

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLREV No. 1717 of 2008**

**Ramesh Chandra Dash**

....

**Petitioner**

Mr. S. Khilar, Adv. (Amicus Curiae)

- Versus -

**State of Odisha & another**

....

**Opp. Parties**

Mr. P. Tripathy, Addl. Standing Counsel

**CORAM:**

**JUSTICE SASHIKANTA MISHRA**

**ORDER**

**26.08.2022**

**Order No.**

**13.**

1. This matter is taken up through hybrid mode.
2. Heard learned counsel for the petitioner and learned Addl. Standing Counsel for the State.
3. In the present revision, the judgment passed by learned S.D.J.M., Kendrapara in ICC Case No. 103/2003 on 26.07.2005, as confirmed by learned Addl. Sessions Judge, Kendrapara in Criminal Appeal No.31 of 2005 vide judgment passed on 31.10.2008 is under challenge. The learned trial court had convicted the accused petitioner for the offence under Section 138 of N.I. Act and imposed a fine of Rs.3,000/-, in default, to undergo RI for six months.
4. Bereft of unnecessary details, the facts of the case are that a complaint was filed by one Debendranath Samanta in the trial court against the petitioner alleging therein that the cheque of Rs.18,000/- dated 28.02.2003, which was handed over to him by the accused towards cost of spare parts and other articles purchased from his shop, i.e. M/s. Natraj Agency, was dishonoured due to insufficient funds as communicated to him by the Bank on 21.03.2003. The complainant contacted the accused

and as requested by him, he presented the cheque for encashment again on 03.05.2003 which also came to be dishonoured due to insufficient funds as communicated by the bank. Thereafter, the complainant served the statutory legal notice demanding payment of the amount in question, which the accused acknowledged but failed to pay within the stipulated period. Hence, the complaint.

The accused took plea of denial and in addition took the plea that the cheque was not dishonoured due to insufficient of funds but due to mismatch of signature, for which the provision under Section 138 of N.I. Act is not attracted. The complainant examined himself as P.W.-1 and another witness as P.W.-2. The accused examined one witness as D.W.-1.

5. Learned court below, after going through the oral and documentary evidence adduced before him held that the fact of deposit of the cheque for collection and of its dishonour was clearly proved. The statutory legal notice was also proved to have been served upon the accused. The cheque in question was proved as Ext.-1 and the signature of the accused thereon as Ext.1/1. The accused examined a villager to rebut the claim of the complainant that the statutory notice had been served upon him but the trial court did not believe the version of the D.W.-1. As regards the plea that the cheque was dishonoured, not due to insufficient of funds but because of mismatch of signature, learned court below referred to Ext.5, which is the intimation issues by Kendrapara Urban Cooperative Bank, in which the reasons for dishonour of cheque was clearly stated as insufficient funds. As such, the trial court held that even if the cheque was also dishonoured due to mismatch of signature, fact remains that

insufficiency of funds was one of the reasons for dishonour of the cheque, which brings the case within the mischief of Section 138 of N.I. Act. On the above evidence, the accused was held guilty and sentenced to fine as aforesaid.

The accused carried the matter in appeal. The learned lower appellate court went through the oral and documentary evidence independently and held that there was no infirmity in the order of conviction and sentence passed by the trial court so as to interfere. The appeal was thus, dismissed.

Feeling further aggrieved, the petitioner has approached this Court in this revision.

6. Mr. S. Khilar, learned Amicus Curiae appointed by this Court has argued that the service of the legal notice on the accused as mandatorily required by the statute has not been proved properly inasmuch as the version of the D.W.-1, a villager, who clearly stated that there was no person called Ramesh Chandra Das in village was not considered in proper perspective by the trial court. It is further argued by Mr. Khilar that the cheque was dishonoured for insufficiency of funds on the first occasion but on a second occasion, i.e. on 05.05.2003, which gave rise to the cause of action for filing the complaint, it was dishonoured for insufficiency of funds and mismatch of signature. The cheque being dishonoured for mismatch of signature cannot give rise to a cause of action contemplated under Section 138 of N.I. Act.

7. In order to appreciate the contention as above this Court has also perused the documents available in the lower court record, particularly, Exts.-3 and 5. Ext.-3 is the intimation of the

Kendrapara Urban Cooperative Bank Ltd on 18.03.2003 clearly indicating that the cheque was not honoured because of insufficient funds. Ext.-5 is the intimation of the said Bank on 13.05.2005 indicating two reasons for dishonour of the cheque, namely “*drawer signature differs and insufficient of funds*”. Since one of the reasons for not honouring the cheque is insufficient fund, the same is enough to bring the case within the mischief of Section 138 of N.I. Act. The fact that there was some other reason also namely, mismatch of drawer’s signature, the same will not take the case out of the purview of Section 138 of N.I. Act. Thus, the main ground urged by the petitioner accused does not carry any weight to be considered. Moreover, even on an independent assessment of the oral and documentary evidence available on record and on perusal of the order of conviction passed by the learned trial court as confirmed by the lower appellate court, this Court finds no reason to interfere in the matter.

8. In the result, the revision is found to be devoid of any merit and is therefore, dismissed.

9. Before parting with the case this Court deems it proper to place on record its appreciation for the able assistance rendered by Sri S.Khilar, Amicus Curiae in disposal of the case. His professional fee is fixed at Rs.10,000/-.

10. The CRLREV is disposed of accordingly.

**(Sashikanta Mishra)**  
**Judge**

*A.K. Rana*