IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR

CRR 3434 OF 2022

SHRI SUDIPTA GHOSH
-VS-
STATE OF WEST BENGAL & ANR.

For the Petitioner	: Mr. Debabrata Acharyya Mr. Sital Samanta
For the Opposite Party No.2	: Mr. Debarshi Brahma Mr. Sourav Mondal Mr. A. Bhuiya Mr. S. Maity Mr. S. Banik Mr. R. Mondal
Reserved on	: 09.06.2026
Pronounced on	: 15.07.2026

UDAY KUMAR, J.: –

INTRODUCTION

1. The legal correctness of a concurrent judgment of conviction and sentence under Section 138 of the Negotiable Instruments Act, 1881 (*hereinafter referred to as the Act of 1881*) has been called into question in this revisional application. The petitioner, Shri Sudipta Ghosh, has preferred this application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as the Code*), assailing the judgment and order dated 28.06.2022 passed by the learned Additional District and Sessions Judge, 1st Fast Track Court, Bichar Bhawan, Calcutta, in Criminal Appeal Case No. 01 of 2020.

2. By the impugned judgment, the learned first appellate court affirmed the judgment of conviction and sentence dated 27.09.2019 delivered by the learned Metropolitan Magistrate, 16th Court, Calcutta, in Complaint Case No. 6464 of 2006 (T.R. No. 638 of 2006), whereby the petitioner was sentenced to suffer simple imprisonment for six months and to pay compensation to the tune of Rs. 3,00,000/- to the complainant under Section 357(3) of the Code, in default of which he was ordered to undergo simple imprisonment for a further term of three months.

FOUNDATIONAL FACTS

3. The prosecution narrative begins with a private criminal complaint instituted by the opposite party no. 2, Chandana Pal. It is the case of the complainant that she maintained a close, sibling-like relationship with the petitioner, who happens to be a practicing Chartered Accountant. Yielding to a personal request by the petitioner, the complainant extended a friendly loan accommodation of Rs. 1,50,000/- via an account payee cheque bearing number 103293 dated 12.05.2003, drawn on Allahabad Bank. This transaction allegedly took place in the presence of one Ramendra Nath Sadhukhan (P.W.3). In acknowledgement of the receipt of the cheque, the petitioner executed a formal money receipt dated 12.05.2003 (Exhibit 4). The loan cheque was subsequently cleared and debited from the account of the complainant on 16.05.2003.

4. In order to discharge this subsisting debt, the petitioner subsequently issued a repayment cheque bearing number 169190 dated 12.03.2006 for the sum of Rs. 1,50,000/- (Exhibit 1) drawn on the Union Bank of India, Canning Street Branch. The complainant presented the instrument to her banker for clearance on 06.05.2006, but the same was returned unpaid on 08.05.2006 with the bank remark "insufficient fund" via a bank return memo (Exhibit 2). The complainant was intimated of the dishonour on 10.05.2006.

5. Aggrieved by the non-payment, the complainant, through her advocate, issued a statutory demand notice dated 17.05.2006 (Exhibit 3) by Speed Post with Acknowledgement Due (A/D) on 23.05.2006 (Exhibit 3/1). The postal acknowledgement card (Exhibit 3/2) indicates that the notice was delivered at the office address of the petitioner on 24.05.2006 and received by an office assistant on his behalf. Upon the petitioner's failure to liquidate the liability within the statutory period of fifteen days, the complainant filed the present complaint before the learned Chief Metropolitan Magistrate, Kolkata, on 05.07.2006. The matter was thereafter transferred to the 16th Court of the Metropolitan Magistrate for trial and disposal.

6. Process was issued against the petitioner under Section 138 of the Act of 1881. The petitioner surrendered on 11.07.2007 and was admitted to court bail. On 29.03.2008, the substance of accusation was read over and explained to the petitioner, to which he pleaded not guilty and claimed to be tried.

