IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 306 of 2020

Vikash Kumar, aged about 40 years, son of Suresh Prasad Keshri, resident of village-Tetaria, P.O. and P.S.-Chouparan, District-Hazaribagh

… … Petitioner

Versus

1. The State of Jharkhand
2. Dinesh Prasad Keshri @ Dinesh Prasad Kesari, son of Late Heera Saw, resident of village-Marhandi, P.O. and P.S.-Chauparan, District-Hazaribag

…. Opp. Parties

For the Petitioner : Mr. Hemant Kumar Shikarwar, Advocate
For the O.P.-State : Mrs. Bandana Sinha, A.P.P.
For the O.P. No.2 : Mr. Nilesh Kumar Gupta, Advocate
Mr. Ankur Anand, Advocate

PRESENT
CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
ORDERS

CAV On 29th July, 2026 **Pronounced on 17/09/2026**

1. Heard Mr. Hemant Kumar Shikarwar, learned counsel for the petitioner and learned A.P.P. assisted with Mr. Nilesh Kumar Gupta, learned counsel for the opposite party No.2.

2. Instant criminal revision has been preferred against the judgment dated 09.01.2020 passed by learned Additional Sessions Judge-VIII, Hazaribagh in Criminal Appeal No.19 of 2018, whereby and whereunder, learned appellate court upheld the conviction and order of sentence of the petitioner dated 18.12.2017 passed by learned J.M. 1st Class, Hazaribag in connection with Complaint Case No.949 of 2015, T.R. No.4189 of 2017 wherein the petitioner has been held guilty for the

offence under section 138 of N.I. Act and sentenced to undergo R.I. for three months and to pay compensation of Rs.3.75 lakhs.

Factual Matrix:-

3. Factual matrix giving rise to this revision is that the complainant and the accused both jointly purchased a Tata Hitachi Excavator and used to let it on hire. In the joint business, the complainant was having 75% share and 25% share was held by the accused/petitioner. Due to financial crisis, the complainant expressed his desire to disassociate from the business upon which the petitioner proposed the complainant/O.P. No.2 for purchasing his share. Thereafter, the complainant agreed and with mutual consent, the price of the excavator was settled at Rs.12 lakhs and accordingly, the accused/petitioner has to pay Rs.6.75 lakhs to the complainant towards his share and to discharge his liability, the petitioner issued a cheque of Rs.3.25 lakhs bearing No.140811 dated 04.04.2015 in favour of the complainant/O.P. No.2. It is further alleged that the complainant/O.P. No.2 presented the cheque in his account in State Bank of India, Chaouparan Branch but the said cheque was dishonoured due to 'insufficient' fund and the same was returned. After dishonour of the cheque, the complainant/O.P. No.2 contacted with the petitioner but he refused to pay the cheque amount and on 11.04.2015, the complainant sent a legal notice to the petitioner but the accused/petitioner did not pay the cheque amount. Thereafter, the

complainant filed the complaint petition bearing Complaint No.949/2015 dated 30.04.2015 against the petitioner.

4. After filing the complaint, self-affirmation (in short S.A.) of the complainant was recorded and on the basis of averments in the complaint, SA of the complainant, cheque bearing No.140811, bank return memo, postal receipt, legal notice to the petitioner, learned court below summoned the accused, Vikash Kumar for facing trial for the offence under section 138 of N.I. Act.

5. The petitioner appeared and contested the case denying the substance of acquisition leveled against him.

6. In course of trial, altogether 5 witnesses have been examined by the prosecution:-

C.W.1-Naresh Prasad Kesari

C.W.2-Tarkeshwar Prasad Keshri

C.W.3-Baleshwar Ravidas

C.W.4-Dinesh Prasad Keshri (Complainant)

C.W.5-Sangita Devi

7. Apart from oral testimony of the witnesses, following documentary evidence has also been adduced by the complainant:-

Ext.1-Original Cheque No.140811 dated 04.04.2015 issued by accused/petitioner

Ext.2-Demand Notice Dated 11.04.2015

Ext.3. Cheque Return Memo dated 04.04.2015

Ext.4-Postal Receipt No.RJ112125717IN dated 11.04.2015

8. Learned trial court after recording the evidence of the complainant and considering the documentary evidence adduced during trial and after hearing the parties held the present petitioner guilty for the offence under section 138 of N.I. Act and sentenced him as stated above.

9. Against the judgment of conviction and sentence, the petitioner preferred an appeal before the Sessions Judge, which was also dismissed, against which this revision has been filed.

