



2026:CGHC:3566

**NAFR****HIGH Court OF CHHATTISGARH AT BILASPUR****CRMP No. 2102 of 2023**

Prakash Kumar Sarway S/o Gopal Prasad Sarway, Aged About 44 Years  
Chief Executive Officer, Zila Panchayat Bemetara, District Bemetara  
(Chhattisgarh) Presently Residing At Chief Executive Officer, Zila Panchayat  
Bastar, Near Indrapriyadarshani Stadium, Jagdalpur District Bastar  
(Chhattisgarh)

**... Petitioner****versus****1 - Daitari Gupta (Since Deceased) Through Lrs. Nil**

**1.1 - (A) Smt. Suruwali Gupta W/o Late Shri Daitari Gupta, Aged About 73  
Years R/o Village Mahaplli, Post Loing, Tahsil And Distt. Raigarh  
(Chhattisgarh)**

**1.2 - (B) Devendra Gupta, S/o Late Shri Daitari Gupta, Aged About 53 Years  
R/o Village Mahaplli, Post Loing, Tahsil And Distt. Raigarh (Chhattisgarh)**

**1.3 - (C) Smt. Sushma Sahu W/o Shri Ramakant Sahu, D/o Late Shri Daitari  
Gupta, Aged About 56 Years R/o Village Banora, Tahsil And Distt. Raigarh  
(Chhattisgarh)**

**1.4 - (D) Smt. Sudha Gupta W/o Shri Dwaja Ram Gupta, D/o Late Shri Daitari  
Gupta, Aged About 48 Years R/o Village- Gudgahan, Post- Gadumariya,  
Tahsil Pusour, District Raigarh (Chhattisgarh)**

**1.5 - (E) Smt. Suchitra Gupta W/o Setkumar Gupta Aged About 38 Years D/o  
Late Shri Daitari Gupta, R/o Village Dhoura Bhatha (Bhatapara) Tehsil  
Tanmar, Dist. Raigarh (C.G.)**

**2 - Dhananjay Gupta (Since Deceased) Through Lrs- Nil**

**2.1 - (i) Smt. Savitri W/o Late Dhananjay Gupta, Aged About 65 Years R/o  
Vill. Mahapalli, P.S. Chakradhar Nagar, Distt. Raigarh**

**2.2 - (ii) Pramod Kumar S/o Late Dhananjay Gupta, Aged About 42 Years R/o  
Vill. Mahapalli, P.S. Chakradhar Nagar, Distt. Raigarh**

**2.3 - (iii) Savitri Barik D/o Late Dhananjay Gupta, Aged About 46 Years R/o  
Vill. Mahapalli, P.S. Chakradhar Nagar, Distt. Raigarh**

**3 - Land Acquisition Officer Cum Sub Divisional Officer (Rev.) Tahsil Office,  
Tah. And Distt. Raigarh (Chhattisgarh)**

**---- Respondent**

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|-----------------|---|---------------------------------------------------------------------------------|
| For Petitioner  | : | Mr. Prafull N. Bharat, Senior Advocate,<br>assisted by Mr. Amit Soni, Advocate. |
| For Respondents | : | Mr. Sourabh Sharma, Advocate.                                                   |

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**Hon'ble Mr. Ramesh Sinha, Chief Justice**

**Order on Board**

**21.01.2026**

1. Heard Mr. Prafull N. Bharat, Senior Advocate, assisted by Mr. Amit Soni, learned counsel appearing for the petitioner. Also heard Mr. Sourabh Sharma, learned counsel appearing for the respondents.
2. The present petition has been filed by the petitioners with following prayer;

*“In view of the aforesaid facts and circumstances the petitioner respectfully prays for the following reliefs:*

*1. That, to call for the records of the case for the kind perusal of this Hon'ble Court.*

*2. That, to quash the order dated 25.02.2020 as the said order is illegal, bad in law, not sustainable and without jurisdiction.*

*3. That, any other relief deemed fit in the facts and circumstances of the case may also be granted.”*

