IN THE COURT OF ADDITIONAL SESSIONS JUDGE
GANGARAMPUR AT BUNIADPUR.
DAKSHIN DINAJPUR.

Present : Sri Subrata Mukherjee,
Additional Sessions Judge,
Gangarampur at Buniadpur
Dakshin Dinajpur

Friday, the 22nd day of May, 2026

Criminal Appeal no. 02 of 2024
CNR No. WBDDO5-000065-2024

Mr. Sayad Faruque Azam

……. Appellant

VERSUS

1) Mr. Najrul Islam,
2) State of West Bengal

……… Respondents

Learned Advocates appeared:
For

The Appellant: Sri Santanu Dey and Sri Nipendu Datta.

The Respondent: Safiul Rahaman.

The Respondent State : Ali Haider Anoaruddin Ahammed (Public Prosecutor in charge)

Judgment

1. The instant Criminal Appeal U/s. 378/381 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C for short) is filed against the impugned judgment and order of acquittal dated 19.12.2023 passed by the Learned Additional Chief Judicial Magistrate, Gangarampur at Buniadpur, Dakshin Dinajpur (Learned ACJM for short), Smt. Moumita Ray in C.R. Case No. 239/2017 under Section 138 of The Negotiable Instrument Act (hereinafter referred to as the NI Act for short).

2. The factual matrix of the present appeal is that the complainant/appellant, Sayed Faruque Azam, filed a complaint case against the accused/respondent, Najrul Islam, under Section 138 of the N.I. Act, alleging that the accused/respondent had issued a cheque for a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) drawn on State Bank of India, Kushmandi Branch, towards discharge of the loan taken by him for his business purposes. The complainant/appellant deposited the said cheque at United Bank of India, Dikul Branch (hereinafter referred to as "UBI, Dikul Branch" for short), for encashment of the said amount. However, State Bank of India, Kushmandi Branch, returned the cheque on 16.05.2017 with the endorsement that the funds in the account of the accused/respondent were insufficient, and accordingly, the cheque was dishonoured. It was further stated by the complainant that information regarding the dishonour of the cheque came to his knowledge on 22.05.2017. Thereafter, the complainant/appellant caused a demand notice to be issued through his Advocate on 17.06.2017 by registered post with A/D, calling upon the accused/respondent to repay the aforesaid amount. The said notice was received by Najrul Islam on 22.06.2017. It was also alleged that despite receipt of the demand notice, the accused/respondent failed and neglected to make payment to the complainant/appellant, Sayed Faruque Azam, and thereby failed to discharge his liability.

3. Having regards to the facts and circumstances of the case the following points were framed for determination by the Learned ACJM, Gangarampur at Buniadpur:

1. Whether the complainant has compiled with the terms of the provisions

of Section 138 (a) (b) and (c) of The N.I. Act?

2. Whether the accused has committed any offense punishable Under Section 138 N.I. Act?

Evidences Laid by the Parties:

4. The appellant/complainant, appeared as a sole witness to substantiate his claim:

PW1- Mr. Sahid Farooq Azam.

Following documents have been produced and marked as exhibits on behalf of the appellant/complainant:-

(a) **Exhibit-1**: The original Cheque of SBI, Kushmandi Branch;

(b) **Exhibit-2**: Cheque Return Memo;

(c) **Exhibit-3**: Signature on Advocate Notice;

(d) **Exhibit-3/1**: Postal Receipts;

(e) **Exhibit-3/2**: Signature of accused/respondent on A.D Card.

5. Thus at the trial stage, the appellant/complainant appeared as the sole witness and some documents were exhibited. Thereafter, the accused/respondent was examined under section 313 of the Cr. P.C. and the accused/respondent rendered defense witness by examining:

(a) **DW1:** Najrul Islam (the accused/respondent himself); &

(b) **DW2:** Rebati Mondal.

No documents were tendered by the accused/respondent but at the time of of the complainant witness the accused tendered the copy of the Summon along with the copy of the plaint and the same was marked as **Exhibit-A**.

Findings of the Learned Trial Court :-

6. On conclusion of trial, Learned Court below was pleased to observe

a) That the appellant/complainant had failed to discharge the burden of proving compliance with the mandatory requirements under Section 138(b) of the N.I. Act and, therefore, lacked the necessary evidence to establish the cause of action for filing the complaint.

b) It was further observed that, since the appellant/complainant failed to discharge the initial burden as mandated under Section 138 of the N.I. Act, the question of invoking the presumptions under Sections 139 and 118 of the N.I. Act against the accused did not arise. Consequently, no burden could be cast upon the accused person to rebut the presumption or to raise a probable defence regarding the enforceability of the cheque in question.

c) The Learned ACJM also observed that, as the complainant had failed to discharge the initial burden necessary to enable the Court to draw the statutory presumption in favour of the holder in due course and thereby constitute an offence under Section 138 of the N.I. Act, any discussion regarding rebuttal of such presumptions by the accused person became unnecessary and redundant.

