

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA**

In the matter of an application under and in terms of s. 25(1) of the Debt Recovery (Special Provisions) Act No.02 of 1990 as amended by Debt Recovery (Special Provisions) (Amendment) Act No.09 of 1994 read along with s. 136 (1) (a) of the Criminal Procedure Act No.15 of 1979.

**C.A. Appeal
No. CA(PHC)137/22**

**High Court Case
No. HC/RA/46/2020
Magistrate's Court Case
No.20081/01/19**

TAIAN LANKA STEEL COMPANY PRIVATE
LIMITED

Having its Registered Office and
Principal place of Business
No.333-1/16,
Old Moor Street,
Colombo 12.

COMPLAINANT

Vs.

“EASTERN MARKETING AND
HARDWARES”
Carrying on business as partnership
under the name and style of
“EASTERN MARKETING AND
HARDWARES”

1. Weerayya Raja
2. Sothirasa Nishanthani

Both at:
No.345,
Nilaweli Road,
Uppuweli.

New Address

No.25/2,
02nd Lane,
Kanya,
Uppuweli,
Trincomalee.

ACCUSED (DEFENDANTS)

And

In the matter of a Revision application
under and in terms of Article 154 (p) 3(b)
read along with Article 138 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

TAIAN LANKA STEEL COMPANY PRIVATE
LIMITED

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COMPLAINANT-PETITIONER

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Trincomalee.

ACCUSED (DEFENDANTS)-RESPONDENTS

And Now Between

In the matter of an Appeal under and in terms of s.11 of High Court of the Provinces (Special Provisions) Act No.19 of 1990 as amended and other applicable provisions of Law;

TAIAN LANKA STEEL COMPANY PRIVATE LIMITED

Having its Registered Office and Principal place of Business
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COMPLAINANT-PETITIONER-APPELLANT

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“EASTERN MARKETING AND HARDWARES”

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ACCUSED(DEFENDANTS)-RESPONDENTS-RESPONDENTS

Before: **A. Ranaraja**

&

Dr. Sumudu Premachandra J.

Counsel: Wasantha Fernando with Thakshila Abeysinghe instructed by Hemantha Wickramasinghe for the Complainant-Petitioner-Appellant.

Written Submissions: By the Complainant-Petitioner-Appellant filed on 14/09/2026.

Argued On: 17/09/2026.

Judgement On: 23/10/2026.

Dr. Sumudu Premachandra J.

1] This Revision Application stems the Order dated 29/10/2019 of the Magistrate's Court of Colombo in Case No. 20081/01/19, refusing to issue summons. The Complainant-Petitioner had filed a complaint concerning three Dishonoured Cheques issued by the 2nd Accused, a partner of "Eastern Marketing and Hardware," for payment of iron and steel goods purchased on credit. Two cheques were returned marked "Refer to Drawer" and the third "Account Closed."

2] The Petitioner contends that the Magistrate erred in refusing summons under Section 139 (1) of the Criminal Procedure Code by effectively requiring proof beyond reasonable doubt at the preliminary stage and by wrongly suggesting that a prior police complaint was necessary to issue summons.

3] The Petitioner, relying on Section 25 (1) of the Debt Recovery (Special Provisions) Act No. 02 of 1990, as amended, together with Section 136 (1) (a) of the Criminal Procedure Code, the Petitioner argues that dishonor in the prescribed circumstances gives rise to statutory liability and that the complaint, invoices, cheques and Cheque Return Notifications disclosed a sufficient prima facie case.

4] The Petitioner further submits that a private complainant is entitled to institute criminal proceedings directly without a prior police investigation. The Appellant argued that the Magistrate should have considered the documentary material at the summons stage and, if necessary, exercised the powers under Section 139 (1) (ii) of the Criminal Procedure Code and Section 90 (d) of the Evidence Ordinance to obtain a bank report rather than dismissing the complaint summarily.

5] The Petitioner therefore invokes the Revisionary Jurisdiction of the High Court under Article 138 (1) of the Constitution and Section 753 of the Civil Procedure Code, contending that Revision is available to correct orders that are ex-facie illegal, palpably wrong, or cause a miscarriage of justice.

6] The Petitioner maintains that the Magistrate's refusal to issue summons was a material error of law because the court prematurely determined matters that should properly be tested at trial, including the effect of the bank endorsements "Refer to Drawer" and "Account Closed," without giving the complainant an opportunity to establish the statutory ingredients of the offences under Section 25 of the Debt Recovery (Special Provisions) Act.

