IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No. 938 of 2017

Uma Shankar Singh, Son of Sri Jagarnath Singh, resident of Village – New Bishunpur, P.O. – B. Polytechnic, P.S. & District - Dhanbad.

.... **Petitioner**

Versus

1. The State of Jharkhand.
2. Anil Kumar Sharma, S/o Sri Janak Singh, R/O Village – Jai Prakash Nagar, Gali No. 4, P.O. + P.S. & District – Dhanbad – 826001.

.... **Opp. Parties**

Coram: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Petitioner : Mr. Manoj Kumar Sinha, Advocate
For the State : Mr. Azeemuddin, A.P.P.
For the O.P. No. 2 : Mr. Deepak Sahu, Advocate.

JUDGMENT

CAV On Dated- 01.09.2026 Pronounced On 30.10.2026

Heard learned counsel for the parties.

2. The instant criminal revision is directed against the judgment dated 29.03.2017 passed by learned Sessions Judge, Dhanbad in Criminal Appeal No. 25 of 2017, whereby and whereunder the appellate court has dismissed the appeal and affirmed the judgment of conviction and order of sentence dated 10.01.2017 passed by learned J.M., 1st Class, Dhanbad in C.P. Case No. 1518 of 2013, whereby the petitioner has been held guilty and convicted for the offence punishable under Section 138 of the N.I. Act and sentenced to undergo S.I. for six months and also to pay compensation amount of Rs. 70,000/- to the complainant.

Factual Matrix

3. Factual matrix giving rise to this revision is that the complainant was in friendly relationship with the appellant, who used to frequently visit his house. Sometime in December, 2012, the appellant requested the complainant for an amount of Rs. 5 to 6 lakhs as loan for purchasing land. The complainant somehow raised the funds and paid Rs. 4 Lakhs to the appellant in presence of witnesses and requested him to return the money at the earliest. At the time of taking the money, appellant had issued a cheque of Rs. 4 Lakh, which was post-dated of 30.04.2013 and when the appellant deposited the cheque in the Bank on 10.05.2013, the same was returned with a memo that the cheque could not be encashed due to insufficient funds in the account. The complainant gave a legal notice to the appellant, but he did not return the due amount within 15 days and when the amount was not returned, the complainant filed C.P. Case No. 1518 of 2013 for the offence under Section 138 of the N.I. Act.

4. The learned trial court finding prima facie case constituting the offence under Section 138 of the N.I. Act issued summons against the accused, who appeared and contested the case denying the accusation leveled against him and claimed to be tried.

5. The complainant in support of its case has examined altogether three witnesses namely, C.W.-1 Anil Kumar Sharma (Complainant himself), C.W. -2 Rishikesh Sharma and C.W.-3 Janak Sharma and also relied upon following documentary evidence:-

Exhibit-1	:	Original Cheque.
Exhibit-2	:	Cheque Deposit Slip.
Exhibit-3	:	Cheque Return Memo.
Exhibit-4	:	Legal Notice.
Exhibit-5	:	Postal Slip.
Exhibit-6	:	Signature of complainant in complainant notice.

6. On the other hand, the defence has examined one witness namely, Prabhat Kumar (D.W.-1). However, no documentary evidence has been adduced by the defence.

7. The learned trial court, after evaluating the evidence available on record, found sufficient evidence proving the offence under Section 138 of the N.I. Act against the petitioner held him guilty and sentenced accordingly.

8. Being aggrieved and dissatisfied with the conviction and sentence, the petitioner preferred Criminal Appeal No. 25 of 2017 before the learned Sessions Judge, Dhanbad, which was also dismissed vide judgment dated 29.03.2017, which has been assailed in this revision.

9. Learned counsel for the petitioner has submitted that the cheque was never issued by the petitioner for any legally enforceable debt or liability and no debt or liability to be discharged by the petitioner has been proved in this case. It is further submitted that no demand notice was sent as required under Section 138 of the Negotiable Instrument Act. Hence, the impugned judgment and order is not legally sustainable and fit to be set aside and this revision is liable to be allowed.

10. On the other hand, learned A.P.P. appearing for the State assisted by learned counsel for the opposite party no. 2 has vehemently opposed the contention raised on behalf of the petitioner and submitted that there is no denial on the part of the petitioner with regard to the signature of him on the cheque. Both the courts below have aptly analyzed and appreciated the evidence on record and arrived at conclusion. There is concurrent finding of fact against the petitioner and there is no merit in this revision, which is fit to be dismissed.