7. Learned Court below finally held the accused not guilty of the plea so framed against the accused under Section 138 of The Negotiable Instrument Act, 1881, and accordingly acquitted him u/s 255(1) of the Code of Criminal Procedure.

8. Feeling aggrieved, the appellant/complainant has filed the present appeal and challenged the correctness of the impugned judgment.

<u>Grounds of appeal:-</u>

9. The impugned judgment of the aforementioned case has been challenged mainly on the following grounds:-

(a) That the Learned Court below, while passing the impugned judgment, committed gross irregularities in acquitting the accused/respondent, although the accused/respondent was not entitled to an order of acquittal. The judgment passed by the Learned Additional Chief Judicial Magistrate, Gangarampur at Buniadpur, therefore, deserves to be set aside.

(b) That the accused/respondent No. 1 failed to rebut the statutory presumption under Section 139 of the Negotiable Instruments Act, and as such, the order of acquittal is unsustainable in law.

(c) That the Learned Additional Chief Judicial Magistrate, Gangarampur at Buniadpur, Dakshin Dinajpur, was pleased to acquit the accused/respondent No. 1 on the technical ground that the demand notice was served on 17-06-2017, allegedly beyond one month from 16-05-2017. However, the complainant actually received knowledge/intimation of such dishonour from the Bank authority only on 22-05-2017, which sufficiently cures the alleged technical defect in the prosecution case.

(d) That the complainant/appellant, namely Sayed Faruque Azam, received the intimation letter/return memo from the Bank authority regarding the dishonour of Cheque being Exhibit-1 (Cheque No. 307687 dated 02-05-2017 drawn on SBI, Kushmandi Branch for an amount of Rs. 2,00,000/-) on 22-05-2017. However, the said document could not be produced by the prosecution during the trial.

(e) That the complainant/appellant is fully capable of proving the actual date of communication of dishonour of the cheque through the evidence of the Bank authority as well as by producing relevant supporting documents.

(f) That the complainant/appellant ought to be granted an opportunity to prove the date of knowledge/communication regarding the dishonour of the cheque through the evidence of the Branch Manager of State Bank of India, Kushmandi Branch, Dakshin Dinajpur, failing which the complainant/appellant shall suffer serious prejudice.

(g) That the judgment dated 19-12-2023 passed by the Learned Additional Chief Judicial Magistrate, Gangarampur at Buniadpur, Dakshin Dinajpur, is liable to be set aside, with liberty granted to the appellant/complainant to establish and prove the date of communication of dishonour/return of the cheque (Exhibits 1 and 2), and the matter being remanded back in connection with C.R. Case No. 139 of 2017 for recording the evidence of the Branch Manager of State Bank of India, Kushmandi Branch, Dakshin Dinajpur, for proper adjudication of the case and for the ends of justice.

<u>Arguments on behalf of the complainant/appellant :-</u>

10. Learned Advocate for the complainant/appellant contended that the Learned ACJM, Gangarampur at Buniadpur dismissed the complaint and acquitted the accused/respondent on a hyper-technical ground by holding that no documentary evidence was produced, nor any bank official was examined, to prove that the complainant received information regarding dishonour of the cheque on 22-05-2017. It was further submitted that the complainant/appellant ought to have been given an opportunity to produce such document and to examine the concerned bank official in support of the said fact. Accordingly, a prayer was made for remand of the case to the Trial Court with direction to accept such evidence and record the testimony of the bank officials regarding the intimation of dishonour.

11. In support of such contention, reliance was placed on the decision reported in AIR Online 2026 Ker 23, 2026 ACD 282 (Kerala) in **Malabar Cements Limited Office and Work v. R. Sudevan & Another**, wherein the Hon’ble Court set aside the order of acquittal and remanded the matter for adducing documentary evidence which could not be produced before the Trial Court. Learned Advocate for the complainant/appellant further submitted, while disputing the arguments advanced on behalf of the accused/respondent, that the complainant is a “victim” within the meaning of Section 2(wa) of the Cr.P.C. and is therefore entitled to prefer the present appeal under the proviso to Section 372 Cr.P.C., relying upon the decision reported in 2025 LiveLaw (SC) 666 in **M/S Celestium Financial v. A. Gnanasekaran**.

