IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRA (SB) 30 of 2023

Pravin Kumar Tiwari
Vs.
Ajit Chandra Mandal

For the Appellant	:	Mr. Arindam Jana Mr. Bikram Banerjee Mr. Sudipta Dasgupta Mr. Sutirtha Nayek Mr. Baibhov Roy
Heard on	:	21.01.2025
Judgment on	:	28.01.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. This appeal has been directed against judgment and order dated 29th November, 2022 passed by learned Judicial Magistrate, 10th Court Alipore, in AC 3447 of 2017. By the judgment impugned trial Judge has acquitted the accused person in a proceeding under section 138 of the Negotiable Instrument Act, (in short N.I. Act).

2. The gist of the case as alleged in the complaint is that, in discharge of a legally enforceable debt the accused/respondent herein had drawn a cheque being no. 747476, dated 16th September, 2016, amounting to Rs. 6 lakhs drawn on State of Bank of India in favour of the complainant. The complainant deposited the said cheque to his banker for encashment but by a cheque return memo, the complainant was informed by his banker i.e. Central Bank of India, Kalighat Junction Branch, that the cheque has been dishonored on the ground of *'exceeds arrangements'*. The complainant had allegedly received the information of such dishonor on 21st September, 2017. Thereafter, a letter demanding the cheque amount was sent by the complainant which was refused to accept by the accused/ opposite party on 25.09.2017. Since the accused failed to pay the cheque amount within the statutory period, the aforesaid criminal proceeding has been initiated by the complainant under section 138 of the N.I. Act.

3. Affidavit of service filed by the petitioner discloses that the accused opposite party no.2, refused to take notice, as appearing from postal endorsement dated 09.01.2025. The accused/opposite party herein was also not represented while the matter was taken up for consideration on consecutive dates.

4. Ld. Trial court at the time of passing impugned judgment framed 10 points for consideration which are as follows:-

<u>Points for determination</u>

(1) Whether the complaint was filed within limitation period?
(2) Whether the cheque in question was issued by the accused person for payment of a sum of money to the complainant?
(3) Whether the cheque in question was issued for the discharge, either in whole or in part of any debt or other legal liability?
(4) Whether the impugned cheque dishonored by the bank on having been presented within three months from the date on which it was drawn or within the period of its validity?
(5) Whether the payee or the holder-in-due course, has made a demand for payment of the said amount by giving notice in writing to the drawer of the cheque within the stipulated period prescribed by law, of the

receipt of information by him from the bank regarding the return of the cheque as unpaid?
(6) Whether the demand notice was valid and legal one?
(7) Whether the demand notice was properly served upon the drawer of the impugned cheque?
(8) Whether the drawer failed to make the payment of the said amount to the payee within fifteen days of the receipt of such notice?
(9) Whether the complaint case is proved beyond reasonable doubt?

(10) Whether the accused person is liable to be convicted?

5. Learned Trial court while passed the judgment impugned, clearly held that above-mentioned point no.1, 2,3,5,6,7,8 are decided in favour of the complainant, however in respect of point no. 4 as above, Trial court decided the issue against the complainant and thereby dismissed the complaint deciding point no.9 and 10 against the complainant. The relevant portion of the judgment impugned may be quoted below:-

> *"S. 146 of the Act makes a bank's slip or memo, bearing official mark denoting that the cheque has been dishonoured, as the prima facie evidence of the dishonour of such cheque. A detailed scrutiny of the return memo reveals that the same is just a print out sans any stamp or seal of the banker of the complainant, i.e., without any official mark of such bank. It has also not been certified to be correct in accordance to the Bankers' Books (Evidence) Act, 1891. Moreover, the complainant has not made any attempt in proving the said return memo by bringing into record the evidence of any official of such bank. Without going into the intricacies of the provisions contained in S. 138 of the NI Act, it can be clearly considered that the cause of action under the same arises only upon the dishonour of a cheque. Here, the complainant, in my humble opinion, has been unsuccessful in proving such dishonour due to the reasons as aforesaid and thus, has failed to discharge the primary onus as attributed to him vide S. 138 of the NI Act.*
> *In view of the above deliberations, it can be conclusively determined that point no.4 is decided against the accused."*

6. Before going to further details let me reproduce section 146 of the Negotiable Instrument Act.

"146. Bank's slip prima facie evidence of certain facts:-

> *The Court shall, in respect of every proceeding under this Chapter, on production of bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved."*

7. In the present context the bank return memo allegedly issued by Central Bank of India is marked as exhibit -2 with objection. It is true that the said system generated slip though mentioned the print date, print time, return date and serial number along with bank code, user ID, Branch along with the details of the impugned cheque and reason for dishonour but it does not bear any seal or signature of Bank concerned. Usually the system generated copies do not require any signature but ld. Counsel appearing on behalf of the accused/opposite party herein strenuously argued that section 146 specifically states that the banks slip or memo should have official mark denoting that the cheque has been dishonored.

