

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present: - HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS).

CRR 269 of 2023
With
IA No. CRAN 3 of 2024
+
CRAN 6 of 2025

GURU DAS ROY CHOWDHURY
VS.
PRADIP KUMAR NAYAK

For the petitioner : Mr. Shibaji kr. Das, Adv.
Mr. Dipendu Sarkar, Adv.
Ms. Deblina De, Adv.

For the Respondent : Mr. Debasis Kar, Adv.
Ms. Suhjana Parvin, Adv.

Heard On : 08-06-2026

Order on : 11-06-2026

Uploaded On : 15-06-2026

CHAITALI CHATTERJEE (DAS), J.:-

1. This is an application under Section 482 read with Section 401 of the Code of Criminal Procedure 1973 filed by the petitioner for quashing of the proceeding in connection with C. Case no.477 of 2020 being a proceeding under Section 138 of the N. I. Act, 1881 presently pending in the Court of the Learned Judicial Magistrate, 2nd Court at Barrackpore, District North 24 Parganas.
2. The brief fact of the case is that the opposite party herein on 20th

October, 2020 had filed a petition of complaint under Section 200 of the Code of Criminal Procedure before the Additional Chief Judicial Magistrate. Barrackpore complaining of commission of offence under Section 138 of the Negotiable Instruments Act, 1881(herein after as the said Act) against the petitioner with an allegation that they had business relationship with the present petitioner and requested the complainant for loan of Rs.1 lakh and the complainant handed over the said amount to the accused persons on 28th December 2019 as per the demand and the present petitioner assured to return them amount within six months. Subsequently, the petitioner issued the cheque in the name of the complainant amount to tune of Rs.1 lakh being cheque no.222339 & cheque no.222340 dated 25th September 2020 i.e. Rs.50,000/- each respectively of SBI, Beadon Street Branch, Kolkata. After receiving those cheques within its validity period, the complainant submitted both the said cheques to his banker IDBI Bank, Khardah Branch for encashment and it was returned back with a remark "Insufficient Fund". The complainant further alleged that he thereafter, sent an advocate's notice on October, 2020 by Speed Post, which was not delivered till date for filing of this application.

3. It was further alleged that the complainant has fulfilled all the formalities within time and therefore, committed an offence punishable under Section 138 of the said Act. On the basis of such complaint, the learned Magistrate took cognizance and issued summon to the accused person to face the trial. Against the said order, the present application has been filed.

4. The specific argument made before this Court by the learned advocate representing the petitioner that the complaint itself is not maintainable and the order of cognizance taken by the learned Magistrate is illegal and is liable to be rejected. It is the specific case that as per the complaint case, the notice of the complainant was sent on October 8, 2020 by Speed Post, which was not delivered without complying with the provisions of Section 138 of the said Act and the proceeding was initiated. The complainant was examined herein S/A under Section 200 of the Code of Criminal Procedure and the affidavit in chief also he categorically stated to have sent such notice on October 8, 2020 to the accused with demand to pay the said amount of Rs.1 lakh. Therefore, it is beyond the statutory period as mandated under Section 138C and therefore, this proceeding cannot be proceeded with.
5. It is further submitted that the learned Magistrate failed to consider the aspect of the matter to maintain the proceeding under Section 138 of the said Act when it is *sine qua non* to initiate a proceeding under section 138 of N.I. Act. Therefore, the charge cannot be held maintainable against the petitioner and no case is made out and hence liable to be dismissed.
6. Learned advocate for the petitioner relied upon a decision in the case of **Subodh S. Salakar Vs. Jayprakash M. Shah & Anr.**¹. On the other hand, learned counsel on behalf of the opposite party raised strong objection and submits that the notice was never returned however, it is admitted that the statutory period was not complete .

In this regard, relied upon the decision of **Yogendra Pratap Singh Vs.**

¹ (2008) 13 SCC 689

Savitri Pandey & Anr.² and judgment in the High Court of Karnataka at Bangaluru on 18th June 2025 (**Arumugam Vs. Ananda**)³,. It is submitted that in similar situation, it was observed by the Hon'ble Court that fresh time was given to the complainant to file fresh complaint after complying with all the formalities.

7. Heard the submission of the parties and on perused of the materials on record. It is undisputed that the proceeding was initiated under Section 138 of the said Act. It is also ascertained from the complaint itself that the amount of Rs.1 lakh under two cheques dated September 25, 2020 of Rs.50,000/- each was handed over and was placed for encashment, as alleged by the complainant on September 20, 2020 to his banker IDBI Bank. It was returned for "Insufficient Fund" and thereafter, a demand notice through the advocate was sent on October 8, 2020 by Speed Post. The proceeding was initiated when no intimation regarding service of notice was received by the complainant. The proceeding was initiated on October 20, 2020 as the petition of complaint was filed under Section 200 of the Code of Criminal Procedure, 1973 for taking cognizance which was taken on the same date that is 20.10.2020 that means on the 12th day from the date the notice was sent.