Arguments on behalf of the accused-respondent:-

12. Per contra, Learned Advocate for the accused/respondent submitted that the present appeal against acquittal arising out of a complaint case was not maintainable without obtaining leave from the Hon’ble High Court as required under Section 378(4) of the Cr.P.C. It was further contended that the decision in **M/S Celestium Financial v. A. Gnanasekaran** had no application to the present case, as the complainant could not be treated as a “victim” within the meaning of Section 2(wa) of the Cr.P.C. According to the learned Advocate, a person can claim the status of victim only when he has suffered loss or injury due to the act or omission constituting the offence alleged against the accused. In the instant case, however, the complaint was dismissed solely on the ground of limitation and not because of any wrongful act causing loss or injury to the complainant by the accused.

13. It was further argued that the complainant had also failed to establish the existence of any legally enforceable debt or liability against the accused. Though the complainant alleged in the complaint that the cheque amount had been paid to the accused in presence of Rebati Mondal, the said witness did not support the complainant's case and instead appeared as a defence witness stating that the accused had repaid the amount to the complainant in her presence and that the complainant had agreed to return the cheque. Learned Advocate therefore contended that, after acquittal by a competent Court, no further opportunity should be granted to the complainant to adduce additional evidence merely to fill up the lacunae in his case. It was also submitted that the facts involved in **Malabar Cements Limited Office and Work v. R. Sudevan & Another** were distinguishable and thus not applicable to the present matter.

Arguments on behalf of the learned Public Prosecutor:-

14. Public Prosecutor, in charge, representing the State of West Bengal, learned Ali Haider Anwaruddin Ahamed contended that the impugned judgment is well articulated by reasons and proper analysis of the evidence on record and therefore the judgment passed by the learned Trial court may not be interfered with as the same has been passed by observing all the provisions of law.

Analysis:

Points for determination:-

15. Upon hearing the submissions advanced by the learned Advocates appearing on behalf of the respective parties, perusing the pleadings, evidence, impugned judgment, and the Lower Court Records, the following points arise for determination in the present appeal:

i. Whether the present appeal filed by the complainant/appellant is maintainable under the proviso to Section 372 of the Code of Criminal Procedure?

ii. Whether the complainant/appellant succeeded in proving compliance with the mandatory statutory requirements contemplated under Section 138(b) of the Negotiable Instruments Act?

iii. Whether the complainant/appellant should be permitted to adduce additional evidence at the appellate stage under Section 391 of the Code of Criminal Procedure?

iv. Whether the impugned judgment and order of acquittal passed by the Learned Trial Court suffer from any illegality, perversity, irregularity, or miscarriage of justice warranting interference by this Appellate Court?

Maintainability of the Appeal

16. At the outset, learned Advocate appearing for the accused/respondent questioned the maintainability of the present appeal by contending that the instant proceeding arises out of a complaint case instituted under Section 138 of the Negotiable Instruments Act and, therefore, an appeal against acquittal could only have been preferred after obtaining special leave from the Hon'ble High Court under Section 378(4) of the Code of Criminal Procedure. Accordingly, it was submitted that the decision in ***M/s Celestium Financial vs. A. Gnanasekaran*** (Supra) is inapplicable to the present case.

17. It was further contended that the complainant/appellant cannot claim the status of a "victim" within the meaning of Section 2(wa) of the Cr.P.C., as according to the learned Advocate for the respondent, the accused/respondent was acquitted on account of failure of the complainant to establish the statutory cause of action and not because the liability itself stood proved.

18. Per contra, learned Advocate appearing on behalf of the complainant/appellant submitted that the complainant in a cheque dishonour proceeding is the direct sufferer of the consequences arising from dishonour of the cheque and therefore squarely falls within the ambit of "victim" as contemplated under Section 2(wa) of the Cr.P.C. Reliance was placed upon the decision of the Hon'ble Supreme Court in ***M/s Celestium Financial vs. A. Gnanasekaran*** (Supra).

19. I have carefully considered the rival submissions.

20. The Hon'ble Supreme Court in the aforesaid decision clarified that the complainant in a proceeding under Section 138 of the Negotiable Instruments Act, being the person directly affected by dishonour of the cheque, possesses the right to prefer an appeal against acquittal under the proviso to Section 372 of the Cr.P.C.

