<u>District – Latehar,</u>

In the Court of Addl. Sessions Judge-II, Latehar.

Present: Sanjay Kumar Dubey,
Addl. Sessions Judge-II,
Latehar.

<u>Dated, the 16th day of May, 2025.</u>

<u>Criminal Appeal No. 53/2022</u>
CNR-JHLT01-002981-2022

1. Ajay Kumar Shrivastaw, aged about 65 years, S/o Late Radha Mohan Lal, resident of village Near Old Shiv Mandir Thana Chowk, P.S. - Latehar, District-Latehar, Jharkhand.

...... Appellant.

V/s.

1. The State of Jharkhand.

2. Kumar Varish aged about 35 years S/o Bipin Kumar Singh, resident of village – Tapakhas Main Road Latehar, P.S. Latehar, District- Latehar.

...... O.P.

For the appellant : Sri Sunil Kumar, Ld. Advocate

For the O.P. : Sri Manoj Kr. Lakra for state of Jharkhand
Sri Hari Om Pandey, Ld. Advocate, for respondent

<u>J U D G M E N T</u>

1. This appeal is filed by the appellant Ajay Kumar Shrivastawa against the conviction and order of sentence passed by Sri Rahul Kumar, J.M. 1st Class Latehar on

30.11.2022 in Complaint Case No. 165/2019 u/s 138 of N.I. Act whereunder appellant was convicted and sentence to undergo one year S.I and Rs. 7,00,000/- (Rs. Seven lakh) as compensation and failing to pay compensation amount additional one month S.I. shall be served by the accused.

2. The case of the prosecution in brief is that as per the allegation the appellant had borrowed Rs. 4,50,000/- (four lakh fifty thousand) from the complainant Kumar Varish. It is further stated in complaint petition that accused gave cheque no. 541014 for Rs. 4,50,000/- (four lakh fifty thousand) to repay the borrowed amount but the cheque was dishonored and the complainant informed to accused-person by telephone and sent legal notice for the payment of above cheque amount, but appellant had failed to repay the cheque amount and present complaint case was filed before the competent court.

3. The grounds of the appeal are as under :-

A. The impugned judgment is illegal and perverse and therefore it is fit to be set-aside.

B. The Exhibit No. A and B show that appellant closed his account in the year 2017 because of some fraudulent activity done with the cheque issued by the appellant as a security. .

C. The Exhibit No. C, C/1, C/2 & Y show that to prevent the misuse of appellant cheque, appellant take the proper step to inform S.P. Latehar, police-station and Agriculture

Department Bihar in the year 2017.

D. That the complaint petition filed by the respondent no. 2 the statement of para no. 2, 3 and 4 and the deposition affidavit filed by the respondent no. 2 in his cross-examination in para 29 are contradictory.

It is therefore prayed that kindly be pleased to admit the appeal for the interest of justice and set-aside the judgment of conviction and sentence dated 31.11.2022.

4. The lower court record is required to be seen to appreciate this appeal.

5. Kumar Varish filed a complaint case u/s 138 N.I. Act and 420 IPC after the inquiry evidence the summoning order was passed u/s 138 N.I. Act only. The complainant stated that on 10.09.18 the accused came to his house of complainant and asked a sum of Rs. two lakh with a promise to repay the same within two months. Again on 09.10.18 the complainant took one lakhs rupees more. On 08.12.18 the accused took away one lakh fifty thousand and promised to repay the entire amount of 4,50,000/- within three months. When the complainant asked for his money after three months i.e. 25.03.19 from the accused on which the accused said he has no money he will repay after one month. On 04.04.19 after one month had passed and again the complainant asked back the loan amount to settle his debt he filled a cheque no. 541014 drawn on P.N.B. Latehar, A/c No. 734800210000047, dated 04.04.19 for Rs. 4,50,000/- When the complainant deposited the cheque in his State bank of India Account on same day he was told by the banker of the accused that the account has already been closed and there is no sufficient balance in the account to honor the cheque given to the complainant. On 10.04.19 the banker of the accused issued a memo saying that due to insufficient fund the cheque cannot be honored. The complainant send the legal notice to the accused on 16.04.19 through post office which was received by him on 20th April 2019 as the accused replied to this legal-notice but it was no where mentioned that the money would be returned. Hence, this case was filed on 23.05.19.

The complainant prayed that the accused be tried and punished as per law and his money should be returned.

6. The complainant has examined two witnesses in trial.

CW 1 the complainant himself filed an affidavit dated 23.03.2022 in ten paras of chief. During the chief the signature on the cheque was marked as Ext. 1 being the accused's signature. The bank dishonored memo issued by S.B.I. Latehar was marked as Ext. 2. The legal-notice issued to the accused as marked as Ext. 3. The postal receipt was marked as Ext. 4. The tracking report was marked as Ext. 5.

In cross by defence he said Kaushal Kumar Singh is his friend. He had no previous transaction with the accused Ajay Shrivastaw. He does not know who had filled the cheque. He had got the filled up cheque. The cheque deposit receipt is there with him but he has not filed the same in the court. The transaction was made in his shop in presence of Ramesh Kumar, Akhtar Hussain. Suggestion of the defence was denied by him.