8. In the decision of **Subodh S. Salakar Vs. Jayprakash M. Shah & Anr.** (*supra*) the Hon'ble Supreme Court specifically observed that-

"14. A complaint petition alleging commission of offence under Section 138 of the Act must demonstrate that the following

² (2014) 10 SCC 713

³ CRL. RP No. 1021 of 2017

ingredients exist i.e.:

- (a) a cheque was issued;*
- (b) the same was presented;*
- (c) but, it was dishonoured;*
- (d) a notice in terms of the said provision was served on the person sought to be made liable; and*
- (e) despite service of notice, neither any payment was made nor other obligations, if any, were complied with within fifteen days from the date of receipt of the notice.”*

9. It was further held in the said decision in paragraph 19 of the judgment that is quoted below:

“19. A complaint petition in view of the clause(b) of Section 142 of the Act was required to be filed within one month from the date on which the cause of action arose in terms of clause (c) of the proviso to Section 138 of the Act which stipulated that:

138.(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.”

10. In this case, admittedly the date of issuance of notice, which was sent by Speed Post as well as this proceeding initiated, there is clear shortfall in presenting the complaint.

11. In terms of Section 27 of the General Clauses Act, which was dealt

with in the said decision of the Hon'ble Supreme Court in paragraph 22 is as follows;

"22. In terms of the provisions of the General Clauses Act, a notice must be deemed to have been served in the ordinary course subject to the fulfilment of the conditions laid down therein. Section 27 of the General Clauses Act reads as under:-

"27. Meaning of service by post.--Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve' or either of the expression 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

Section 142 of the Act puts a limitation on the power of the court to take cognizance of the offences which reads as follows;

"142. Cognizance of offences.—

[(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no court shall take cognizance of any offence punishable under section 138

except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138: [Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.].

[(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the

cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.]”

12. Therefore, presumption of service, under the statute, would arise not only when it is sent by registered post in terms of Section 27 of the General Clauses Act but such a presumption may be raised also under Section 114 of the Evidence Act even when a notice is received back with an endorsement that the party has refused to accept, when it is clearly mentioned in the petition of complaint that the notice of intimation regarding service. In such circumstances, law is very clear as discussed in the decision of the Hon'ble Supreme Court in 2008 and in subsequent decision that such proceeding cannot be maintainable in the eye of law.

13. In ***Yogendra Pratap Singh Vs. Savitri Pandey & Anr.***⁴ the Hon'ble

Supreme Court held in paragraph Nos.38 as follows:

"38. We, therefore, do not approve the view taken by this Court in Narsingh Das Tapadia and so also the judgments of various High Courts following Narsingh Das Tapadia that if the complaint under Section 138 is filed before expiry of 15 days from the date on which notice has been served on the drawer/accused the same is premature and if on the date of taking cognizance a period of 15 days from the date of service of notice on the drawer/accused has expired, such

⁴ AIR 2015 SC 157

*complaint was legally maintainable and,
hence, the same is overruled.”*

14. Learned Magistrate at the time of taking cognizance failed to appreciate that the matter despite such shortfall in filing the complaint and further examined and even then also did not consider the period as amended has not been fulfilled and issued process, which has caused severe harassment to the petitioner. Therefore, considered the law laid down in this regard, this Court is of the view on the basis of the complaint lodged because of the non-fulfilment of the contention as mentioned in Section 138C and Section 142 of the said Act and this proceeding is not maintainable in the eye of law as of now, therefore, the proceeding is liable to be quashed.

15. However, the observation made the decision as relied upon before this Court passed by the High Court of Karnataka in the case of **Aramugum vs Ananda (supra)** that the drawer of the cheque cannot be allowed to escape merely from the Prosecution on the technical count is also accepted by this court . The complaint was filed before expiry of the statutory period and hence liberty is given to the complainant to file fresh complaint after complying with all essential formalities, as amended in terms of the said Act. If such proceeding is filed within the period of two months after observing with the required formalities seeking condonation , the learned court shall consider and condoned the under Section 142(2) of the said Act and it is needless to observe that the Learned Magistrate will proceed with such complaint in accordance with law .

16. In view of the proceeding being not maintainable under section 138 of N.I Act the 20% of the total amount as deposited pursuant to the direction of the Court be returned for the present.
17. Accordingly, the learned Magistrate is directed to pass necessary order to return the said amount in favour of the petitioner. Learned Magistrate is further directed that in case, any such complaint is filed within the prescribed period of two months all effort should be made to dispose of as expeditiously as possible.
18. Accordingly, in view of the above, the instant revisional application stands disposed of.
19. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(CHAITALI CHATTERJEE (DAS), J.)