21. In the present case, it is undisputed that the cheque in question was allegedly issued in favour of the complainant/appellant towards discharge of liability. Therefore, the complainant/appellant is the person directly affected by the alleged dishonour of the cheque and consequently answers the description of a "victim" under Section 2(wa) of the Cr.P.C.

22. Accordingly, I hold that the present appeal is maintainable under the proviso to Section 372 of the Code of Criminal Procedure.

Whether the appellant/complainant shall be allowed to adduce further evidence and whether the case record be remanded back to the Trial Court for collecting additional evidence as prayed for?

Findings of the Learned ACJM Gangarampur at Buniadpur :-

23. Learned ACJM observed that the complainant/appellant failed to discharge the burden of proving compliance with the mandatory requirements under Section 138(b) of the Negotiable Instruments Act and, consequently, failed to establish the cause of action for filing the complaint. The learned Trial Court noted that although the cheque return memo dated 16-05-2017 was exhibited by the complainant, the complainant asserted that he received information regarding dishonour of the cheque only on 22-05-2017 and thereafter issued the statutory demand notice on 17-06-2017 within the prescribed period. However, upon consideration of the evidence, the learned ACJM found that the complainant neither pleaded nor explained the mode and manner by which he acquired knowledge of the dishonour on 22-05-2017. The Court further observed that no documentary evidence was produced, nor any bank official examined, to establish that the complainant had in fact received such intimation on the said date.

24. The learned ACJM further held that in proceedings under Section 138 of the N.I. Act, the statutory timelines relating to receipt of information regarding dishonour, issuance of demand notice, and filing of complaint are mandatory in nature and directly affect the accrual of the cause of action. Since the complainant failed to prove by cogent evidence that knowledge of dishonour was received on 22-05-2017, the learned Trial Court concluded that the complainant failed to establish the foundation for computation of limitation under Section 138(b) of the N.I. Act. On such reasoning, the learned ACJM held that the cause of action could not be said to have arisen in favour of the complainant and consequently dismissed the complaint.

25. Before proceeding further to consider whether the appellant/complainant should be permitted to adduce additional evidence and whether the case record ought to be remanded to the learned Trial Court for collection of such evidence, as prayed for, the following points require consideration and clarification.

Nature and Scope of Offence Under Section 138 of the N.I. Act

26. Section 138 of the Negotiable Instruments Act creates a statutory offence subject to fulfillment of strict statutory conditions. The offence is not constituted merely because a cheque is dishonoured. Criminal liability arises only upon fulfillment of all the ingredients prescribed under clauses (a), (b), and (c) of Section 138 of the Act.

27. The statutory scheme clearly provides:

- the cheque must be presented within the prescribed period;
- the cheque must be dishonoured;
- the payee must issue a written demand notice within thirty days from receipt of information regarding dishonour;
- and the drawer must fail to make payment within fifteen days from receipt of such notice.

Only upon fulfillment of the aforesaid conditions does the cause of action arise for institution of a complaint under Section 138 of the N.I. Act.

28. The Hon’ble Supreme Court in ***K. Bhaskaran v. Sankaran Vaidhyan Balan***, (1999) 7 SCC 510, ***Shakti Travel & Tours v. State of Bihar***, (2002) 9 SCC 415 and ***Sadanandan Bhadran v. Madhavan Sunil Kumar***, (1998) 6 SCC 514; has consistently held that an offence under Section 138 of the N.I. Act is completed only upon fulfillment of all the statutory requirements, namely, issuance of cheque towards legally enforceable liability, presentation of the cheque within the prescribed period, dishonour of the cheque, issuance of statutory notice within thirty days from receipt of information regarding dishonour, and failure of the drawer to make payment within fifteen days from receipt of such notice. The cause of action to prosecute arises only upon expiry of the said fifteen days without payment.

29. Section 142 of the N.I. Act further provides that the complaint is to be filed within one month from accrual of such cause of action, though delay in filing the complaint may be condoned upon sufficient cause being shown. However, there is no provision under the Act for condonation of delay in issuing the statutory notice under Section 138(b) or in extending the fifteen days’ period available to the drawer for making payment under Section 138(c). Consequently, failure to comply with these mandatory requirements defeats the very cause of action for prosecution under Section 138 of the N.I. Act.

<u>Dispute Regarding Accrual of Cause of Action</u>

30. In the present case, the cheque in question bearing No. 307687 dated 02.05.2017 for an amount of Rs. 2,00,000/- drawn on SBI, Kushmandi Branch, was admittedly dishonoured on the ground of “Funds Insufficient”.

The cheque return memo being Exhibit-2 clearly bears the date 16.05.2017.