CW 2 Ramresh Kumar filed an affidavit dated 28.03.2022 in three paras of chief.

In cross by defence he said he is friend of Kumar Varish. The transaction has taken place between 12.00-2.00 P.M.,no written documents was prepared. Three times transaction has taken place in his presence. On fourth occasion on 04.04.19 they had gone to the house of Ajay Srivastava.

The defence has examined one witness in trial :

DW 1 Sridhar Shrivastaw filed an affidavit dated 30.06.2022 in five paras of chief. During the chief the closing of bank account photocopy was marked as Ext. A. The photocopy of application given to S.P. Latehar was marked as Y for identification. The account closing amount of Rs. 405/ was deposited by him which was marked as Ext. B. The speed-post slip which was sent to S.P., police-station and Krishi Bihar was marked as Ext. C, C/1, C/2.

In cross by complainant he said he had given five blank cheques to Ankur Seeds and on this for security was not written as it would have invalidated the cheque. Ajay Shrivastaw is alive. He does not recall the cheque number given to Ankur Seeds and it was given for security was not written on document was prepared for the same. All the cheques had signature of owner of Krishi Bihar. The cheques were given five years ago when he received the call from company that the cheques were not there with them then he closed the account and gave the application to S.P. Latehar. The complaint which he has filed against seeds company no written document is there. On the cheque there was no name of the company his father had signed it. He had taken the returning the cheque to Kaushal Kumar Singh but he has lost it. Kaushal Kumar Singh used to work in his company he has no documentary-evidence for the same. The application given to the bank was done by his father. Kaushal Kumar Singh had misused the cheques. In the cheque given to Kaushal Kumar Singh there was a case filed against his father and he does not know in that his father was convicted or not. Another case was filed by Arti Devi against his father is not within his knowledge. Suggestion of the complainant was denied by him.

Point of Determination :

1. Whether the respondent has succeeded to prove the offence charged in trial beyond reasonable doubt ?

2. Whether the Exhibits filed by the appellant are tenable in the eyes of law ?

3. Whether the appellant has succeeded to prove the defence allowed to him under the N.I. Act ?

4. Whether the appellant is entitled for relief claimed in this appeal ?

7. Point of Determination no. 1 :-

The respondent had filed the complain case u/s 138 N.I. Act and 420 IPC after the inquiry evidence the summons was issued u/s 138 N.I. Act only. The substance of accusation was explained to the accused on 05.01.2022 u/s 138 N.I. Act to which the accused did not plead guilty and claimed to be tried. The cheque dishonor memo issued by S.B.I. on 10.04.19 in which it was stated that account was closed issued by the banker of accused Ajay Kumar Shrivastaw namely P.N.B. Latehar which was marked as Ext. 2 and the signature on the cheque no. 541014 drawn by Ajay Kumar Sinha dated 04.04.19 to Kumar Varish for an amount of Rs. 4,50,000/- the signature on the cheque was marked as Ext. 1. After the cheque dishonor was intimated to the complainant thereafter he send a legal-notice which was sent on 16.04.19 to the accused, by Sri Hari Om Pandey Advocate Latehar through postal receipt no. RJ121441292IN to the accused demanding the amount of cheque dishonor by his banker within receipt of 15 days of notice. The signature on legal-notice was exhibited of his lawyer and the complainant which was marked as Ext. 3. The postal receipt of legal-notice was marked as Ext. 4. The track consignment report of the postal receipt no. RJ121441292IN was marked as Ext. 5 as the packet was delivered on 20th April 2019.

The complaint case was filed within 45 days of the legal-notice which was received by the accused. A reply was sent by the accused to the legal-notice but dated 30th April 2019 but in that the repayment of the amount of cheque was not mentioned in their reply. The complainant had examined two witnesses to the prove the case in trial the complainant filed an affidavit dated 23.03.2022 in which the signature of the accused in the cheque was marked as Ext. 1 without objection. The cheque dishonor memo was marked as Ext. 2 without objection issued by P.N.B. Latehar to the complainant's bank S.B.I. Latehar. On the legal-notice the signature and the signature of his lawyer was marked as Ext. 3. The postal receipt was marked as Ext. 4 and the postal tracking report was marked as Ext. 5.

In cross by defence he says there was no previous transaction with the accused. He does not know where Kaushal Kumar Singh is right now. He does not know that Shridhar had given five cheques to Kaushal Kumar Singh as a security for depositing in his seed shop at Ranchi. He does not know in whose handwriting the cheque is filled up. The cheque was duly filled and given to him. The transaction of money was taken in his shop in the afternoon Ramresh Kumar, Akhtar Hussain were there alongwith him. On all the three occasions these three persons were present at the transaction of money. Suggestion of the defence was denied by him.