7. To prove her case, the complainant examined three witnesses: herself as P.W.1, Sub-Inspector Sonam Lama of Taltala Police Station as P.W.2, and Ramendra Nath Sadhukhan as P.W.3. Various documents were exhibited on behalf of the prosecution (Exhibits 1 to 5). The defense, during the cross-examination of the prosecution witnesses, introduced a certified copy of the FIR and written complaint in Taltala P.S. Case No. 85 dated 09.07.2006, which was marked as Exhibit A. The petitioner was examined under Section 313 of the Code on 28.01.2019, where he admitted his signatures on the cheque and the money receipt, but disclaimed any liability, asserting that he had left blank, signed cheques and office papers with his friend, one Tapas Paul, for income tax purposes, which had been subsequently misused. The petitioner did not lead any defence evidence.

8. Upon conclusion of the trial, the learned Magistrate convicted and sentenced the petitioner, which was subsequently upheld in appeal, giving rise to the present revisional proceeding.

SUBMISSIONS

9. Mr. Debabrata Acharyya, the learned counsel appearing on behalf of the petitioner, has launched a formidable structural challenge against the concurrent judgments of the courts below. He contends that the trial itself stands vitiated due to a fundamental breakdown of procedural due process at the very inception. By drawing the attention of this Court to the original plea form dated 29.03.2008, he highlights that the learned trial Magistrate arraigned the petitioner for an entirely foreign transaction, specifically Cheque No. 901536 dated 27.03.2006 for an amount of Rs. 5,00,000/-. He underscores that while the entire complaint, evidence, and prosecution documents is strictly concerned with Cheque No. 169190 for Rs. 1,50,000/-, the petitioner was forced to plead to a fictional liability of five lakh rupees. Relying upon the decisions of this Court in *Dilip Kumar Das & Anr. v. The State of West Bengal* (2000) C. Cr LR (Cal) 460 and *Natendra Nath Giri v. State of West Bengal* (2001) C. Cr LR (Cal) 32, he argues that this failure to comply with the mandatory provisions of Section 251 of the Code constitutes an incurable procedural illegality that has caused grave prejudice to the petitioner.

10. It is further submitted by the learned counsel for the petitioner that the underlying debt was patently time-barred under the Limitation Act, 1963, since a gap of three years had elapsed between the original disbursement of the loan in May 2003 and the issuance of the demand notice in May 2006. Furthermore, placing reliance on the decision of the Supreme Court in *K. Prakashan v. P.K. Surenderan* (2008) 1 SCC (Crl) 200, he argues that since the complainant admitted under cross-examination that she was an unemployed lady and had received the money from her father, the non-examination of her father is fatal to the prosecution's case for establishing financial capacity. Alternatively, he submits that in terms of the interim order passed by this Court on 15.09.2022, the petitioner has already deposited the entire compensation sum of Rs. 3,00,000/- in the lower court, and invoking the ratio of *Kalamani Tex & Anr. v. P. Balasubramanian* (2021) 5 SCC 283, he prays that the substantial sentence of imprisonment be set aside.

11. *Conversely,* Mr. Debarshi Brahma, the learned counsel appearing for the opposite party no. 2, strongly refutes these submissions. He argues that the discrepancy in the cheque number and the amount recorded in the plea sheet on 29.03.2008 is nothing more than a minor typographical error and an administrative oversight. He contends that such an error is a curable irregularity under Section 465 of the Code, as the petitioner was fully aware of the true nature of the case he was meeting throughout the trial.

12. He further argues that once the signature on the cheque is admitted, the reverse onus clauses under Sections 118 and 139 of the Act of 1881 immediately apply, and the defense has failed to adduce any evidence to displace this statutory presumption. He submits that financial capacity stands objectively proven by the bank account statement of the opposite party no. 2 (Exhibit 5), and that the service of notice was properly presumed under Section 27 of the General Clauses Act, 1897. He thus prays for the dismissal of the revisional application.

DISCUSSION

13. The primal question which falls for determination before this Court is whether the stark mismatch between the transaction put to the accused during his arraignment under Section 251 of the Code and the actual instrument under prosecution strikes at the core of the trial's legality, and whether the statutory presumptions under the Act of 1881 stand properly applied or rebutted.

