

**IN THE COURT OF ADDITIONAL DISTRICT & SESSIONS JUDGE,
FAST TRACK COURT NO.1, CITY SESSIONS COURT,CALCUTTA**

Present :

Koustuv Mukhopadhyay,

(JO Code-WB 01059)

Additional District & Sessions Judge,

Fast Track Court No 1.

City Sessions Court, Calcutta.

Criminal Appeal No. 62 of 2025

CNR No.WBCS01-000360-2025

Appeal U/S- 415(3) of BNSS as against the order and judgment of conviction dated 09.04.2025 passed by the Ld. Judicial Magistrate, 10th Court, Calcutta in Complaint Case No. CS 14722 of 2020.

Rahul Mukherjee

Convict/Appellant.

v.

State of West Bengal & Anurag Bindawala

Respondents.

Date of Judgment:- **21.04.2026**

JUDGMENT

Introduction

1. The present appeal challenges the judgment of conviction dated 09.04.2025 and the consequential order on sentence delivered by the Ld. Judicial Magistrate, 10th Court, Calcutta, in Complaint Case No. CS-14722 of 2020 (T.R. No. 289 of 2021).
2. By that judgment, the appellant stood convicted under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the N.I. Act"), and was directed to pay compensation amounting to Rs. 4,54,666/-, with a default stipulation of simple imprisonment.

3. This appeal, preferred on substantial grounds questioning the foundational proof of service of the statutory demand notice, raises critical issues pertaining to the mandatory compliance with procedural safeguards under the N.I. Act and the applicability of statutory presumptions in the face of evidentiary gaps.

Brief Facts of the Case

4. The prosecution's narrative before the Ld. Trial Court centered on an alleged cheque transaction wherein the convict (now appellant) issued cheque No. 613763 dated 02.03.2020 for Rs. 4,13,333/- purportedly in discharge of a pre-existing liability towards the complainant.
5. Upon presentation for encashment, the cheque was dishonoured on 04.03.2020 with the endorsement "Funds Insufficient," as evidenced by the bank return memo.
6. The complainant/respondent claims to have issued a demand notice dated 17.03.2020 to the convict/appellant, demanding payment within the statutory period of 15 days.
7. Payment not forthcoming, the complainant/respondent instituted the present complaint case under Section 138 of the N.I. Act before the Ld. Chief Metropolitan Magistrate, Calcutta in the form of a complaint and therefrom the case record was transferred to the Court of Ld. Metropolitan Magistrate, 10th Court, Calcutta (re-designated as Ld. Judicial Magistrate, 10th Court, Calcutta).

Evidence Adduced Before the Ld. Trial Court

8. The trial court proceedings were marked by a one-sided evidentiary record.
9. The complainant, Anurag Bindawala, deposed as PW-1, narrating the sequence of events from the issuance of the cheque to its dishonour and the subsequent demand notice.
10. No defence witnesses were examined by the convict/appellant, who chose to rest his case primarily on cross-examination and legal arguments.
11. On the documentary front, the complainant tendered and proved several exhibits: the cheque and accompanying deposit slip (Exhibit P-1 series), the bank return memo (Exhibit P-2), the demand notice along with its track report (Exhibit P-3 series), a General Diary (G.D.) entry concerning the alleged loss of the original postal receipt (Exhibit P-4), letters exchanged with the General Post Office and related postal receipts (Exhibit P-5 and P-6 series), and the complaint petition itself (Exhibit P-7).
12. Notably absent, however, was the original postal receipt for the demand notice, a fact the complainant attributed to its mysterious loss.

Findings of the Ld. Trial Court

13. Upon appreciating this evidence, the Ld. Trial Court held that the cheque in question had indeed been issued by the accused in discharge of a legally enforceable debt or liability, thereby attracting the rebuttable presumption under Section 139 of the N.I. Act.
14. The Ld. Trial Court further invoked the presumption of service under Section 27 of the General Clauses Act, 1897, deeming the demand notice duly served despite the missing postal receipt. It observed that the convict/appellant had failed to adduce any counter-evidence to rebut these presumptions, nor had he mounted a robust defence.
15. In a succinct conclusion, the Ld. Trial Court declared: "the complainant has successfully established his case... the accused has committed the offence punishable under Section 138 N.I. Act," leading to the imposition of the aforementioned compensation.