8. Needless to say that such bank slip is required to be marked to draw only for the presumption that the cheque has been dishonored. In the present context it is nobody's case that the impugned cheque has not been dishonored. The accused/opposite party also did not give reply to the demand notice denying the fact that the cheque was dishonoured. Even when the accused was examined under section 313 Cr.P.C., in answer to question no. 5 relating to "bank return memo" his answer was simply 'No'. The accused opposite party herein has also deposed as DW-1 and in his entire evidence, nowhere he has stated that the cheque in question was never dishonored. Ld. Trial court made a narrow interpretation of the words *'having thereon the official mark denoting that the cheque has been dishonored'* by saying that the exhibit-2 does not bear any official mark of such bank and thereby court below has confused "official mark" with "official seal and signature". As I have stated above that the cheque return memo clearly indicates the Bank Code, Branch name, branch code, the user ID, and also about details of dishonoured cheque along with reason for dishonor with print out date and time and as such there is hardly any scope to say that the cheque return memo marked as exhibit 2, does not bear official mark denoting that the cheque has been dishonored on the ground of “exceeds arrangement”. No evidence is also forthcoming before the court that the said official mark of the bank on exhibit-2 are false or fabricated.

9. On perusal of section 146 of the N.I. Act it is very much clear that the said provision has been incorporated in the statute to verify the fact as to whether the cheque was produced before the bank and was dishonoured on that particular ground or not. In the present case as I have already stated that exhibit-2 clearly states that the cheque got dishonored on the ground of “exceeding arrangements”. Since the aforesaid cheque return memo was electronically generated and since it was issued by the bank, it is beyond the control of the complainant, if the bank authority does not put signature or seal on the said cheque return memo. Section 146 of the N.I. Act does not prescribe any particular form of cheque return memo and the cheque return memo is not a document which is required to be covered under section 4 of the Bankers Book (Evidence) Act, 1891 and as such even the cheque return which is merely an intimation, does not bear seal of the bank, it does not render the cheque return memo as invalid or illegal.

10. A co-ordinate bench of Delhi High Court in ***Guneet Bhasin Vs. State of NCT of Delhi and others,*** reported in **2022 SCC Online Del 3967** held on a similar context as follows:-

> ***"9.*** *The cheque return memo is a memo informing the payee's banker and the payee about the dishonour of a cheque. When the cheque is dishonoured, the drawee bank immediately issues a cheque return memo to the payee's banker mentioning the reason for non-payment. The purpose of the cheque return memo is to give the information of the holder of the cheque that his cheque on presentation could not be encashed due to the variety of reasons as mentioned in the cheque return memo. As per the section 146 of the NI act, the cheque return memo on presentation presumed the fact of dishonour of the cheque unless and until such fact is disapproved. Neither section 138 nor the section 146 of the NI act has prescribed any particular form of cheque return memo. The section 138 of the NI Act does not mandate any particular form of cheque return memo which is nothing but a mere information given by the Banker of the due holder of a cheque that the cheque has been returned as unpaid. If the cheque return memo is not bearing any official stamp of the bank, it does not render the cheque return memo as invalid or illegal. The cheque return memo is not a document which is not required to be covered under section 4 of the Bankers Book (Evidence) Act, 1891. If there is any infirmity in the cheque return memo, it does not render entire trial under section 138 of the NI Act as nullity."*

11. On perusal of the impugned cheque return memo marked exhibit-2 it reflects that the cheque bearing no. 747476 amounting to Rs. 6 lakhs could not be encashed on the ground of 'exceeds arrangements'. The petitioner during the entire course of trial never disputed his signature in the cheque nor about the dishonour of cheque by the concerned banker. Infact the impugned judgment by which Trial judge acquitted the accused on the said sole ground bereft of any factual or legal basis. Accordingly the system generated cheque return memo, having specific identifying mark of the bank, denoting that the cheque has been dishonoured on that particular ground, though does not bear seal or signature of the bank but I find that it is validly issued by the bank and merely because complainant did not bring any witness to prove the said document during trial, the proceeding of section 138 cannot be said to be invalid or illegal. Since the accused has not challenged trial courts observation that point no. 1,2,3 and 5-8 are in favour of the complainant and as I also do not find any illegality or infirmity in the judgment impugned for deciding point no. 1,2,3 and 5-8 in favour of the complainants, those issues are not required to be dealt with again in the present context.

12. In view of aforesaid discussion **CRA (SB) 30 of 2023** is allowed. Accused namely Ajit Chandra Mondal is found guilty for committing offence punishable under section 138 of the N.I. Act and as such he is convicted.

13. The convict **Ajit Chandra Mondal** is sentenced to pay fine of Rs. 12,00,000/- (twelve lakhs) within three months from the date of this judgments, in default to suffer simple imprisonment for six months. If the said fine amount is deposited before the court below by the convict Ajit Chandra Mondal within the stipulated period, the said amount shall be disbursed in favour of the complainant towards compensation. However, if the accused fails to deposit the fine amount with the stipulated period, he will surrender before the court below to serve out the sentence of imprisonment. If the convict neither pays the amount nor appears before the court below to serve out sentence, the court below will take all appropriate steps including issuance of warrant to secure attendance of the convict to serve out sentence.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)