14. In a criminal trial governed by the summons procedure, compliance with Section 251 of the Code is the cornerstone of a fair trial. The provision commands that "when the accused appears or is brought before the Magistrate, the particulars of the offense of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defense to make*, but it shall not be necessary to frame a formal charge."*.

15. It is settled law that Section 251 of the Code is not a mere empty formality or a routine bureaucratic box to be checked by the trial court. It serves as a vital statutory surrogate for a formal charge. Its overarching purpose is to explicitly apprise the accused of the precise allegations and facts levelled against him, so that he may consciously shape and prepare his defence. If a Magistrate records the substance of accusation for an entirely separate instrument, proclaiming a liability of five lakh rupees linked to a completely different cheque number and demands the accused to plead to it, the procedural framework of the trial collapses.

16. Let me test the facts of the present case on this anvil. A review of the lower court record reveals an alarming departure from this rule. The formal plea sheet dated 29.03.2008 records that the learned Magistrate examined the petitioner for the dishonour of Cheque No. 901536 dated 27.03.2006 for a sum of Rs. 5,00,000/-. The actual subject matter of the complaint, namely Cheque No. 169190 for Rs. 1,50,000/-, was absent from the arraignment.

17. I cannot accept the argument of the respondent that this is a minor, curable typographical error under Section 465 of the Code. There is a vast difference between correcting a minor clerical slip and confronting an accused with a completely fabricated financial liability. The petitioner was legally called upon to defend himself against a five-lakh rupee transaction, but he was ultimately tried and convicted for a one-and-a-half-lakh rupee transaction.

18. As eloquently held by this Court in *Dilip Kumar Das* (supra), when the trial court merely chants provisions of law or misstates the core parameters of the accusation under Section 251, it amounts to a non-compliance that prejudices the accused from the outset. In *Natendra Nath Giri* (supra), this Court reiterated that an omission to state the correct particulars of the offense goes to the root of the matter and vitiates the trial. The petitioner has been severely prejudiced by this structural defect, as he was never formally arraigned for the specific instrument that led to his conviction. Such a fundamental breakdown of due process cannot be cured under Section 464 or 465 of the Code.

19. Regarding the issue of financial capacity and the reverse onus under Section 139 of the Act of 1881, the legal position is clear. Once the signature on the cheque is admitted, the court must presume that the holder received the instrument for the discharge of a legally enforceable debt [*vide Rangappa v. Sri Mohan (2010) 11 SCC 441*]. However, this presumption is rebuttable by a preponderance of probabilities, which can be drawn from the materials already on record and the cross-examination of the complainant.

20. In *K. Prakashan* (supra), the Supreme Court ruled that where a complainant claims to be an unemployed individual who secured the loan funds from a relative, but fails to examine that relative or produce clear documentary proof of the source, the initial statutory presumption can be successfully displaced.

21. In the present case, P.W.1 clearly stated during cross-examination: *"I am an unemployed lady... my father gave this amount... I have not filed any document to prove that I inherited the amount from my father."* Despite this explicit challenge to her independent financial capacity, the prosecution chose to withhold the evidence of her father. Furthermore, a review of the Section 313 Cr.P.C. examination shows that the trial court failed to put this crucial circumstance regarding the source of the funds to the petitioner, which constitutes an independent procedural defect.

22. However, I find no merit in the petitioner's remaining arguments regarding limitation and the service of notice. Although the loan was originally disbursed in May 2003, the petitioner issued the impugned cheque on 12.03.2006. Under Section 18 of the Limitation Act, 1963, the delivery of a signed cheque operates as a valid written acknowledgment of a debt, resetting the limitation period. Therefore, the debt was alive and enforceable when the cheque was presented.

23. Similarly, under Section 27 of the General Clauses Act, 1897 since the demand notice was dispatched to the petitioner's verified office and bail bond address, service is legally presumed. The fact that it was accepted by an office assistant does not invalidate service (*vide C.C. Alavi Haji v. Palapetty Muhammed (2007) 6 SCC 555*).