Ordinarily, therefore, the statutory notice contemplated under Section 138(b) of the N.I. Act ought to have been issued within thirty days therefrom.

Admittedly, however, the statutory demand notice was issued on 17.06.2017.

31. Prima facie, therefore, the notice appears to have been issued beyond the prescribed statutory period if limitation is computed from 16.05.2017.

The complainant/appellant, however, attempted to explain the said delay by specifically pleading that although the cheque return memo was dated

16.05.2017, information regarding dishonour actually came to his knowledge only on 22.05.2017 and therefore the notice dated 17.06.2017 fell within limitation. The legal proposition advanced by the complainant/appellant cannot be disputed. Section 138(b) of the Negotiable Instruments Act specifically uses the expression: "within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid."

32. Section 138 (b) and (c) of the N.I Act reads as:-

> *(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*
>
> *(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.*

33. Therefore, under Section 138(b) of the Negotiable Instruments Act, the statutory demand notice must be issued within thirty days from the date on which the payee or holder in due course receives information from the bank regarding dishonour of the cheque. Further, under Section 138(c) of the Act, the cause of action to institute a complaint arises only when the drawer fails to make payment within fifteen days from the date of receipt of such statutory notice. Thus, the limitation does not necessarily commence from the date mentioned in the cheque return memo itself, but from the date on which information regarding dishonour is actually received by the complainant.

34. In the present case, the cheque in question was presented by the complainant through his banker, United Bank of India, Dikul Branch, and the same was dishonoured due to "Funds Insufficient" vide cheque return memo dated 16-05-2017.

35. In the present case, the cheque was dishonoured on 16-05-2017 and, ordinarily, the statutory notice under Section 138(b) of the Negotiable Instruments Act was required to be issued within thirty days therefrom, i.e., on or before 15-06-2017, in view of the principle laid down in in ***M/s Saketh India Ltd. vs. India Securities Ltd.*, AIR 1999 SC 1090.** Admittedly, however, the demand notice was issued on 17-06-2017 and thus, prima facie, appears to have been issued beyond the prescribed statutory period.

36. Admittedly, the complainant/appellant issued the statutory demand notice on 17-06-2017, i.e., beyond thirty days from the date of dishonour of the cheque as reflected in the cheque return memo dated 16-05-2017. Prima facie, therefore, the notice appears to have been issued beyond the period prescribed under Section 138(b) of the Negotiable Instruments Act.

37. The complainant/appellant, however, explained that though the cheque return memo was dated 16-05-2017, information regarding dishonour actually came to his knowledge only on 22-05-2017, as specifically stated in paragraph 2 of the demand notice (Exhibit-3). In ***Munoth Investments Ltd. v. Puttukola Properties Ltd.*, (2001) 6 SCC 582**, the Hon'ble Supreme Court held that the period under Section 138(b) is to be computed from the date of receipt of information regarding dishonour and not merely from the date mentioned in the cheque return memo. Therefore, if the complainant is able to establish that information regarding dishonour was received on 22-05-2017, the notice dated 17-06-2017 would fall within the prescribed period of limitation. However, once such plea is specifically taken, the burden necessarily lies upon the complainant to establish, through cogent and reliable evidence, the actual date on which such information was received.

<u>Appreciation of Evidence Adduced by the Complainant During Trial and the Legality of the Findings Recorded by the Learned ACJM</u>

38. The appellant/complainant, appeared as a sole witness to substantiate his claim:

PW1- Mr. Sahid Farooq Azam.

Following documents have been produced and marked as exhibits on behalf of the appellant/complainant: **-**

(f) **Exhibit-1**: The original Cheque of SBI, Kushmandi Branch;

(g) **Exhibit-2**: Cheque Return Memo;

(h) **Exhibit-3**: Signature on Advocate Notice;

(i) **Exhibit-3/1**: Postal Receipts;

(j) **Exhibit-3/2**: Signature of accused/respondent on A.D Card.

39. The Learned ACJM, Gangarampur at Buniadpur, rightly observed that the complainant/appellant failed to produce any documentary evidence or examine any bank official to establish that information regarding dishonour of the cheque was actually received on 22-05-2017. A proceeding under Section 138 of the Negotiable Instruments Act is primarily founded upon documentary evidence, and in the absence of cogent proof regarding the actual date of receipt of information of dishonour, the complainant/appellant failed to discharge the burden of proving compliance with the mandatory requirement under Section 138(b) of the Act. In *Munoth Investments Ltd. vs. Puttukola Properties Ltd.* (supra), the Hon'ble Supreme Court accepted the complainant's case only because clear and reliable evidence, including testimony of the Company Secretary and the concerned Bank Manager, had been adduced to establish the precise date on which information regarding dishonour was received.

