

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

**Present:-**

**HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.**

**CRA 441 OF 2006**  
**MAGMA LEASING LIMITED**  
**VS**  
**ASIM MONDAL & ANR.**

**For the Appellant : Ms. Rituparna Ghosh, Adv.**

**Reserved on : 21.04.2026**

**Judgement on : 14.07.2026**

**Uploaded on : 14.07.2026**

**CHAITALI CHATTERJEE DAS, J.:-**

1. This is an appeal filed with a prayer for special leave to appeal under Section 378 (4) of the Code of criminal Procedure filed by the appellant against the judgement and order of acquittal dated 15.03.2006 passed in criminal appeal no. 28 of 2005 by the Learned 6<sup>th</sup> Fast Track Judge, Calcutta reversing the order of conviction and sentence passed in case of C/298 of 2003 by Learned Metropolitan Magistrate, 13<sup>th</sup> Court, Calcutta from the charge under Section 138 of Negotiable Instruments Act.

**Fact of the Case**

2. The fact of the case in brief is that a complaint was lodged before the Court of Learned Chief Metropolitan Magistrate at Kolkata under Section 200 Cr.P.C

against the present respondent alleging that, in discharge of existing liabilities or legal debt in part, the accused person issued 7 number of cheques in favour of the complainant and gave the details of the same in the petition of complaint which were deposited on 25.11.2002 for encashment to its banker UBI, Park Street Branch but those cheques were dishonoured and returned unencashed with the ground 'exceeds arrangement' by return memo dated 26.11.2002. Such information of dishonour was intimated to the petitioner company by the banker on 28.11.2002, was duly communicated to the accused person by demand notice dated 04.12.2002 through the Senior Manager (Legal) of the complainant Company through registered post with A/D as well as Speed Post calling upon the accused to effect payment of the total amount within 15 days from the date of receipt of the said notice in default appropriate proceedings under Section 138 of NI Act will be initiated against him. The said demand notice was returned to the appellant with the remark "not known" on 07.12.2002 and it was received on 10.12.2002.

**3.** The complaint was lodged within a month from such date as the appellant apprehended that the aforesaid misdeed of accused person is deliberate, intentional and mala fide and with an ulterior motives to devoid the appellant. On the basis of such complaint the case was transferred by the Chief Metropolitan Magistrate to the Learned Metropolitan Magistrate 13th Court, Calcutta and the said Court on consideration of the evidence of three prosecution witnesses and after hearing the arguments found the accused guilty and passed the order of conviction and sentence to suffer S.I. for T.R.C and to pay a fine of Rs. 20,000/- out of which Rs. 18,000/- to be paid to the complainant as compensation in default for imprisonment for six months.

Being aggrieved by the said judgement and order of conviction and appeal was preferred by the present respondent before the Court of Learned Chief Judge, City Sessions Court which was subsequently heard by the Learned Court of Additional Session Judge, 6th Fast Tract Court, Bichar Bhavan, Calcutta.

4. The Learned Sessions Court further considered the evidence on record and the argument advanced by both the appellant as well as the respondent therein and was of the view, cheque No 154070 dated 26.11.2002 though was presented before the complainant's bank on 25.11.2002 it was deposited on 26.11.2002 before the drawer's bank at UBI, Amtala Branch and the same cannot be said to be pre mature or invalid but another Cheque No. 154064 dated 26.05.2002 was presented after expiry of the period but in the demand notice the entire claim was made and the Learned Court found the case is not maintainable and therefore the order of conviction was set aside. Challenging the same the present appeal has been preferred by the appellant company. In this case none appeared on behalf of the appellant and Ms. Rituparna Ghosh was engaged by the Calcutta High Court Legal Services Committee pursuant to the direction passed by this court.