CONCLUSION

24. From the exhaustive discussion undertaken above, the following legal conclusions are arrived at:

(i) First: The recording of a plea under Section 251 of the Code based on a completely different cheque number and an inflated amount constitutes a structural defect that violates basic due process. Such a fundamental error cannot be treated as a curable irregularity under Section 465 of the Code, and it invalidates the trial's legal foundation.

(ii) Second: While the delivery of a signed cheque within three years of a loan satisfies the acknowledgment requirements of Section 18 of the Limitation Act, the complainant's failure to examine the source witness (her father) to support her claimed financial capacity creates a significant evidentiary gap under the *K. Prakashan* framework, which was further complicated by the defective Section 313 CrPC examination.

(iii)Third: The Act of 1881 is an economic statute designed to provide financial restitution rather than simple retribution. As observed by the Supreme Court in *Kalamani Tex* (supra), when an accused complies with judicial directives by depositing double the cheque amount as compensation, the financial injury to the complainant is fully redressed, and an active term of imprisonment becomes unnecessary.

25. The dynamic of the prosecution and the re-evaluation of the record reveal that the trial court's proceedings were compromised from the very beginning. A criminal trial that convicts an individual for a transaction completely different from the one put to him during his formal arraignment cannot be sustained under our constitutional scheme of due process. The structural defect at the Section 251 CrPC stage strikes at the root of the matter and invalidates the concurrent judgments of conviction.

26. Ordinarily, a breakdown of procedure at the Section 251 stage would compel this Court to set aside the conviction and remand the matter for a fresh trial from the stage of the plea. However, this litigation began twenty years ago, in 2006. Subjecting the parties to a fresh trial after two decades would cause undue hardship and run counter to the interests of judicial efficiency.

27. This Court must take into account the subsequent steps taken during these revisional proceedings. On 15.09.2022, this Court directed the petitioner to deposit the entire compensation amount of Rs. 3,00,000/- before the trial court as a condition for staying the execution of his sentence. The petitioner has fully complied with this direction and deposited the money into the judicial cash section of the lower court.

28. The offense under Section 138 of the Act of 1881 is an economic offense intended to provide financial restitution rather than simple punishment. By depositing the full Rs. 3,00,000/-—double the value of the original cheque—the petitioner has fully satisfied the financial claims of the complainant. In light of this full restitution, and given the significant procedural errors in the trial, imposing an active prison sentence after twenty years would serve no valid judicial purpose.

29. Accordingly, the Criminal Revisional Application being 3434 of 2022, is allowed in part.

30. The impugned judgment and order dated 28.06.2022 passed by the learned Additional District and Sessions Judge, 1st Fast Track Court, Bichar Bhawan, Calcutta, in Criminal Appeal Case No. 01 of 2020, which affirmed the order of conviction and sentence passed by the learned Metropolitan Magistrate, 16th Court, Calcutta, in Complaint Case No. 6464 of 2006, is hereby modified as follows:

i. The sentence of six months of simple imprisonment imposed upon the petitioner, Sudipta Ghosh, is set aside.

ii. The order for compensation to the tune of Rs. 3,00,000/- (Rupees Three Lakhs only) under Section 357(3) of the Code is affirmed.

iii. Since the petitioner has already deposited the full amount of Rs. 3,00,000/- into the Judicial Cash Section of the learned Trial Court, the said deposit shall be treated as full satisfaction of the compensation order.

iv. The opposite party no. 2/complainant, Chandana Pal, is at absolute liberty to withdraw the entire deposited amount of Rs. 3,00,000/- from the Judicial Cash Section of the learned Trial

Court upon proper identification, without any further conditions.

v. The petitioner is discharged from his bail bonds, and the criminal proceedings against him stand closed.

31. The Trial Court Record (*T.C.R.*) shall be sent down to the learned courts below forthwith along with a copy of this judgment for immediate compliance.

32. All connected applications stand disposed of.

33. Interim orders stand vacated.

34. There shall be no order as to costs.

35. Case diary, if any, be returned forthwith.

36. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)