11. Before appreciating the evidence on record, it would be relevant to reproduce the certain statutory provisions of the Negotiable Instruments Act, 1881.

Section 118 of the Negotiable Instruments Act, 1881 reads as under:

"**118. Presumptions as to negotiable instruments**.—Until the contrary is proved, the following presumptions shall be made:—

(a) ***of consideration***:—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) ***as to date***:—that every negotiable instrument bearing a date was made or drawn on such date;

(c) ***as to time of acceptance***:—that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) **as to time of transfer**:—that every transfer of a negotiable instrument was made before its maturity;

(e) ***as to order of indorsements***:—that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) ***as to stamp***:— that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) ***that holder is a holder in due course***:— that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him."

Section 138 of the Negotiable Instruments Act, 1881 reads as under:

"***Section 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, or 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."

Explanation.—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

Section 139 of the Negotiable Instruments Act, 1881

reads as under:

"***139. Presumption in favour of holder***.—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section138 for the discharge, in whole or in part, of any debt or other liability."

Section 142 of Negotiable Instruments Act, 1881 reads

as under:

"***142. Cognizance of offences***.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.— For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.

12. As per the allegations made in the complaint petition, a cheque was issued by the petitioner in favour of the complainant for the liability of payment of amount of Rs. 4,00,000/-, which was given by the complainant /

opposite party no. 2 to the petitioner as friendly loan in the month of December, 2012 and assured to be returned by 30.04.2013. The complainant deposited the said cheque with his banker on 10.05.2013, but the same was dishonoured due to insufficiency of fund and was returned with cheque return memo dated 13.05.2013. Thereafter, on 21.05.2013, a demand notice was sent by registered post to the petitioner, but the amount was not repaid nor the notice was replied. At last, on 12.06.2013, the complaint was filed with specific averment made in complaint of sending the demand notice by registered post.

13. After enquiry, cognizance of the offence under Section 138 of the N.I. Act was taken. Despite receiving the summons, the petitioner did not choose to repay and return the cheque amount. The object of issuing the demand notice before filing the complaint is to give an opportunity to the issuer of the cheque.

14. In view of the oral as well as documentary evidence, the prosecution case is proved beyond all reasonable doubt and the presumption under Section 118 of the N.I. Act also arises in favour of the complainant / opposite party no. 2 in regard to the consideration of the cheque, at the time of acceptance of cheque and also the time of transfer of the cheque.

15. Likewise, the presumption under Section 139 of the N.I. Act also be taken in favour of the complainant / opposite party no. 2 that the holder of the cheque received the cheque of the nature referred under Section 138 of the N.I. Act for discharge in whole or in part of any debt or other liability. The presumption under Sections 118 and 139 of the N.I. Act both are rebuttable presumption.

16. The complainant / opposite party no. 2 and his witnesses have fully supported the case and the documents have also been proved. Meaning thereby, the petitioner (drawer) has also not disputed his signature on the said cheque. The petitioner did not adduce any evidence and also did not rebut the presumption under law. Original Cheque and Cheque Return Memo are marked as Exhibit-1 & 3 respectively.

17. The Hon'ble Apex Court in the case of ***Amit Kapoor v. Ramesh Chander*** reported in ***(2012) 9 SCC 460*** has held that :

> **12.** Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well- founded error and it may not be appropriate for the court to scrutinize the orders,

> which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.
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> **13.** Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner.

18. In view of above discussions and reasons, I do not find any merit in this revision. The impugned judgment of conviction and order of sentence passed by the learned trial court and upheld by the learned appellate court needs no interference by this Court and this criminal revision deserves to be dismissed.

19. Accordingly, the judgment of conviction and order of sentence passed by the learned trial court and upheld by the learned appellate court is hereby affirmed.

20. In the result, this criminal revision is **dismissed.**

21. The petitioner is on bail. His bail bond is hereby cancelled.

22. The petitioner is directed to surrender before the concerned Trial Court within two months from the date of this judgment and receive the remaining period of sentence awarded by the learned Trial Court, failing which, the learned Trial Court shall take all coercive steps in securing the attendance of the petitioner and sending him under proper conviction warrant to jail custody for undergoing the remaining period of sentence awarded to him.

23. Pending I.A, if any, stand disposed of.

24. Let a copy of this judgment along with trial court record be sent to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi
Dated : 30/10/2026
Sunil/-NAFR
Uploaded On : 30/10/2026