40. Therefore, in light of the discussions made hereinabove, this Court is of the considered view that the judgment and order passed by the Learned ACJM, Gangarampur at Buniadpur, do not suffer from any material illegality, perversity, or irregularity warranting interference by this Appellate Court.

41. In the absence of sufficient evidence regarding the date of receipt of information of dishonour, the complainant/appellant failed to establish the necessary cause of action for instituting the complaint. **Thus the Learned ACJM committed no error in dismissing C.R. Case No. 239 of 2017 upon holding that the complainant/appellant had failed to discharge the burden of proving compliance with the mandatory requirements of Section 138(b) of the Negotiable Instruments Act.**

<u>Prayer from the part of the Complainant/appellant:</u>

42. The principal prayer advanced on behalf of the complainant/appellant in the present appeal is that an opportunity should be granted to adduce further evidence by:

- producing relevant bank documents, and
- examining concerned bank officials,

  for the purpose of establishing that information regarding dishonour was actually received on 22.05.2017.

The complainant/appellant also prayed for remand of the matter to the Learned Trial Court for recording such evidence.

Whether the appellant/complainant shall be allowed to adduce further evidence during the appeal?

43. The power of the Appellate Court to take further evidence is dealt under the provisions of Section 391 of the Cr.P.C. The Section reads as:

> ***391. Appellate Court may take further evidence or direct it to be taken***.—
> *(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.*
> *(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.*
> *(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.*
> *(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.*

Law Laid down by The Honourable Supreme Court on adducing further evidence during appeal under Section 391 Cr.P.C.

44. Section 391 of the Code of Criminal Procedure undoubtedly confers discretionary power upon the Appellate Court to take additional evidence if such evidence appears necessary for a just decision of the case. However, the settled legal position is equally clear that such power is to be exercised sparingly, cautiously, and only in exceptional circumstances.

45. The Hon’ble Supreme Court in ***Ajitsinh Chehuji Rathod v. State of Gujarat*, (2024) 4 SCC 453 :** held that additional evidence may be permitted only where despite due diligence such evidence could not be produced during trial or where subsequent events necessitate such course.

46. Similarly in ***State (NCT of Delhi) v. Pankaj Chaudhary*,** (2019) 11 SCC 575 : the Hon’ble Supreme Court observed that Section 391 Cr.P.C. cannot be invoked merely to fill up gaps or lacunae in the prosecution case.

47. Honourable Supreme Court in ***Ashok Tshering Bhutia v. State of Sikkim*,** (2011) 4 SCC 402 at page 412 had observed that additional evidence at the appellate stage is permissible, in case of a failure of justice. However, such power must be exercised sparingly and only in exceptional suitable cases where the court is satisfied that directing additional evidence would serve the interests of justice. It would depend upon the facts and circumstances of an individual case as to whether such permission should be granted having due regard to the concepts of fair play, justice and the well-being of society. Such an application for taking additional evidence must be decided objectively, just to cure the irregularity. The provisions of Section 391 Cr.P.C. cannot be pressed to fill up lacunae in prosecution’s case.

48. Honourable Supreme Court again in ***Bir Singh v. State of U.P.*, (1977) 4 SCC 420** it was reiterated that the power to take additional evidence at the appellate stage is exceptional in nature and cannot ordinarily be used to repair deficiencies in evidence after conclusion of trial.

49. So, borrowing the wisdom from the abovementioned Judgments of The Honourable Supreme Court it can be submitted that:

> a) Additional evidence under Section 391 of the Cr.P.C. can be taken at the appellant stage in exceptional circumstances where such evidence is necessary for a just decision of the case and to prevent failure of justice.
>
> b) The appellate Court shall record reasons for such necessity.
>
> c) The additional evidence by the Appellant Court can be taken if the Appellate Court thinks that additional evidence is necessary to see that justice is done to the parties by arriving at the truth.

d) The Appellate Court has power to take additional evidence in a suitable case yet the discretion should not be exercised to fill up gaps or lacunae in the prosecution evidence.

Again back to the facts and disputes regarding the present case

50. When the present facts are examined in light of the aforesaid settled principles, it becomes apparent that the evidence now sought to be introduced was always within the knowledge and reach of the complainant/appellant.