**Submission**

5. The Learned Advocate on behalf of appellant argued that seven cheques were issued to the respondent which was described in the petition amounting Rs.16, 772. From the evidence of P.W. 3 on behalf of UBI Amtala Branch it can be found that six cheques were returned on the ground of 'exceed arrangement' and one cheque dated 26.05.2002 was deposited within a valid period. The Learned Appellate Court reversed the judgement of the Learned Trial Court on some mere technicalities and should not be considered in a

proceeding under the provision of Negotiable Instrument Act. The appellant through its responsible and authorised officer filed a petition of complaint against the accused no. 1 under Section 138 of Negotiable Instrument Act before the Court of Learned Chief Metropolitan Magistrate and such allegation was very brief which relates to issuance of seven post-dated cheques by the respondent in discharge of his debt and liability in existence within their maturity period and was presented for encashment by the appellant company, were dishonoured followed by service of demand notice by the appellant which was not complied with and hence it attracts the penal mischief of Section 138 of the Negotiable Instrument Act. The cognizance was taken by the Chief Metropolitan Magistrate and transferred before the Learned Metropolitan Magistrate, 13th Court, Calcutta. The process was issued and the respondent entered appearance, pleaded not guilty and examined its witnesses and the accused was examined under Section 313 of the Code and also examined himself as the lone defence witness. After hearing the parties the order of conviction was passed but the Learned Appellate court held that the demand notice issued in respect of the seven cheques including the invalid cheques was thus bad in law thereby poisoning of entire subsequent proceeding, based on that reversed the order of conviction and sentence which is devoid of legal sanctity. It is further argued that the cheque dated 26.11.2002 having presented on 25.11.2002 to its own bank by the appellant was to be treated to have been presented prior to its maturity which has also robbed the entire chastity of the demand notice followed by the entire proceeding, inclusive of the order impugned.

6. It is further argued that the established principle of law is that the discretion of the Learned Court below should not be interfered with by the Learned Appellate Court save and except a glaring miscarriage of justice but no such case could be made out by the respondent before the Learned Appellate Court and the said court without appreciating the same delivered a stereotype judgement. It was not the case of the respondent that cheques in question were not issued by him and those had been returned unpaid and as such Section 138 of Negotiable Instrument Act the offence is completed and he cannot get the benefit. Accordingly prayed for allowing the said appeal.
7. The Learned Advocate representing the respondent on the other hand raised vehement objection and argued that the cheque was deposited after the expiry of its validity period and the cheque no. 154070 dated 26.11.2002 was presented on 25.11.2002 that is before the date of issuance of the cheque and the fine amount imposed by the Learned Magistrate was beyond his jurisdiction. It was further argued that it is mandatory that a cheque is to be presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier and when a post-dated cheque is written or drawn it is only a bill of exchange. Furthermore, the Learned Magistrate is empowered to award compensation in terms of Section 357 (3) of Cr.P.C and it is argued that regarding the order of conviction about payment of fine , it must be read that Rs. 2000/- is directed to be fined and the remaining Rs. 18,000/- is the compensation amount, which was not done by the Learned Magistrate and the Learned Appellate Court rightly considered those aspect of the matter and passed such

judgement whereby the order of conviction was set aside rightly. Hence prayed for dismissal of this appeal.

**Analysis**

8. Heard the submission of both the Learned Advocates. On careful consideration of the facts and circumstances of the case and the arguments advanced before this Court by both the Learned Counsels, the question arose as to whether the judgement and order passed by the Learned Session Court acquitting the accused person after reversing the order of conviction passed by the Learned Metropolitan Magistrate for the offence committed under Section 138 Negotiable Instruments Act is sustainable in the eye of law.
9. The factual matrix disclose that the complainant is a limited company and carries its business and the accused person is a private individual having his address as mentioned in the cause title. The following cheques were issued as alleged in the petition of complaint by the present appellant in discharge of existing liability and or legal debt in part. Which are as follows:-