7] The Petitioner also relies on Section 73 of the Bills of Exchange Ordinance concerning cheques as bills of exchange payable on demand and argues that the statutory scheme imposes liability in the circumstances established by the complaint.

8] Once the case was filed the learned Chief Magistrate of Colombo refused to issue summons on the Accused basically holding that the meaning of refer to drawer has not been clearly established whether any criminality is involved. She has noted that there was no complaint made to the police and no bank statements were called to clear up on what basis that the cheques were dishonored.

9] Being aggrieved to the said refusal of issuing summons, the Petitioner filed a Revision application to the Colombo High Court. The learned High Court Judge dismissed the application stating that there is no error in the impugned Order.

10] Being aggrieved to the said dismissal of the Revision application by the High Court, the Appellant prefers this appeal on the following grounds;

1. The Honourable learned High Court Judge presiding at High Court No. 03 has by all means acted with a predetermined mind not suitable to a

Judicial Officer and had erred in law acting in total misconception in law with regard to the nature of criminal liability of drawers on Dishonoured Cheques with the remark “Refer to drawer” and “Account Closed” being 3 cheques (Subject matters of the present case) issued to settle money legally due to the Appellant and the Appellant as entitled to maintain a Prosecution under Section 136 (1) (a) of the Criminal Procedure Code as amended framing charges under and in terms of the imperative provisions of the Debt Recovery Act as amended and more particularly under Section 25 (1) (a) and (b) of the Debt Recovery (Special Provisions) Act as amended by Section 19 of the Debt Recovery (Special Provisions) (Amendment) Act No. 09 of 1994.

2. The learned High Court Judge erred in law in the challenged judgement dated 16/06/2022 conclusion by acting in total misconception of law by all means stated that the Appellant has not provided sufficient information and evidence in order to continue with the action in the first instance.
3. Learned High Court Judge erred in law by failing to understand that one party will not issue a Cheque without a transaction to any other party just for fun and failed to accept and respect the fact that the Respondent had issued these 3 cheques based on legitimate transactions that happened between the Appellant and the Respondent.
4. Honourable learned High Court Judge presiding at High Court No. 03 erred in law by failing to understand and apprehend that in terms of Section 19 of the Debt Recovery (Special Provisions) (Amendment) Act No. 09 of 1994 the section amended and replaced Section 25 (1) (b) of the Principal Enactment and by which amendment Legislature has clearly created strict liability on drawers of cheques.
5. The said Order is contrary to law and against the intention of legislature.

6. Honourable learned High Court Judge presiding at High Court No. 03 failed and neglected to consider that the learned Magistrate made the impugned Order dated 29/10/2019 without considering the law applicable in relation to cheque returns whatsoever, and thereby erred in law;
7. Honourable learned High Court Judge failed and neglected to consider that the matter in issue in the correct perspective and misdirected himself with regard to the applicable law; what actually the Appellant canvassed by the said application for Revision and thereby erred in law;
8. Honourable learned High Court Judge misdirected himself with regard to the provisions of Section 25 (1) of the Debt Recovery (Special Provisions) Act as amended by Section 19 of the Debt Recovery (Special Provisions) (Amendment) Act No. 09 of 1994 and thereby erred in law.

11] I now consider the merits of this application. It is trite law that every institution of the Magistrate's Court shall be instituted under section 136 of the Criminal Procedure Code, as amended. In relation to private complaint, Section 136 (1) (a) is to be considered. It enacts;

“Proceedings in a Magistrate's Court shall be instituted in one of the following ways: –

(a) on a complaint being made orally or in writing to a Magistrate of such court that an offence has been committed which such court has jurisdiction either to inquire into or try:

Provided that such a complaint if in writing shall be drawn and countersigned by a pleader and signed by the complainant; or”

12] Once the private complaint is filed under Section 136 (1) (a), the Magistrate should then act under Section 139, the relevant portions of which are reproduced below;

“Where proceedings have been instituted under paragraph (a) or paragraph (b) or paragraph (c) of section 136 (1) and the Magistrate is of opinion that there is sufficient ground for proceeding against some person who is not in custody-

(a) if the case appears to be one in which according to the fourth column of the First Schedule a summons should issue in the first instance, he shall, subject to the provisions of section 63, issue a summons for the attendance of such person;