Grounds for Consideration in Appeal

16. Having heard the Ld. Counsel for both sides and also the Ld. Advocate appearing for the State at length and meticulously perused the trial court records, including the depositions, exhibits, and impugned judgment, several pivotal infirmities emerge that strike at the core of the prosecution case.

17. Foremost is the complaint/respondent's admitted inability to produce the original postal receipt evidencing dispatch of the demand notice—a statutory sine qua non under Section 138(b) of the N.I. Act.
18. While secondary evidence such as the G.D. entry and postal correspondence was tendered, these fall short of constituting primary proof of dispatch.
19. Compounding this lapse, the complaint/respondent itself referenced a reply notice allegedly dispatched by the accused repudiating liability, yet this crucial document was neither exhibited nor proved during trial.
20. No official from the postal department was summoned to corroborate dispatch or service, leaving the foundational fact of notice service unproven.
21. These omissions, collectively, undermine the Ld. Trial Court's reliance on presumptive proof.

Relevant Legal Position

22. It is trite law that compliance with the demand notice requirement under Section 138(b) of the N.I. Act is not merely directory but mandatory, forming the very edifice upon which the offence is structured.
23. The Hon'ble Supreme Court of India has, in a consistent line of authoritative pronouncements, repeatedly clarified the scope and

limitation of the presumption embodied in Section 27 of the General Clauses Act.

24. While the provision undoubtedly permits a court to presume due service of a notice once it is shown to have been properly addressed, prepaid, and posted, such presumption is neither automatic nor conclusive in nature.
25. Rather, it is a rebuttable presumption of fact, the invocation of which is contingent upon the complainant first establishing certain foundational facts through reliable and admissible evidence.
26. It has been emphasised that mere production of a copy of a notice or a bald assertion of dispatch, without satisfactory proof of actual posting, cannot by itself trigger the statutory presumption.
27. The evidentiary burden initially rests upon the complainant to demonstrate, with reasonable certainty, that the notice was in fact duly dispatched in the ordinary course of business. Only upon such foundational proof being laid does the presumption under Section 27 arise, shifting the onus onto the addressee.
28. In situations where primary evidence—such as the original postal receipt—is unavailable, the standard of proof does not stand diluted. On the contrary, the requirement of substantiation becomes more exacting. The complainant is then expected to adduce secondary evidence of a dependable character. This may include examination of

competent officials from the postal department, production of official dispatch records, or other cogent and convincing circumstantial evidence capable of establishing the factum of posting and the likelihood of service.

29. The law, therefore, does not countenance a mechanical or routine invocation of presumption in the absence of such proof.

30. Where the evidentiary foundation is deficient, the presumption under Section 27 cannot be pressed into service to fill the gaps in the prosecution's case. Courts are required to adopt a cautious and judicious approach, ensuring that the presumption operates only within its legitimate evidentiary bounds and does not supplant the fundamental requirement of proof.

31. Equally, where the convict/appellant's reply notice is invoked to infer deemed service as per Section 138(c) of N.I Act, it must itself be formally proved and marked as an exhibit. Failure on these fronts vitiates the proceedings, warranting Appellate Court's intervention.

Observation by this Court

32. Applying these principles, the conviction in the instant case precariously rests on presumptions erected upon shaky evidentiary foundations, particularly concerning service of the demand notice.

33. The non-production and non-exhibition of the original postal receipt remains unaddressed, with secondary documents like the G.D.

entry and postal letters serving merely as makeweights rather than substitutes.

34. The Ld. Trial Court erred in presuming service without examining any postal witness, despite the complainant's own admission of loss.

35. The unexhibited reply letter from the convict/appellant, referenced in the complaint, further deprives the record of a complete picture, potentially indicating non-service or repudiation.

36. In the considered opinion of this Court, the deficiencies noted herein are neither trivial nor merely procedural irregularities that can be overlooked in the interest of finality. Rather, they strike at the very foundation of the prosecution case and go to the root of the matter.

37. In my view, the failure to properly prove the service of the statutory demand notice, coupled with the non-exhibition of material documents such as the alleged reply of the convict/appellant, creates a substantive gap in the chain of evidence which is essential for sustaining a conviction under Section 138 of the N.I Act.

38. In my view, these lapses assume greater significance in light of the statutory scheme, where compliance with the requirement of issuance and service of demand notice is not a mere formality but a condition precedent to the institution and maintainability of the

complaint itself. In absence of cogent proof on these aspects, the very substratum of the prosecution case becomes vulnerable.