Submission on behalf of the petitioner:-

10. Learned counsel for the petitioner has submitted that the prosecution has failed to prove its case against the petitioner as the petitioner has not issued any cheque in favor of the complainant in discharge of his debt/liability rather the cheque was given to the partner only as security. It is further submitted that the complainant has not brought any evidence to show that he has ever purchased the Tata Hitachi Machine and the same has been sold to the petitioner for consideration as alleged. Learned counsel has further submitted that the complainant has neither brought any evidence of service of notice nor date and time has been mentioned as to when the notice was served upon the petitioner. It has further been argued that learned court below has erred by not holding the presentation of the complaint as premature. If the service of demand

of notice is taken into consideration with the Principles of General Clauses Act, then the complaint must have been filed after expiry of 30 days. Therefore, this revision should be allowed by setting aside the judgment of conviction and order of sentence passed by learned Trial Court and as upheld by learned Appellate Court.

Submission on behalf of State and O. P. No.2:-

11. On other hand, learned A.P.P. assisted with learned counsel for the opposite party No.2 controverted the aforesaid contentions raised on behalf of the petitioner and submitted that learned courts below have properly appreciated the evidence brought on record by the complainant and reached at the right conclusion by convicting the petitioner. It is further submitted that the complainant has proved the original cheque and signature of accused thereon, bank return memo, legal notice and the postal receipt by which the demand notice has been sent to the accused/petitioner as well as other documents. It is further submitted that the petitioner has already completed his sentence of imprisonment awarded to him but the compensation amount of Rs.3.75 lakhs has not been paid as of now. As such, there is no valid reason to take a different view from the learned Trial Court and learned Appellate Court, which have given concurrent findings about the guilt of the petitioner. Hence, this revision is fit to be dismissed.

Analysis, Reasons and Decision:-

12. I have gone through the record of the case along with the impugned judgment and order passed by learned trial court as well as learned appellate court in the light of contentions raised on behalf of both the parties.

13. It is admitted fact that the petitioner has issued a cheque in order to discharge the liability of cheque amount of Rs.3.25 lakhs in favour of the complainant but the said cheque was dishonored. In spite of giving legal notice and presentation of complaint within stipulated time and after observing of legal formalities, the liability was not discharged. The plea taken by the petitioner that he has neither issued any cheque in favour of the complainant in discharge of his debt liability nor he received any notice but from the documents available on record, it transpires that the accused/petitioner has received the notice upon which the address of the accused mentioned on the demand notice, postal receipt and in his statement recorded under section 313 of Cr.P.C., the petitioner has not denied or challenged his address mentioned in demand notice and complaint petition. It is clear cut case that the petitioner has issued a cheque for discharging the liabilities of cheque amount taken by petitioner, which has been dishonored and after all legal formalities, the case was instituted. On the issue of premature complaint petition, the accused petitioner has opportunity to pay the cheque amount before the court after receiving summon but he did not

do so, therefore, learned Trial Court has rightly held the petitioner guilty after appreciating all the evidences.

14. From the evidence, it appears that the petitioner has already completed his sentence of R.I. for 3 months awarded by learned Trial Court and affirmed by the learned Appellate Court but he has not paid the compensation amount of Rs.3.75 lakhs.

15. In the case of ***Kumaran v. State of Kerla (2017) 7 SCC 471***, the Hon'ble Apex Court has held at para 23 as under:-

> *"23. A conspectus of the aforesaid judgments would show that compensation under the old CrPC was always recoverable as a part of fine, and that even after default imprisonment having been undergone, a fine could still be collected in the manner provided by Section 386. The requirement of special reasons was introduced by the amending Act of 1923. The special reasons outlined in the Bombay High Court judgment [Digambar Kashinath Bhawarthi v. Emperor, 1934 SCC OnLine Bom 56 : ILR (1935) 59 Bom 350 : AIR 1935 Bom 160 : 1935 Cri LJ 1034] of 1934 as well as in the Mysore High Court judgment [K. Vemmana Shenoy v. Collector of South Kanara, 1963 SCC OnLine Kar 32 : AIR 1964 Mys 64] of 1963 would show that it is enough that sufficient reasons or some good reason be given in order that fine be realised even after default imprisonment has been undergone. The Courts held that despite the fact that the reach of Section 386(1) proviso was only qua warrants that issued after default imprisonment was undergone, yet, the principle of the proviso to Section 386(1)*

would apply even to warrants issued before default imprisonment was undergone. The law, therefore, till the enactment of the 1973 Code, made it clear that Section 386 CrPC and Section 70 IPC read together would lead to the conclusion that fines were recoverable even after default imprisonment was undergone, provided there were special reasons for recovery of the same."

Hence, in view of the above principle laid by Hon'ble Apex Court, this Court is of the view that merely by undergoing the imprisonment does not absolve the accused/petitioner from payment of awarded compensation and under the recovery provision viz. distress warrant can be issued against the petitioner.

16. In view of the above discussion and reasons, I do not find any merits in this revision, which stands **dismissed**.

17. Pending I.A(s), if any, is also disposed of accordingly.

18. Let a copy of this order be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand, Ranchi

Date:-17 /09 /2026

Pappu/- N.A.F.R.

Uploaded on 18 /09 /2026