(b) if the case appears to be one in which according to that column a warrant should issue in the first instance, he shall issue a warrant for causing such person to be brought or to appear before the court at a certain time:

Provided that (i) the Magistrate may in any case, if he thinks fit, issue a summons in the first instance instead of a warrant; (ii) in any case under paragraph (a) or paragraph (b) of section 136 (1), the Magistrate shall, before issuing a warrant, and may, before issuing a summons, examine on oath the complainant or some material witness or witnesses; and”

13] In **Malinie Guneratne vs Abeysinghe and another** [1994] 3 Sri LR 196, where Sarath N. Silva, J / P, CA (as he then was) held when issuing summons under Section 139;

“Section 139 (1) requires a Magistrate to form an opinion as to whether there is sufficient ground for proceeding against some person who is not in custody. I am of the view that the opinion to be formed should relate to the

offence the commission of which is alleged in the complaint or plaint filed under section 136(1). The words 'sufficient ground' embraces both, the ingredients of the offence and the evidence as to its commission. The use of the word opinion does not make the action of the Magistrate a purely subjective exercise. Since the opinion relates to the existence of sufficient ground for proceeding against the person accused, the material acted upon by the Magistrate should withstand an objective assessment. I am of the view that the proper test is to ascertain whether on the material before Court, prima facie, there is sufficient ground on which it may be reasonably inferred that the offence as alleged in the complaint or plaint has been committed by the person who is accused of it."

14] In **Aruna Iddagoda vs Hon. Magistrate, Magistrate's Court No.4, Colombo 12 and other**, CA (Writ) Application No. 211/2020, Arjuna Obeyesekere, J., P/CA quashing the summons issued on an Accused held;

"Where a complaint is made in terms of Section 136(1)(a), as in this application, prior to issuing summons, the Hon. Magistrate must form an opinion that there are sufficient grounds to proceed against the person named."

15] It is to be observed that when considering whether to issue summons under Section 139 (1) of the Code of Criminal Procedure Act, the Magistrate is only required to determine whether "sufficient grounds" exist at a prima facie level, rather than conducting an in-depth evaluation of evidence or requiring proof beyond reasonable doubt at the initial stage.

16] It should further be noted that the learned Chief Magistrate imposed evidentiary requirements appropriate to a full trial at the preliminary summons stage, which is wrong.

17] I now consider the scope of section 25 (1) of the Debt (Recovery) Special Provisions Act No. 02 and Section 25 (1) of the Debt (Recovery) Special Provisions Act No. 2 of 1990 is as follows;

“Any person who,

(a) draws, a cheque knowing that there are no funds or not sufficient funds in the bank to honour such cheque; or

(b) makes an order to a banker to pay a sum of money which payment is not made by reason of there being no obligation on such banker to make payment or by reason of the payment having countermanded; or

(c) gives an authority to an institution to pay a sum of money to itself, in payment of a debt or loan or any part thereof owed to such institution, from, and out of an account maintained or funds deposited, by such person not placing adequate funds in such account or by reason of the funds deposited having been withdrawn by reason of such person countermanding the authority given or by reason of any one or more of such reasons; or

(d) having accepted on inland bill dishonours it by nonpayment, shall be guilty of an offence under this Act and shall on conviction by a Magistrate after summary trial be liable to punishment with imprisonment of either description for a term which may extend to one year or with fine of ten thousand rupees or ten per centum of the full value of the cheque, order, authority or inland bill in respect of which the offence is committed, whichever is higher, or with both such fine and imprisonment...”

18] In **Officer-in-Charge, CID vs. Soris** [2006] 3 SLR page 375 at page 381, N. Jayasinghe, J, has explained;

“We are of the view that section 25 (1)(a) is self-contained and exists devoid of any ambiguity and given effect to, without resorting to any other provision. We are also of the view that “institution of an action” in Part I of the Debt Recovery Act has no relevance whatsoever to a prosecution instituted under Section 25(1) of the Act.”

19] It should be noted that cheques are drawn for many reasons. A cheque is not invalid by the reason of being post-dated (See **Krishnappa Chetty Vs Carpen Chetty** 15 NLR 243¹). An anti-dated or post-dated cheque is a valid cheque (Sec. 13 (2) of the Bills of Exchange Ordinance²). Post-dated cheques are given for many reasons, the most common of which is the availability of funds at a particular time in future.

