW-1 was for a different loan availed by him which had already been paid by him on 02-01-2020 and 28-05-2020. Had ₹ 43,00,000/- (Rupees forty three lakhs) only, actually been paid towards a debt of ₹ 20,00,000/- (Rupees twenty lakhs) only, it would not only have been a preposterous proposition, but there would also have been no requirement whatsoever for the Revisionist to have issued the cheque dated 29-06-2020, amounting to ₹ 20,00,000/- (Rupees twenty lakhs) only. It is unbelievable that even after all debts were repaid another cheque would also be issued *sans* reason by the Revisionist to the benefit of the Respondent.

**11.** In light of the foregoing discussions, I find no reason whatsoever to interfere in the findings arrived at in the impugned Judgment.

**12.** The sentence imposed on the Revisionist as also the modification made by the Appellate Court to the sentence imposed by the Trial Court on the Revisionist is accordingly upheld.

**13.** The Revisionist shall pay the legally recoverable debt of ₹ 24,00,000/- (Rupees twenty four lakhs) only, to the Respondent, before the Court of the Learned Chief Judicial Magistrate, Gangtok, within six weeks' from today, failing which he shall undergo the imprisonment imposed on him by the Learned Appellate Court.

**14.** Revision Petition stands disposed of accordingly.

**15.** Copy of this Judgment be transmitted to the Court of the Learned Chief Judicial Magistrate, Gangtok, the then Learned Chief Judicial Magistrate, Gangtok, all other Learned Magisterial Courts and the Court of the Learned Sessions Judge, Gangtok.

**16.** Lower Court records be returned forthwith.

( **Meenakshi Madan Rai** )  
**Judge**

15-11-2024

Approved for reporting : **Yes**