

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 449 of 2017

MMTC Ltd.

-Versus-

Sk. Abdul Sabur

For the Appellant : **Mr. Anand Keshari,
Mr. Swarajit De,
Mr. Piush Kumar Ray,
Ms. Syed Kishwar,
Mr. Vipul Vedant.**

For the Respondent : **Mr. Mrityunjay Chatterjee,
Mrs. Suchismita Chakraborty,
Mr. Arindom Poali.**

Hearing concluded on : **28.10.2025**

Judgment On : **14.01.2026**

Prasenjit Biswas, J:-

1. The instant appeal is directed against the judgment and order dated 30.03.2016 passed by the learned Metropolitan Magistrate, 9th Court, Calcutta in Case No. C/2765/1997 at the instance of the appellant.

2. By passing the impugned judgment the respondent (accused) namely, Sk. Abdul Sabur was held not guilty of the offence under Section 138 of the Negotiable Instrument Act, 1881 and was acquitted under Section 255(1) of Cr.P.C.
3. Being aggrieved and dissatisfied with the said order of acquittal the complainant, being the appellant (herein) has preferred this instant appeal.
4. The case of the complainant in a nutshell is that:

“The respondent/accused had issued two Account Payee Cheques, being Cheque Nos. 141692, 141693 dated 20.06.1997 for sum of Rs. 7,66,584/- and Rs. 15,12,341/- respectively of Punjab National Bank, Burdwan (W.B.) in favour of this appellant-complainant. It is contended that the two cheques were duly signed by the respondent-accused personally and were deposited for encashment within its validity period at Punjab National Bank, Brabourne Road Branch, Calcutta, but the same was dishonoured by the banker of the accused person with the remarks; “Insufficient Funds” on the cheque return memo dated 31.10.1998. It is further stated in the complaint that a legal notice dated 12.11.1997 through his learned Advocate by speed post with acknowledgement due was sent to the accused person and it was served upon him on 15.11.1997 demanding the cheque

amount and obviously within the statutory period of limitation as provided in the act. As the accused did not pay the due amount, a complaint was filed under Section 138 of the Negotiable Instrument Act, 1881 before the Court of learned Chief Metropolitan Magistrate, Calcutta on 16.12.1997. The Chief Metropolitan Magistrate, Calcutta took cognizance of the case and transferred the same to the other Court for disposal.”

5. Evidences were adduced by the complainant and the accused and documents were marked as exhibited and after considering the evidences brought on record by both the parties and exhibited documents, the impugned judgment was passed by the Trial Court.
6. Heard the learned counsel appearing for the respective parties. The impugned judgment of acquittal passed by the learned Trial Court has been carefully perused, and the entire record and proceedings have been minutely examined.
7. The principal issue that arises for consideration in the present appeal is whether the learned Trial Court has properly and judiciously appreciated the oral and documentary evidence on record, particularly Exhibits 3 and 6, being the ‘Registers of Cheques Returned’, while recording the order of acquittal.
8. It is the categorical contention of the appellant that the learned Trial Court has failed to appreciate the material evidence on record in its correct perspective. According to the appellant, although the

cheques in question were dishonoured on 20.10.1997, the complainant received the information and intimation of such dishonour only on 31.10.1997. This fact, it is contended, is clearly borne out from Exhibit-6, the Register of Cheques Returned, read in conjunction with Exhibit-3, namely the Cheque Return Memo. The appellant asserts that the learned Trial Court has completely ignored this crucial documentary evidence and has made no discussion whatsoever regarding Exhibit-6 in the impugned judgment.

- 9.** It has been consistently argued by the learned Advocate for the appellant that the distinction between the date of dishonour of the cheque and the date of knowledge or receipt of information of such dishonour by the complainant is of substantial legal significance. This distinction has a direct bearing on the computation of limitation and the determination of compliance with the statutory requirements. According to the appellant, the learned Trial Court, while passing the impugned judgment of acquittal, failed to appreciate that the Cheque Return Memo was received by the complainant on 31.10.1997, as evidenced by Exhibits-3 and 6, and despite the presence of such evidence on record, the same was neither discussed nor believed by the Trial Court.
- 10.** It has further been contended that delay, if any, is essentially a question of fact, and the party seeking to take advantage of such

delay is bound to confront the rival party through cross-examination. However, a careful perusal of the cross-examination of the prosecution witnesses reveals that no question whatsoever was put by the respondent-accused challenging the date of receipt of information of dishonour as deposed by the witnesses or as reflected in Exhibit-6. In the absence of any such challenge, the testimony of the prosecution witnesses on this aspect remained unchallenged, unrebutted, and intact. The learned Trial Court, however, failed to take note of this important aspect and did not draw the necessary legal inference arising from the absence of any challenge to the prosecution version regarding the date of knowledge of dishonour of the cheques.

