

**CRR 3136 of 2022
with
IA No. CRAN 2 of 2023**

**Anish Kumar Singh
Vs.
The State of West Bengal & Anr.**

For the Petitioner : Mr. Bibek Chatterjee,
Ms. Paramita Sahu,
Ms. Susmita Saha.

For the State : None.

For the Opposite Party No. 2 : None.

1. It appears from the record that an affidavit-of-service has been filed by the petitioner before the Court on 5th July, 2023. It appears from the affidavit-of-service that the opposite party/complainant in the present case was duly served. But in spite of service there was no representation on behalf of the opposite party no. 2.
2. The present revisional application has been preferred against an order dated 22.07.2022 passed by the learned Metropolitan Magistrate, 7th Court, Calcutta, in C.S. Case No. 65216 of 2019.
3. Vide the said order the learned Magistrate has rejected the petitioner's application under Section 245 of the Cr.P.C. on the specific finding that:-

“Section 27 of the General Clauses Act dealt with the presumption of service of a letter sent by post. The dispatcher of a notice has, therefore, a right to insist upon and claim the benefit of such a presumption. But as the presumption is rebuttable one, he has two options before him. One is to concede to the stand of the sendee that as a matter of fact he

did not receive the notice, and the other is to contest the sendee's stand and take the risk for proving that he in fact received the notice. It is open to the dispatcher to adopt either of the options. If he opts for the former, he can afford to take appropriate steps for the effective service of notice upon the addressee. Such a course appears to have been adopted by the appellant-company in this case and the complaint filed, admittedly, within limitation from the date of the notice of service conceded to have been served upon the respondent. – Dalmia Cement (Bharat) Ltd. V. M/S Galaxy Traders and Agencies Ltd. and others, (2001) 1 SCR 461.

Sd/-
MM 7th Court, Calcutta”

4. The learned Magistrate on perusal of the written complaint has given his finding that the accused persons had issued a cheque in favour of the complainant and the same was dishonoured on **30.11.2019**. The complainant then issued a demand notice upon the accused persons which was **sent on 05.12.2019 by registered post**. The learned Magistrate has noted that A/D card was not returned to the complainant and the complainant submitted that as the notice was duly addressed, it was deemed to have been served within the expiry period. **It was submitted by the complainant that in spite of expiry of the stipulated period of 15 days, the accused persons failed and neglected to make the payment and, hence, the case.**
5. **From the record it appears that notice was duly served upon the accused persons on 23.12.2019 (supported by postal track report). The present case has been filed on 30.12.2019 that is within seven**

days from the date of receipt of the notice and well before the expiry of the 15 day which is the period from the date of service of the notice for the accused to make the said payment.

6. It appears from the order of the learned Magistrate that the complainant did not place anything on record/more specifically the track report to rebut the presumption as to the service of notice and the period within which to comply with the notice, as prima facie proved by the accused person.
7. **Section 138(C) of the N.I. Act clearly lays down the time period which is permitted under the Act for the accused to make payment.**
8. **Section 138(C) of the N.I. Act, lays down:-**

“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 provision of this Act, be punished with imprisonment for a term which may extend 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)
- (b)

(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.”

9. In the present case the learned Magistrate in spite of there being sufficient materials on record and also his specific finding that the complainant has filed the case **prior to the expiry of the period as permitted under Section 138(C) of the N.I. Act**, the Court erroneously rejected the application under Section 245 Cr.P.C.
10. Considering the said fact and the materials on record, this Court finds that the order of the learned Magistrate is clearly not in accordance with law and the said order under revision is liable to be set aside.
11. Accordingly, the order dated 22.07.2022 passed by the learned Metropolitan Magistrate, 7th Court, Calcutta, in C.S. Case No. 65216 of 2019, is hereby set aside.
12. The application under Section 245 Cr.P.C. is restored and the said application is to be heard by the learned Magistrate afresh, within 30 days from the date of this order and to dispose of the same in accordance with law by giving a proper reasoned order on hearing the parties and considering the materials on record.
13. **The present revisional application being CRR 3136 of 2022 is, thus, disposed of.**
14. All connected Applications, if any, stands disposed of.
15. Interim order, if any, stands vacated.
16. Copy of this order be sent to the learned Trial Court for necessary compliance.

- 17.** Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)