

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.1440 of 2019**

Arising Out of PS. Case No.-964 Year-2013 Thana- ROHTAS COMPLAINT CASE District-  
Rohtas

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Sanjay Kumar Singh Son of Ramashrey Singh Resident of Village- Dinara,  
Police Station- Dinara, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rameshwar Singh Son of Bhukhi Singh Resident of Village- Bhanas, Police  
Station- Dinara, O.P. Bhanas, District- Rohtas.

... .. Respondent/s

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**Appearance :**

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|----------------------|---|---------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Krishna Prasad Singh, Sr. Advocate<br>Mr. Rajani Kant Singh, Advocate |
| For the Respondent/s | : | Mr. Mukeshwar Dayal, A.P.P.                                               |

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**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**ORAL ORDER**

3      05-02-2024                      Heard learned senior advocate for the petitioner and  
learned Additional Public Prosecutor for the State.

2. The petitioner has filed the instant revision  
challenging an order of remand passed by the learned Appellate  
Court in Criminal Appeal No.73 of 2017 passed on 02.09.2019.

3. It will not be out of place to mention at the outset  
that the private opposite party filed a complaint under Section  
138 of the N.I. Act which was registered as Complaint Case No.  
964 of 2013. After trial, the Trial Court passed an order  
imposing sentence upon the petitioner of simple imprisonment  
for a term of one year. The accused/petitioner preferred an  
appeal and the learned Appellate Court remanded back the said



appeal with certain directions.

4. It is found from the impugned order passed by the Court of Appeal that the petitioner failed to prove the cheque return memo issued by the Bank, notice demanding payment of the sum issued by the learned advocate for the petitioner and other relevant documents. The learned Appellate Court permitted the complainant to prove those documents in Trial afresh and remanded the case. The impugned order passed by the Appellate Court is criticized by the learned advocate on behalf of the petitioner on the ground that the Appellate Court allowed the opposite party to fill-up the lacuna which cropped up during trial, the appellate court cannot pass any such order to fill-up the lacuna in order to deprive the accused from getting benefit of such lacuna.

5. It is further submitted by the learned advocate for the petitioner that the case of the opposite party no.2 is that the opposite party no.2 paid him a sum of Rs.8,00,000/- on verbal request in cash. The said amount was not paid by way of cheque or demand draft. Therefore, the opposite party no.2 failed to prove the petitioner's obligation to make payment by way of cheque. In other words, the opposite party no.2 has failed to prove that there was any existing debt or liability for issuance of



the said cheque and therefore, Section 138 of the Negotiable Instruments Act does not lie.

6. Section 138 of the Negotiable Instrument Act runs thus :-

**“138. Dishonour of cheque for insufficiency, etc., of funds in the account.**-Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years], with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been 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;

(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.”

7. Proviso to Section 138 of N.I. Act calls out certain conditions, namely :-

(i) the payee or holder of the cheque in due course shall present to the bank within a period of six months from the date on which it was drawn or within the period of his validity, whichever is earlier.

(ii) the payee or the holder of in due course of the cheque than makes a demand for the payment of said amount of money by giving a notice within 30 days of the receipt of information. The drawer of such cheque fails to make payment of the said amount to the payee within 15 days of the receipt of the said notice.

8. In the absence of the above mentioned exercise, like presentation of cheque, dishonor of cheque, issuance of notice within the statutory period of time, failure by the opposite party no.2 to make payment of such amount within statutory period of time, makes a complaint under Section 138 of the N.I. Act liable to be dismissed.

9. During trial the opposite party failed to prove the



aforesaid documents. The appellate court remanded the case giving an opportunity to the opposite party to prove those documents.

10. In my considered view, the above direction given by the learned Appellate Court is not filling up of lacuna. On the other hand, as per the provision of Section 138 of the N.I. Act it was the bounden duty of the opposite party to prove the document, if the opposite party on remand fails to prove those document, the petitioner will automatically get the benefit of non production of document. Moreover, the judgment of the Trial Court is bad in law because he has not directed the petitioner to pay fine amount which may extend the twice the amount of the cheque. Therefore, the judgment of the Trial Court vitiates for non-application of mind.

11. In view of such discussion, I do not find any illegality or irregularity committed by the Court of Appeal. Therefore, the instant revision is dismissed.

**(Bibek Chaudhuri, J)**

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