39. Furthermore, it appears to me that the convict/appellant was effectively deprived of a meaningful and fair opportunity to challenge the prosecution on these crucial elements.

40. In my view, the non-production and non-exhibition of vital documents curtailed the convict/appellant's right to cross-examine the complainant or contest the authenticity, dispatch, and service of the demand notice and the alleged reply thereto. Such denial goes to the heart of a fair trial, as the right of cross-examination is not merely procedural but a valuable substantive safeguard available to the accused.

41. In these circumstances, sustaining the conviction without affording an opportunity to cure these material defects would occasion a failure of justice. The interests of fairness, equity, and due process therefore necessitate a fresh consideration of the matter after permitting both sides to fully adduce and test the relevant evidence.

Necessity of Remand

42. In the considered view of this Court, the interests of justice militate against outright acquittal, as the complainant ought to be afforded a final opportunity to cure these defects by leading targeted evidence—

such as examining postal officials to prove dispatch and service, or tendering the convict/appellant's reply letter if extant.

43. Correspondingly, the convict/appellant must be permitted to cross-examine such witnesses and adduce rebuttal evidence.

44. A remand is thus imperative, enabling the Ld. Trial Court to render a fresh adjudication on a fortified record, untainted by procedural irregularities.

45. This course aligns with the salutary principle that technicalities should not defeat substantive justice in cheque dishonour cases, which are quasi-civil in nature (*Rangappa v. Sri Mohan*, (2010) 11 SCC 441).

Conclusion

46. In light of the foregoing, the appeal succeeds in part.

47. The judgment of conviction dated 09.04.2025 and the order of sentence passed by the Ld. Judicial Magistrate, 10th Court, Calcutta, in Case No. CS-14722 of 2020 (T.R. No. 289 of 2021) are liable to be set aside.

48. The matter stands remanded to the Ld. Trial Court for de novo proceedings confined to the following directions:

49. The Ld. Trial Court shall forthwith secure the presence of parties and grant opportunity to the complainant/respondent to adduce further evidence specifically aimed at proving service of the demand notice, including but not limited to examination of relevant postal

officials and tendering of the alleged reply letter from the accused, if available.

50. The convict/appellant shall be accorded full opportunity to cross-examine any such witnesses, adduce defence evidence, and address arguments.

51. Thereafter, the Ld. Trial Court shall hear both sides afresh, apply its mind to the entire evidence, and deliver a judgment.

52. The aforesaid exercise shall be concluded expeditiously, preferably within three months from the communication of this judgment.

Final Observation

53. It is clarified that this Court has refrained from expressing any opinion whatsoever on the merits of the case, including the existence of liability or validity of the cheque.

54. All contentious issues remain wide open for determination by the Ld. Trial Court on the reconstituted evidence.

55. Memorandum of appeal is sufficiently stamped.

Conclusion

56. Accordingly, it is,

O R D E R E D

that the instant criminal appeal be and the same is allowed on contest and the impugned judgment dated 09.04.2025 passed in CS 14722 of 2020

passed by Ld. Judicial Magistrate, 10th Court, Calcutta is hereby set aside and the matter be remanded back to the Court of Ld. Judicial Magistrate, 10th Court, Calcutta with the direction as stipulated above.

57. However, there shall be no order as to cost and stay order gets vacated.

Addendum:-

58. The convict/appellant **Rahul Mukherjee** is directed to surrender before the **Ld. Judicial Magistrate, 10th Court, Calcutta** positively within 30 days from today failing which the Ld. Trial Court will have liberty to take action against him.

59. Let a copy of this Judgment along with the TCR be sent forthwith to the **Ld. Judicial Magistrate, 10th Court, Calcutta** for perusal, information and necessary action.

60. Office to make note in the germane registers accordingly.

61. Let a copy of the judgment be uploaded in the CIS within 48 Hours from now as per **Rule 186A** of the **Cr.R.O** of **Hon'ble High Court, Calcutta**.

62. Dictated & corrected by me on this **21st day of April, 2026** and the judgment is signed, sealed & delivered.

Koustuv Mukhopadhyay
Additional Sessions Judge,
FTC-1, Bichar Bhawan,
City Sessions Court, Calcutta

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