51. Section 391 of the Code of Criminal Procedure confers wide discretionary power upon the appellate Court to take additional evidence where such evidence appears necessary for a just decision of the case, such power is to be exercised sparingly and only in exceptional circumstances to prevent failure of justice.The provision cannot ordinarily be invoked to permit a party to fill up lacunae or cure defects in evidence which could and ought to have been addressed during trial.

52. The complainant/appellant was also fully aware that:

- the cheque return memo bore the date 16.05.2017;
- the demand notice was issued on 17.06.2017;
- and therefore proof regarding date of receipt of information was absolutely essential.

53. Despite having full opportunity before the Learned Trial Court, no effort was made:

- to summon bank officials,
- to call for bank records,
- to produce intimation documents,
- or even to seek adjournment for such purpose.

54. The present application therefore does not arise out of discovery of fresh evidence or circumstances beyond control. Rather, it is an attempt to cure an evidentiary deficiency after suffering an adverse judgment. Permitting such evidence at the appellate stage would amount to allowing the complainant/appellant to improve the prosecution case after acquittal, which is impermissible in law.

Appellant’s argument in respect of his right to file further evidence in appeal

55. Learned Advocate in support of his contention has referred the case reported in **Malabar Cements Limited Office and Work VS R. Sudevan & Another** (supra) wherein Hon’ble Court was pleased to set aside the judgment of acquittal and remanded the matter back to the Trial Court for the purpose of adducing documentary evidence which the complainant fail to produce before the Trial Court.

56. Learned Advocate during his argument had stated that in **Malabar Cements Limited Office and Work VS R. Sudevan & Another** (supra) the relevant postal report was produced in a connected case between the same parties and in such circumstances the Hon’ble Court was pleased to allow the complainant to adduce the documentary evidence which the complainant failed to produce before the Trial Court.

57. It was also submitted that after getting the judgment in the present case being **C.R. Case No. 239/2017** and being aware about the necessity of the submission of document, to prove that he gathered the knowledge of dishonour on 22-5-2017, this complainant had filed some documents in another case which is pending before the Court of the Learned ACJM, Gangarampur at Buniadpur and therefore, when similar documents have been filed in another pending case between the same parties this Appellant Court must allow this appeal and remand back the case to the Trial Court for adducing further evidence in the light of the law laid down in **Malabar Cements Limited Office and Work VS R. Sudevan & Another** (supra).

Precedent

58. It is well settled that criminal cases are to be decided on appreciation of evidence, surrounding facts and probabilities arising from the particular circumstances of each case, and even a slight difference in facts may lead to a different conclusion. Therefore, excessive or mechanical reliance upon precedents without considering the factual matrix of the case may result in miscarriage of justice. In **Secundrabad Club Etc. v. C.I.T.-V ETC. reported in**

[2023] 12 S.C.R. 979 : 2023 INSC 736, the Hon’ble Supreme Court observed that it is the ratio decidendi and not the final order which constitutes a binding precedent, and a decision rendered on peculiar facts cannot be blindly applied to another case. Similarly, in **Union Of India & Anr vs Major Bahadur Singh,** 2006 (1) SCC 368, the Hon’ble Supreme Court reiterated that one additional or different fact may make a world of difference between conclusions in two cases and that disposal of cases by blindly relying upon precedents is improper.

Final Decision with reasons:

Distinction from Malabar Cements Case

59. The complainant/appellant has relied upon the decision in ***Malabar Cements Limited Office and Works vs. R. Sudevan & Another*** (supra) in support of the prayer for adducing additional evidence at the appellate stage. In the said case, the Hon’ble Court permitted the complainant to adduce further evidence during appeal and remanded the matter back to the Learned Trial Court for recording such evidence.

60. The Hon’ble Kerala High Court, in the aforesaid case, **found the findings of the Learned Magistrate to be legally justified** on the materials then available on record. However, the impugned judgment was nevertheless set aside and the matter was remanded on account of certain exceptional circumstances, namely:–

> i) The documents which had not been produced in the concerned case had already been produced in another connected proceeding between the same parties; and
>
> ii) The non-production of those documents had resulted in the acquittal of the accused in a matter **involving dues payable to a public sector undertaking, thereby involving public money and public interest**.

61. Therefore, the decision rendered in ***Malabar Cements Limited Office and Works vs. R. Sudevan & Another*** (supra) cannot be applied mechanically without examining the factual distinction between the two cases. It is a settled principle that precedents are to be applied having regard to the factual matrix of each case, and even a minor but significant factual distinction may alter the applicability of the ratio laid down therein.