20] Moreover, a cheque cannot be held invalid merely because it is not dated (Vide Sec 3 (4) (a) of the Bills of Exchange Ordinance No. 25 of 1927 (BEO))³. The holder can write the date before presenting it to the bank. It is the responsibility

¹ “A cheque is not invalid by reason of its being post-dated. An endorsee of a cheque, who knew at the time of the endorsement that the cheque was post-dated, may nevertheless maintain an action on the note.”

² “A bill is not invalid by reason only that it is antedated or postdated, or that it bears date on a Sunday.”

³ “3(4) A bill is not invalid by reason -

(a) that it is not dated ;

(b) that it does not specify the value given, or that any value has been given therefor ;

(c) that it does not specify the place where it is drawn or the place where it is payable.”

of the drawer to retain funds in the account to meet the cheque during the period of its validity. Therefore, the mere fact that the cheque is undated or postdated is no defence. However, if specific instructions have been given by the drawer as to the date (such as a period of time) and the cheque has been presented to the bank contrary to such instruction, that may be a valid defence of the absence of a mental element, depending on the circumstances of the case. But, it has to be taken and considered in a trial, not in the initial stage, before issuing summons. It is further to be noted that every summons to be issued under section 139(1) of the Criminal Procedure, to form an opinion by the Magistrate, there is no necessity to lodge a complain to a Police and there is no requirement as such under section 136(1)(a) of the Criminal Procedure Code as amended.

21] In terms of Section 20 of the BEO⁴, if a cheque is delivered, with the signature of the drawer, to be filled by the acceptor, he has a prima facie authority to fill up the omission (including the amount) in any way he thinks fit within a reasonable time and strictly in accordance with the authority given. Therefore, even a blank cheque leaf, signed and handed over by the Accused, which is towards some payment, would attract the liability under Section 25.

⁴ “20(1) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a prima facie authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor; or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a prima facie authority to fill up the omission in any way he thinks fit.

(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact: Provided that if any such instrument after completion is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.”

22] In ***Bir Singh v. Mukesh Kumar***, (2019) 4 SCC 197, the Indian Supreme Court held that where a signed blank cheque is voluntarily handed over, the presumption under Section 139 of the Negotiable Instruments Act can still arise. The Accused may rebut that presumption, but the mere fact that the cheque was not filled entirely by the drawer is not enough by itself.

23] The law relating to cheques has been drastically changed in 2025. There are certain presumptions that have been introduced by Bills of Exchange (Amendment) Act, No. 13 of 2025. Those are;

- **Presumption of Debt or Liability:** Section 82E presumes that a cheque was received for the discharge of a debt or liability, unless proven otherwise.
- **Presumption of Insufficient Funds:** Section 82 (3) presumes dishonour due to insufficient funds for returns like *"refer to drawer"* or *"account closed"*.
- **Conclusive Evidence of Dishonour:** Section 82D accepts return notifications, deposit slips, and the returned cheque itself as conclusive evidence of dishonour.
- **Presumption of Consideration:** Signatories and holders are prima facie presumed to be party for value and holders in due course.

24] In the case in hand, cheques were drawn before the above amendment. Thus, there is no direct impact on those presumptions. In this case the cheques were bounced on stating "refer to drawer". Notably, Courts in other Jurisdictions have held that "Refer to drawer" in the ordinary meaning amount to a statement of a bank, "we are not paying, go back to the drawer and ask why", or else "go back to the drawer and ask him to pay". The remarks "refer to drawer" necessarily

means, as per banking custom, that the cheque has been returned for the need of funds in the account of the drawer of the cheque. It is a courteous way normally adopted by a bank to show its inability to honour the cheque for the need of funds. (Vide; n **Dike v. African Continental Bank Ltd.** (2000) 5 NWLR (Pt. 657) 441, **Jayson v. Midland Bank Ltd.** (1968) 1 Lloyd's 91 Rep. 409, (1915) 31 T.L.R. 334, **Voltas Ltd Vs Hiralal Agarwalla** (1991) 71 Comp as 273 (Cal)., and **Plunkett v. Barclays Bank Ltd** (1936) 2 K.B. 107).