- 11.** The learned Advocate appearing on behalf of the respondent has strenuously contended that there is no material on record warranting interference with the impugned judgment. It has been submitted that the findings recorded by the learned Trial Court are based on a proper appreciation of the evidence on record and do not suffer from any illegality, infirmity, or perversity. According to the learned Advocate, the complainant has failed to establish compliance with the mandatory statutory requirements prescribed under Section 138 of the Negotiable Instruments Act.
- 12.** It is specifically argued that the complainant did not issue the statutory demand notice to the accused within the stipulated

period of fifteen days from the date of receipt of information from the concerned bank regarding the dishonour of the alleged two cheques. Such failure, it is submitted, amounts to a clear violation of the clause (b) to Section 138 of the Negotiable Instruments Act, which mandates strict adherence to the timelines prescribed therein. On this ground alone, the prosecution case is stated to be not maintainable in law.

13. In support of the aforesaid contention, the learned Advocate for the respondent has placed reliance upon the decision of the Hon'ble Supreme Court in ***Sadanandan Bhadran v. Madhavan Sunil Kumar***, reported in **1998 Supreme Court Cases (Cri) 1471**, wherein the Apex Court emphasized the mandatory nature of the statutory notice and the necessity of strict compliance with the conditions precedent for launching a prosecution under Section 138 of the Act. Further reliance has been placed on the decision in ***Sarbnarayan Jha v. M/s. Khan Pal Chowdhury and Co. (P) Ltd. and Others***, reported in **1991 C Cr LR (Cal) 311**, to reinforce the submission that non-compliance with the statutory requirements vitiates the entire prosecution and renders the complaint liable to dismissal.
14. On the strength of the aforesaid submissions and authorities, the learned Advocate for the respondent has urged that the impugned

judgment does not call for any interference and deserves to be affirmed.

- 15.** Upon microscopic scrutiny of the impugned judgment, it becomes evident that the learned Trial Court did not appreciate all the exhibited documents brought on record and, in particular, failed to advert to Exhibits 3 and 6, despite the fact that the same were duly exhibited and formed an integral part of the prosecution evidence. Such an omission strikes at the very foundation of proper judicial appreciation of evidence.
- 16.** Exhibit-6, being the Register of Cheques Returned, specifically records the date 31.10.1997, and it is the consistent claim of the complainant that the Cheque Return Memo was received on that date. This document is not only relevant but is a material piece of evidence for the proper adjudication of the dispute between the parties. Despite the clear probative value of Exhibits-3 and 6, the learned Trial Court has not recorded any finding thereon. The impugned judgment is conspicuously silent as to why these documents were ignored or disbelieved. Such failure to consider material evidence amounts to non-application of mind and renders the findings recorded by the Trial Court legally unsustainable.
- 17.** It is a settled principle of law that a Trial Court is duty-bound to consider both oral and documentary evidence brought on record and to assign cogent reasons for accepting or rejecting the same.

Selective appreciation of evidence, by relying upon one part of the record while completely ignoring another material document, vitiates the judicial decision-making process and undermines the sanctity of the judgment.

18. The cumulative effect of the aforesaid discussion clearly demonstrates that the learned Trial Court has failed to appreciate the evidence in its proper and correct perspective. The impugned judgment suffers from serious infirmities inasmuch as it ignores material documentary evidence and oral testimonies.
19. Accordingly, the impugned judgment, being founded on incomplete and selective consideration of the exhibited documents, cannot be allowed to stand and is not sustainable in the eyes of law.
20. In the result, the appeal is **allowed**.
21. The impugned judgment dated 30.03.2016 passed by the learned Trial Court in connection with Case No. C/2765/1997 is hereby set aside.
22. The case is accordingly remanded to the learned Trial Court with a direction to adjudicate the matter afresh, upon due and comprehensive consideration of the entire documentary exhibits as well as the oral evidences already on record. The learned Trial Court shall thereafter pass a reasoned and speaking judgment in accordance with law, after affording due opportunity of hearing to the learned Advocates appearing on behalf of the respective parties.

- 23.** The learned Trial Court shall dispose of the matter expeditiously and independently, without being influenced by any observation made herein, which are confined solely to the disposal of the present appeal.
- 24.** Let a copy of this judgment along with the Trial Court records be sent down to the learned Trial Court forthwith.
- 25.** Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)