| <b><u>CHEQUE NO.</u></b> | <b><u>DATE</u></b> | <b><u>DRAWN ON</u></b>                         | <b><u>AMOUNT</u></b>      |
|--------------------------|--------------------|------------------------------------------------|---------------------------|
| 154064                   | 26.05.2002         | United Bank of India,<br>Amtala, 24-Pgs-743503 | Rs. 2,396/-               |
| 154065                   | 26.06.2002         | - do -                                         | Rs. 2,396/-               |
| 154066                   | 26.07.2002         | - do -                                         | Rs. 2,396/-               |
| 154067                   | 26.08.2002         | - do -                                         | Rs. 2,396/-               |
| 154068                   | 26.09.2002         | - do -                                         | Rs. 2,396/-               |
| 154069                   | 26.10.2002         | - do -                                         | Rs. 2,396/-               |
| 154070                   | 26.11.2002         | - do -                                         | Rs. 2,396/-               |
| <hr/> <b>TOTAL -</b>     |                    |                                                | <b>Rs. 16,772/-</b> <hr/> |

10. The appellant deposited all the cheques on 25.11.2002 for encashment to its banker, UBI, Park Street, Amtala Branch which were dishonoured on the ground 'exceeds arrangement'. The details of the cheques clearly manifests

that those were post-dated of an equal amount of Rs.2,396/-. The cheque no. 154070 was dated 26.11.2002 drawn on U.B.I, Aamtala. From the petition of complaint it is clear that the said cheque was deposited on 25.11.2002 that is one day prior to the date mentioned on the cheque and cheque no. 15464 dated 26.05.2002 was deposited after expiry of the validity period. In this case P.W. 1 Tapan Kumar Mazumder being posted at U.B.I., Park Street Branch as acting Supervisor deposed that on receiving summon he came to depose in the case as per authorization given by the Deputy Manager. The statement of account was marked as exhibit and the aforesaid cheques were of same amount Rs. 2,396 were dishonoured on the ground “not arranged for” and ‘exceeds arrangements’. He produced the Xerox certified copy of cheque clearing register. In a statement of P.W 1 the date of deposit of those seven cheques were not mentioned and he deposed validity of a cheque is 180 days. He could not say whether cheque no. 154064 was deposited after expiry of six months or not or the cheque no. 154070 dated 26.11.2002 was deposited on 25.11.2002 or not.

**11.** P.W. 2 Modan Mohan Mundra the authorised representative of the appellant company deposed that to discharge his existing liability in part arising out of higher purchase agreement dated 26.02.2000, those seven cheques were issued by the accused and all the cheques were deposited in the bank within valid period. He produced three return memos mentioning all the seven returned cheques .He also produced the demand notice which was sent through their Senior Manager legal. He could not say exactly the date of institution of the complaint as he was appointed in the company in September

2001 as Executive Legal. In the letter of authority the number of case, cheque no. 5 and name of the parties was not mentioned. On 15.01.2003 he filed the case as per authority given to him in the month of September 2001. In the petition of complaint the nature of liability was not mentioned. He deposited all the seven cheques in the petition it was mentioned that all were deposited on 25.1.2002. He denied that he filed his case after lapse of 14 days from the date of receipt of return envelope on 07.12.2002 and 14.12.2002.

**12.** Mr. Pronab Kumar Pal P.W. 3 who was posted as an Officer in the UBI Amtala Branch deposed that the cheque leaves were issued from their bank. The seven cheques which were returned on 26.11.2002 revealed from his statement of those account and that on the ground of 'exceed arrangements' and one cheque dated 26.05.2002 has been stayed due to its expiry of validity period. He produces the three return memos which were issued on 26.11.2002. The respondent was examined under Section 313 Cr.P.C. and he specifically stated that he gave post-dated cheques and admitted that his father was suffering from cancer and he could not pay the money. He denied to receive any notice and also denied the amount demanded of Rs. 55,000/- instead of Rs. 16,000/- but he admitted to have paid some money. He also stated that if he gets time he shall repay the money. Therefore prima facie it is admitted that in discharge of the debt or liability the post-dated cheques were issued by the present respondent and hence there remains no dispute regarding issuance of cheque. In this case it is found that demand notice was returned with the remark 'not known' on 07.12.2002 which was received by the complainant on 10.12.2002 and the accused person has denied that he did not receive any notice.