62. Upon careful consideration, I am of the humble opinion that the facts and circumstances of ***Malabar Cements Limited Office and Works vs. R. Sudevan & Another*** (supra) are clearly distinguishable from the facts of the present case, and therefore the said decision does not assist the complainant/appellant. The distinguishing features are as follows:–

a) In ***Malabar Cements*** (supra), the **amount involved was due to a public sector undertaking and, therefore, involved public money and larger public interest**. In the present case, <u>no such question of public money or public interest is involved</u>. **The dispute is purely private in nature.**

b) In ***Malabar Cements*** (supra), the documents which had not been formally exhibited in the concerned proceeding were already available on record in another connected case between the same parties. In the present case, although it has been argued on behalf of the complainant/appellant that similar documents were filed in a connected proceeding, <u>it clearly appears from the submissions advanced that such documents were produced in the connected case only after the complainant/appellant suffered an adverse judgment in the present matter. Therefore, it cannot be said that the documents were already available on record in a connected proceeding at the relevant point of time or that the omission was merely technical in nature.</u> ***On the contrary, the failure to produce the documents during trial clearly reflects negligence and lack of due diligence on the part of the complainant/appellant.***

63. Thus, bearing in mind the settled legal position that the power under Section 391 of the Cr.P.C. to permit additional evidence at the appellate stage is to be exercised sparingly and only in exceptional circumstances, and that such power cannot ordinarily be invoked for the purpose of filling up gaps or lacunae in the prosecution case, I am of the considered opinion that no exceptional circumstance exists in the present matter warranting the exercise of such discretion. More particularly, when the evidence sought to be introduced was always within the knowledge and possession of the complainant/appellant during trial, permitting such evidence at the appellate stage would amount to allowing the complainant/appellant to improve the case after suffering an adverse judgment. Accordingly, the exceptional course adopted in ***Malabar Cements Limited Office and Works vs. R. Sudevan & Another*** (supra) cannot be extended to the facts of the present case.

Conclusion

64. In the conspectus of the discussions made herein above, this Court is of the considered view that the present appeal is wholly devoid of merit and does not warrant any interference with the judgment and order passed by the Learned ACJM Gangarampur at Buniadpur acquitting the accused, Najrul Islam. The findings recorded by the Learned ACJM Gangarampur at Buniadpur are based upon proper appreciation of the evidence available on record and do not suffer from any illegality, perversity, or material irregularity.

65. This Court is further of the considered opinion that the complainant/appellant cannot be permitted to adduce additional evidence at the appellate stage. The evidence sought to be introduced was always within the knowledge and possession of the complainant/appellant during the course of trial, yet no steps were taken to produce the same before the Learned Trial Court. Permitting such evidence at this belated stage would amount to allowing the complainant/appellant to fill up the lacunae in the prosecution case and to improve upon the deficiencies in evidence after suffering an adverse judgment, which is impermissible in law.

66. Moreover, the accused/respondent, having faced the ordeal of criminal litigation for a considerable period and having ultimately secured an order of acquittal, is entitled to the benefit of the strengthened presumption of innocence attached to such acquittal. In the absence of any exceptional circumstance justifying exercise of power under Section 391 of the Cr.P.C., this Court finds no reason to permit further evidence or to unsettle the well-reasoned judgment passed by the Learned Trial Court.

67. Hence,

It is,

<u>O R D E R E D,</u>

that that the instant Criminal Appeal is dismissed on contest.

68. That Order and Judgment dated 19-12-2023 passed by the learned ACJM, Gangarampur at Buniadpur in **C.R. Case No. 239/2017** are hereby affirmed and confirmed.

69. Accordingly, the Criminal Appeal stands disposed of.

70. Considering the facts and circumstances of the case, I make no order for costs.

71. All interim orders, if any, passed in connection with the present appeal stand vacated.

72. The Trial Court Record along with a copy of this judgment be transmitted forthwith to the learned Trial Court at once.

73. Given under my hand and seal of this Court on this 22nd day of May, 2026.

Typed & Corrected by me

Sd/-
Addl. Dist. and Sess. Judge
Gangarampur at Buniadpur,
Dakshin Dinajpur.

Sd/-
(Subrata Mukherjee)
(WB-00901)
Addl. Dist. and Sess. Judge
Gangarampur at Buniadpur,
Dakshin Dinajpur.

Memo No:- **Dated:- 22-05-2026**

Copy of this Judgment be forwarded for information and taking necessary action to the Court of the learned ACJM, Gangarampur at Buniadpur.

(Subrata Mukherjee)
(WB-00901)
Addl. Dist. and Sess. Judge
Gangarampur at Buniadpur,
Dakshin Dinajpur.