25] In **M/s Electronic Trade & Technology Development Corporation Ltd. Vs M/s Indian Technologist and Engineer (Electronic) Pvt. Ltd** AIR 1996 SC 2339, it was held that if a cheque is returned with the endorsement 'Refer to drawer' or Instructions for stoppage of payment or exceeds arrangement, it amounts to dishonor of cheque.

26] In relation to Section 25 (1) of Debt Recovery (Special Provisions) Act No. 02 of 1990 (as Amended) more recently, in **The Attorney General vs Samuvel Canistes**, CA HCC 0154/2023, Decided on: 27/06/2025, His Lordship AMAL RANARAJA, J. split the civil and criminal part of the section as;

*"The Debt Recovery (Special Provisions) Act No.02 of 1990 (as Amended) contains five parts; the first to the fourth parts refer to the recovery procedure in respect of monies lent and advanced by lending institutions. Part V which contains sections 25 (1)(a) and (b) **constitute criminal responsibility in respect of any person.** Such criminal responsibility accrues when a person draws a cheque knowingly that there are no funds, or a cheque is dishonored by a bank due to such cheque being dishonestly countermanded or there being no obligation on the banker to make payment."* [Emphasis is added]

27] Mens rea of the offence shows according to Section 25 two segments. Firstly, knowingly draws a cheque which is dishonoured by a bank for the need of funds and secondly, gives an order to a banker to pay a sum of money, which payment is not made by reason of there being no obligation and such banker to make payment or the order given being subsequently countermanded with a dishonest intention. These things are to be proved in the trial. If the summons was not issued, it will be detriment to the holder of the cheque.

28] Actus Reus is handing over the cheque to the holder. The relevant consideration is whether, when the cheques were presented within their validity period, there were sufficient funds or an existing bank obligation to honour them. Accordingly, an account becoming closed after issuance but before presentment may still attract liability.

29] The learned High Court Judge has failed to consider the fact that the Appellant application has refused by the Learned Chief Magistrate requiring proof in advance which is palpably wrong. It was further drawn that in HC/RA/49/2020 and HC/RA/50/2020, in which similar cases, identical Magistrate's Court Orders concerning dishonored cheques and related to Section 25 (1) of the Said Act were allowed and Orders were set aside by the learned High Court Judges of Colombo, respectively, yet, in this matter without considering the precedents, the Revision was dismissed. This court sees that the same question of law was decided in favour of the Petitioners in those cases, reversing Magistrates' Orders by two different judges and it was drawn and certified copies were attached to the instant High Court Judge's information. The learned High Court Judge ignored the said precedents. It is to be noted that judgements

should have uniformity and without any reasons, the Trial Judges ought not to have taken different stances. Though, the above cases are not binding; those cases are highly persuasive. Had the learned Trial Judge considered the matter in hand sensibly, this case would not have come up.

30] It is to be noted that the expression "security cheque" is not statutorily identified by Bills of Exchange Ordinance or any other statute. Cheque by its nature is a negotiable instrument. Thus, a cheque is not just a paper that can be retained as a security. Every valid cheque is viable to be presented to a bank. If, on the date on which the cheque is issued, liability or debt existed the drawer cannot say that it was given as 'security'. (See **Sampelly Satyanarayana Rao Vs Indian Renewable Energy Development Agency Limited** 2016 SCC 954-SC India).

31] In the above circumstances, I am of the view that the learned High Court Judge ought to have exercised its Revisionary Jurisdiction to correct the Magistrate's manifest errors. The central complaint of the Appellant is that the Learned Chief Magistrate prematurely required proof of matters properly reserved for trial. She has misapplied the statutory requirements governing dishonored cheques, and thereby denied the Appellant a lawful opportunity to prosecute the alleged offences, resulting in a miscarriage of justice.

32] Due to the aforesaid reasons, I set aside the disputed Orders dated 16/06/2022 of the learned High Court Judge and refusal to issue summons for Order dated 29/10/ 2019 of the learned Chief Magistrate of Colombo and direct the learned Chief Magistrate to restore the case back into the Magistrate's Court's case roll, to issue summons on the Accused (Accused-Defendant-

Respondent) to appear before the Magistrate's Court of Colombo and proceed with the trial to its conclusion on merits according to the law.

33] I direct the Registrar of this Court to communicate this judgement to the High Court of Colombo and the Chief Magistrate's Court for compliance.

JUDGE OF THE COURT OF APPEAL

AMAL RANARAJA J.

I agree

JUDGE OF THE COURT OF APPEAL