The complaint was lodged on 15.01.2003 that means after a period of one month from the date of return of the said notice. It is a settled law that 'not known' cannot be considered to be a good service and the appellant ought to have taken appropriate steps to send a further notice to the respondent. The appellant filed the complaint with the apprehension that the misdeed of the accused person was deliberate, intentional, bona fide and to defraud the complainant of the said amount which has been denied by the respondent but merely on the basis of apprehension an order of conviction cannot sustain.

**13.** It appears from the record that the Learned Appellate Court was of the view that the cheque dated 154064 dated 26.05.2002 was deposited after expiry of its validity period and therefore question of recovering the said amount does not arise and for dishonour of such cheque no proceeding can be instituted. This Court further found that another cheque was deposited prior to the date of issuance prematurely and the evidence manifest that such cheque was returned on 26.11.2002 hence it was placed for encashment beyond time. Therefore that amount also cannot be claimed nor can any proceeding be instituted on the basis of the same. This Court is unable to accept the view of the Learned Appellate Court that since the Cheque No. 154064 was through presented on 25.11.2002 it was decided on 26.11.2002, in view of the evidence laid in this regard which clarified that on 26.11.2002 it was returned. However, the Learned Appellate Court did not dispute that the validity of cheque remains for 180 days and one of the cheque dated 26.05.2002 admittedly deposited for encashment on 26.11.2002 and the same was presented after a period of 180 days. From the evidence it is apparent that

such cheque was “stayed due to its expiry of validity period” and accordingly the reason was inflicted in the cheque return memo issued by UBI, Amtala , it was out of date so far that cheque dated 26.5.2002 was concerned. In the demand notice the said cheque dated 26.05.2002 was clubbed with other six cheques to cover the cheque amount in single demand notice and the Learned Sessions Court was of the view that since the cheque deposited after expiry of the valid period was clubbed together in the demand notice with the other amount, same cannot be said to be a valid notice. In this regard relied upon the decisions where the Hon’ble Apex Court held that if the drawee present such encashment after six months in the bank on which the said Negotiable Instrument has been drawn and after that is dishonoured, the drawee has to blame himself for such delay and if such Negotiable Instrument is dishonoured the drawee cannot file a criminal complaint against the drawer on that count.

**14.** In ***Kaveri Plastics v Mahdoom Bawa Bahruden Noorul***<sup>1</sup> it was clarified that a notice mentioning an amount different from the cheque amount, or failing to mention the cheque amount altogether, would be legally invalid.

*"A failure in above regard, namely when the cheque amount is not mentioned in the Proviso (b) notice or the amount different than the actual cheque amount is mentioned, in the notice, such notice would stand invalid in eye of law. The notice in terms of Proviso (b) being a provision in penal statute and a condition for the offence, it has to be precise while mentioning of the amount of the cheque which is dishonoured. Even if the cheque details are mentioned in the notice but corresponding amount of cheque is not correctly mentioned, it would not bring in law the validity for such notice'*

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<sup>1</sup> 2025 Live Law (SC) 9

### **Conclusion**

- 15.** In the light of the aforesaid decision it can be found that in the demand notice the appellant claimed the entire amount pertaining to all the seven cheques. It is evident from the record that one cheque was deposited prematurely and another was out dated .Therefore the demand notice was not in conformity with the decision of the Hon'ble Apex Court and further the service of such notice was not collected since it returned as "Not known".
- 16.** Hence the Learned Appellate Court rightly reversed the order of conviction passed in case of C/298 of 2003 by Learned Metropolitan Magistrate, 13<sup>th</sup> Court, Calcutta from the charge under Section 138 of Negotiable Instruments Act and this court do not find any infirmity in the order impugned for which any interference is necessary.
- 17.** Hence this CRA 441 of 2026 is hereby dismissed. The judgement and order of the Learned Appellate Court is hereby affirmed.
- 18.** The Department is directed to forward the T.C.R to the concerned court forthwith for intimation and taking appropriate action.
- 19.** Urgent certified copy Urgent of the order if applied for be provided to the parties upon observance of all necessary requirements.

**[CHAITALI CHATTERJEE (DAS), J.]**