

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.812 of 2019

Arising Out of PS. Case No.-2266 Year-2013 Thana- MUZZFARPUR COMPLAINT CASE
District- Muzaffarpur

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Pankaj Kumar, S/o late Hari Mohan Prasad, R/o Mohalla- Shyam Mandir,
P.S.- Town, District- Muzaffarpur

... .. Petitioner

Versus

1. The State of Bihar
2. Madan Kumar Chaudhary, S/o late Rambalam Choudhary, Resident of
Adarsh Nagar, Majhauria, P.S.- Town, District- Muzaffarpur

... .. Respondents

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Appearance :

For the Petitioner : Ms. Nivedita Nirvikar, Sr. Advocate.

Ms. Shashi Priya, Advocate.

Mr. Sumit Kumar Bubna, Advocate.

For the State : Mr. Upendra Kumar, APP

For the Opposite Party No. 2: Mr. Uday Prakash Sharma, Advocate.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

Date : 04-03-2025

The present Criminal Revision Petition has been preferred against the impugned judgment of conviction and order of sentence dated 28.05.2019, passed by learned Additional Sessions Judge-VIII, Muzaffarpur, in Criminal Appeal No. 90 of 2015, upholding the judgment of conviction



and order of sentence passed by learned Trial Court in Trial No. 4443 of 2015, corresponding to Complaint No. 2266 of 2013, whereby the learned Magistrate, Ist Class, Muzaffarpur, Shri A.K. Dixit, has found the petitioner guilty under Section 138 of the Negotiable Instrument Act and sentenced him to undergo imprisonment for one year and pay compensation of Rs. 8,00,000/- to the complainant, who is opposite party no. 2, Madan Kumar Chaudhary.

2. The factual background of the case is that one Madan Kumar Chaudhary, who is O.P. No. 2 herein, filed Criminal Complaint bearing No. 2266 of 2013 in the Court of learned Judicial Magistrate, 1st Class, Muzaffarpur, alleging that cheque bearing no. 079071 dated 20.06.2013 was drawn by the accused/petitioner herein on Bank of India, Muzaffarpur Branch for Rs. 7,00,000/- in favour of the complainant, who is O.P. No. 2 herein. However, on presentation of the cheque by the complainant to his bank, HDFC, Muzaffarpur, the said cheque was dishonoured for insufficient fund as per the return memo dated 30.7.2013, sent by the Bank of India to the complainant. Thereafter, a legal notice dated 06.08.2013 was sent to the accused/petitioner herein by the complainant (O.P. No. 2 herein) informing him the dishonour of the cheque and asking for the



cheque amount. However, no reply was received from the accused, nor any money was paid to the complainant. Hence, the complainant filed the criminal complaint on 22.08.2013 and after filing the complaint, the complainant and two other witnesses viz., Chandra Bhushan Mishra and Sunil Kumar Pandey were examined during inquiry under Section 200 Cr.PC and thereafter, cognizance was taken of the offence punishable under Section 138 of Negotiable Instrument Act and after statement of the particulars of the offence to the accused/petitioner, trial commenced and during the trial, besides the complainant, Chandra Bhushan Mishra and Sunil Kumar Pandey were examined as prosecution witnesses. Original cheque, return memo and legal notice, besides acknowledgment of the accused on stamp paper of Rs. 1,000/- for loan were exhibited during trial.

3. No evidence has been, however, adduced by the accused in his defence, though during his examination under Section 313 Cr.PC, he has pleaded that he is innocent and evidence adduced by the complainant are false.

4. After hearing both the parties and perusal of the record, learned Magistrate found the petitioner/accused guilty under Section 138 of N.I. Act and sentenced him accordingly.



5. Being aggrieved by the judgment of conviction and order of sentence, the petitioner/convict preferred criminal appeal bearing No. 90 of 2015. However, the said criminal appeal was dismissed by learned Additional Sessions Judge-VIII, Muzaffarpur, by the impugned judgment and hence, the present revision petition has been preferred by the petitioner/convict.

6. I heard learned counsel for the petitioner, learned APP for the State and learned counsel for the complainant/O.P. No. 2.

7. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in this case. She also submits that the complainant/O.P. No.2 has failed to prove his case against the petitioner. There are several contradictions in the deposition of the prosecution witnesses on material particulars of the prosecution case.

8. She also submits that the O.P. No. 2 has also failed to prove any debt or other liability of the cheque amount. She also submits that even the so-called acknowledgment of the loan is forged and fabricated. The petitioner has not executed such acknowledgment. During examination of the petitioner under Section 313 Cr.PC, the cheque number which was confronted by



the accused/petitioner was different from the cheque number which has been exhibited during the trial.

9. However, learned APP for the State and learned counsel for the O.P. No. 2 vehemently defend the impugned judgment submitting that there is no illegality or infirmity in it and hence, the present petition is liable to be dismissed for want of any merit.

10. To substantiate their claim, they further submit that as per the evidence on record, the complainant/O.P. No. 2 has proved all the ingredients of offence under Section 138 of N.I. Act. The cheque was presented to his Banker within the validity period of the cheque and the same was returned with return memo showing that the cheque was dishonoured for want of sufficient fund in the account of the accused/petitioner and within limitation, legal notice was sent to the accused/petitioner, but the same was neither replied back, nor was any payment made towards discharge of the liability to pay the cheque amount. Hence, within limitation period, the complainant had filed the complaint and during the trial not only legal debt for issuing the cheque has been proved by way of acknowledgment of the loan, but even original cheque, legal notice and return memo have been exhibited. Hence, there is no infirmity in the



finding of learned Court below that the petitioner has committed offence under Section 138 of N.I. Act.

11. I considered the submissions advanced by both the parties and perused the materials on record.

12. I find that during the trial, the acknowledgment of loan by the accused on stamp paper of Rs. 1,000/- has been exhibited and after perusal of the deposition of the complainant, including his cross-examination, I find that neither the content nor the signature of the petitioner/accused on the acknowledgment has been challenged by the complainant/O.P. No. 2 during the trial. Hence, the acknowledgment of loan by the petitioner is well proved. Even issuance of cheque has not been challenged. On the other hand, it has been claimed that there was business transaction between the accused and the complainant. Even receipt of legal notice has not been denied, nor was the legal notice replied back by the accused/petitioner. The minor contradictions in the deposition of the prosecution witnesses are inconsequential. Even mentioning of wrong number of the cheque in issue to the petitioner/accused during his examination under Section 313 Cr.PC is not fatal, because I do not find any prejudice has been caused by such mistakes on the part of the Court, because all along he was aware of the



evidence including the cheque issued by him.

13. Hence, I find that both the Courts i.e. learned Trial Court as well as learned Appellate Court have committed no error to find the guilt of the petitioner under Section 138 of N.I. Act.

14. However, at this stage, learned counsel for the petitioner submits that while sentencing the petitioner, some lenient view may be taken in view of the fact that his wife is suffering from cancer and he has financial difficulty and his presence is also required to attend his wife. She also submits that the petitioner has already spent for about three months in custody in this case.

15. Considering the submissions and taking sympathetic view of the facts and circumstances, the sentence for imprisonment is reduced to the period already undergone by the petitioner in custody and amount of fine payable by the petitioner/accused is reduced to Rs. 7,80,000/- only.

16. The present petition is allowed in part, accordingly.

17. On the request of learned counsel for the petitioner, the petitioner is at liberty to pay the fine amount in two equal monthly installments within two months and only



thereafter, learned Court below would take steps to realize the fine if the petitioner fails to pay the fine within the stipulated period.

(Jitendra Kumar, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	05.03.2025.
Transmission Date	05.03.2025.

