IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.159 of 2019

Mir Adil Ali (Raju) …. **Petitioner**
None

-Versus-

Udayanath Sahoo …. **Opposite Party**
In person

CORAM:
MR. JUSTICE R.K. PATTANAIK

ORDER
10.09.2025

Order No.

12. 1. None appears for the petitioner at the time of call.

2. The opposite party is present in person.

3. Instant revision is filed by the petitioner assailing the impugned judgment in Crl. Appeal No.33 of 2018 confirming the order of conviction and sentence in I.C.C. Case No.1944 of 2003 on the grounds stated therein.

4. As per the petitioner, the order of conviction and sentence is not legally tenable and it has been confirmed in the appeal by the learned Special Judge, CBI, Court No.II, Bhubaneswar. The pleading on record is that the cheques were self-cheques with no endorsement thereon and therefore, no offence under Section 138 of the N.I. Act has been committed as a result. The further pleading is that the opposite party is neither a payee nor holder in due course but the learned Courts below convicted the petitioner for the alleged offence and

directed him to undergo a sentence of 6 months S.I and pay a sum of Rs.9 lac towards compensation in terms of Section 357(3) Cr.P.C. and hence, it is liable to be interfered with besides the impugned judgment in Crl. Appeal No.33 of 2018.

5. The opposite party, on the other hand, submits that the cheques were issued by the petitioner and presented before the Bank for encashment and it stood dishonoured due to insufficiency of fund and within the time stipulated time after issuance of notice, the amount was not returned, hence, the complaint was filed. It is further submitted that the evidence was received before the court of first instance and the Bank official examined as P.W.2 proved insufficiency in the account of the petitioner maintained by the Bank through Ext. 8.

6. In the judgment in appeal, it is made to reveal that P.W.2 deposed the petitioner having an amount of Rs.649/- only in the account and proved it through a copy of ledger i.e. Ext.8. The fact of having received the cheques by the opposite party is established by evidence before the Court of learned J.M.F.C., Bhubaneswar. It is also made to reveal from the record that three cheques were issued with Rs.1.5 lac each in two and another for Rs.2.00 lac drawn and it was in favour of the opposite party, which ultimately got bounced back when presented before his banker. The evidence on record with regard to the insufficiency of fund in the account of the petitioner is proved through P.W.2 through Ext.8. In such view of the matter, the default on the part of the petitioner is well

established in having issued the alleged cheques to the opposite party and about the same being dishonoured. So, therefore the plea advanced by the petitioner that no any offence under Section 138 N.I. Act is made out shall have to be rejected.

7. As regards the presumption against the drawer, law is well settled that it is needed to be shown that there was no lawful debt or liability in existence in respect of the cheque issued. It is a reverse presumption applied against a drawer of the cheque. In other words, when there is a cheque issued, the drawer of the same is to dislodge the presumption, otherwise, it shall be accepted that it was issued towards discharge of a debt or liability in view of Section 139 of the N.I. Act read with Section 118 of the Indian Evidence Act.

8. On a reading of the impugned judgment in appeal with reference to the LCR received, this Court finds that the cheques were issued and was received by the opposite party and ultimately, upon such endorsement informed verbally and proved through P.W.2 vide Ext.8, the inescapable conclusion of this Court is that the petitioner having failed to discharge the burden, no wrong or error has been committed thereby upholding the order of conviction and sentence in I.C.C. Case No.1944 of 2003. So to say, no case is made out by the petitioner while demanding the impugned judgment in Crl. Appeal No.33 of 2018 to be set aside. This Court reiterates that the cheques having been issued by the petitioner and received by the opposite party towards a lawful debt and the same

having been dishonoured and duly proved before the court of first Instance with the examination of bank official, learned J.M.F.C., Bhubaneswar did not err to conclude that an offence under Section 138 N.I. Act is established and rightly affirmed by the court of appeal.

9. Accordingly, it is ordered.

10. In the result, the revision petition stands dismissed.

(R.K. Pattanaik)
Judge

Alok

Signature Not Verified
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Signed by: ALOK RANJAN SETHY
Reason: Authentication
Location: ORISSA HIGH COURT
Date: 11-Sep-2025 20:15:50