CW 2 Ramresh Kumar filed an affidavit dated 20.02.2022 in three paras of chief. In cross by defence he said he has not worked with Kumar Varish at any point of time. He knows Ajay Shrivastaw son Shridhar Shrivastaw. The time of occurrence is in the afternoon in between 12 PM to 2 PM. There was no written agreement made for the transaction. The transaction had taken place three times and he was present there all the three times. Suggestion of the defence was denied by him.

The complainant evidence was closed on 28.04.2022 and the statement of the accused was recorded u/s 313 Cr.P.C on 06.05.2022 in which he denied the evidences against him but he admitted that he had given the cheques for security to Kaushal Kishore Singh. During the statement he did not say that he will led defence evidence. The defence evidence was closed on 28 June 22, again on 30 June 22 petition u/s 311 Cr.P.C. was filed by the defence that they want to give defence evidence which was allowed on same day on the cost of Rs. 200/- and the defence witness

Shridhar Shrivastaw was examined as DW 1 vide affidavit dated 30 June 22 in five paras of chief. During the chief the photocopy of letter to P.N.B. for closing the account mentioned with him in which the seal of bank was there and it was marked as Ext. A. The letter given to SP Latehar for lodging the FIR was marked as Y for identification. The deposit of 405/- rupees in the bank was marked as Ext. B and speed post slip to SP Latehar, police-station and Krishi Bihar was marked as C, C/1, C/2 respectively. In cross by the complainant he said he had given five cheques for security to Ankur Seeds. The cheque numbers of the cheques given to Ankur Seeds is not recalled by him. The receiving of security cheques was not made. He does not remember the date of handing over of the cheques. He has not filed written complaint regarding the lodging of complaints to the company. He had taken receiving of the cheques given to Kaushal Kumar Singh but he has lost it. He has no documentary-evidence that Kaushal Kishore Singh worked in the company. In the cross he has given the name as Kaushal Kumar Singh and in the application the name of Kaushal Kishore Singh has been given. Two another cases were filed against his father. He does not know that in the case filed by Kaushal Kishore Singh his father’s conviction had taken place. Suggestion of the complainant was denied by him.

The complainant has succeeded to prove that there was a lawful debt entered by the accused with the complainant on 10.09.18, 09.10.18, and 08.12.18 on these three occasions he had taken 4,50,000/- rupees which was to be the returned in four months. In repayment of the debt the accused had issued cheque no. 541014 from A/C 7348002100000047 drawn on P.N.B. Latehar. This cheque was dishonored and the accused when he received the legal-notice he did not return the money to the complainant within 15 days of receipt of notice. Thereafter the complaint case was filed within limitation of 30 days prescribed u/s 138 NI Act. The complainant has succeeded to prove the offence u/s 138 N.I. Act beyond reasonable doubt. Hence, point of determination no. 1 is decided in favour of the complainant / respondent.

Point of Determination no. 2 & 3 :-

The accused has filed photocopy of two letters given to Manager P.N.B. Latehar dated 23.02.17 and another letter given to the Manager P.N.B. Latehar regarding withdrawal of money by the accused from his account. This letter is dated 20 July 2017. Both these documents are photocopy and they are wrongly exhibited as Ext. A by the ld. Trial court as the accused has not adopted the procedure established by law to lead secondary evidence in lieu of primary evidence as prescribed by law. The documents are not prepared through same process so they cannot be exhibited and these letters were given even before issue of the cheques which was issued on 4 April 2019. In such a case the accused had already created a defence for him that he had already closed the account two years ago and hence the cheque could not be issued by him. The cheques which he has given to Kaushal Kumar Singh as per his averment neither the numbers or the date of giving these cheques was told by his witness Shridhar Kumar. These cheques as per the accused were issued for security of supply of seeds to his firm Krishi Bihar but no document could be produced by him to that effect. The photocopy of the documents which have been filed by the accused are not tenable in the eyes of law. The accused has not proved the defence which is applicable to him u/s 138 N.I. Act during trial. Hence, the point of determination no. 2 and 3 are decided against the appellant.

Both the appellant and the respondent have filed written argument in their case and number of ruling from both the sides. The rulings which have been filed by the appellant are not related to the facts and circumstances of this case. Hence, the ruling which have been filed by the appellant are not required to be considered in this appeal.

Point of Determination no. 4 :-

In view of discussions held herein above the appellant has failed to prove his case in the appeal and the judgment dated 30.11.2022 does not require to be interfered with.

The conviction passed by the ld. Trial court is perfectly as per law and it does not require to be interfered with.

<u>O R D E R</u>

In view of discussions held herein above the judgment and sentence of conviction, dated 30.11.2022 is hereby confirmed and the appeal of the appellant is hereby dismissed. Let a copy of this judgment be sent to ld. Trial court along with with the L.C.R.

(Dictated and corrected by me)	**(Dictated)**
Sd/-	**Sd/-**
(Sanjay Kumar Dubey) **Addl. Sessions Judge-II** **Latehar dt. 16.05.2025** **J.O. Code-JH0535**	**(Sanjay Kumar Dubey)** **Addl. Sessions Judge-II** **Latehar dt. 16.05.2025** **J.O. Code-JH0535**