3. The prosecution case in brief is that respondent No.1 and 2 are the persons who filed the complaint for the offence punishable under Section 138 of the Negotiable Instrument Act and as such they are necessary parties. Shorn of unnecessary details it is respectfully submitted that at the relevant time the petitioner was posted as Sub Divisional Officer, Raigarh and was also awarded the duties of Land Acquisition Officer, Raigarh. On 25.07.2009 a land acquisition proceedings for 16 khasras total 5.324 hectare was initiated on the request of Executive Engineer, Water Resources Department, Raigarh

in village Bansiyan. The land of respondent No.1 and 2 was also being acquired in the said proceedings. Pursuant to notification under Sections 4, 6 and 9 of the Land Acquisition Act, 1894 the proceedings were taken up and on 05.03.11 award was prepared and forwarded for approval which was approved on 28.03.11. After the award certain objections regarding payment of compensation to respondent No.1 and 2 was raised by villagers on the ground that they had instituted a Civil Suit regarding title against respondent No.1 and 2. Considering the said objection on 10.03.2011 the erstwhile Land Acquisition Officer passed an order and directed that the compensation be assessed in the name of Bhoomi Swami as recorded on date. The Land Acquisition Officer further held that after the decision of competent Court, the amount of compensation would be paid to the actual, concerned Bhoomi Swami. The petitioner subsequently joined on the post of Sub Divisional Officer Cum Land Acquisition Officer, the aforesaid fact was not in the knowledge of petitioner due to which a cheque amounting to Rs.1,13,02,569/- was issued in favour of respondent No.1 and 2.

4. When the aforesaid fact regarding order dated 10.03.2011 was brought to the knowledge of petitioner he immediately made a communication with the Bank and asked to stop the payment. Thereafter on 02.06.2017 a written communication was also forwarded to the concerned Bank. On 23.10.2017 the petitioner passed an order whereby it has been directed that the order dated 10.03.2011 was not brought to his knowledge therefore the cheque was issued and subsequently a memo of stop payment was issued. As the matter is still pending before the competent civil Court and this Court also, therefore till the decision of those cases, the withdrawal of cheque

bearing No.097200 amounting to Rs.1,13,02,569/- is stayed.

5. As the subject cheque could not be realized in favour of respondent No.1 and 2 they preferred a complaint under Section 200 of Cr.P.C. for an offence punishable under Section 138 of the NI Act inter alia alleging that due to the instruction of petitioner the cheque could not be realized. It was further pleaded that on 06.06.2017 a notice was issued to the petitioner who despite service of notice had not paid the amount under the cheque and as such he had committed an offence punishable under Section 138 of the NI Act and prayed for taking cognizance and to punish the petitioner. On 14.03.2018 the petitioner preferred an application under Section 197 Cr.P.C. on the ground that he is a public servant and the impugned action was made while acting in discharge of his official duty, as no sanction under Section 197 Cr.P.C. has been obtained by the respondent No.1 and 2 therefore the Court cannot take cognizance of the instant complaint. Respondent No.1 and 2 filed their reply and it was contended that the provisions of Section 197 Cr.P.C. are not applicable in the present case since the Negotiable Instrument Act is a Special Act which does not prescribes any such stipulation, further Section 143 and 145 prescribes that the provisions of Cr.P.C. are not applicable and the cognizance is taken under Section 142 of the Act and prayed for dismissal of the application.
6. Learned trial Court after hearing the parties vide order dated 29.11.2019 allowed the application and discharged the petitioner from the complaint. Being aggrieved by order dated 29.11.2019 respondent No. 1 and 2 preferred a revision. The Revisional Court after hearing the

parties came to the conclusion that the application under Section 197 Cr.P.C. was filed on 14.03.2018 and the matter was proceeded necessarily without justification and ultimately on 29.11.2019 the application was allowed that too without obtaining reply of respondent No.1 and 2. It was further concluded that the Trial Court erroneously converted the summons case into a warrant trial which was not permissible. It was further concluded that the cheque was issued on 29.05.2017, it was dishonoured on 31.05.2017, the memo of stop payment was issued on 02.06.2019 whereas the order in respect was passed on 23.10.2017 thus the petitioner had committed some illegality therefore it must be discovered through evidence. It was further concluded that since the Trial Court has already taken cognizance therefore issue of Section 197 Cr.P.C. has to be adjudicated at the time of final orders, whether the action of the petitioner was in good faith or not. After holding so the revision preferred by respondent No.1 and 2 was allowed.

7. Being aggrieved by the order dated 25.02.2020, the petitioner herein preferred a writ petition criminal under Article 226 of Constitution of India before this Court bearing WPCR No. 196/2020 in which the interim order passed by this Court on 18.03.2021 and the effect and operation of the impugned order dated 25.02.2020 was stayed by this Court vide order dated 18.03.2021. During the pendency of the writ petition bearing WPCR No. 196/2020 the respondent No. 1 was died and application was moved by the petitioner on 02.07.2023 for bringing the name of the legal heirs of respondent No. 1 in the cause title. Subsequently when the matter was further listed on 03.08.2023 before the Division bench of this Court, the writ petition bearing WPCR No.

196/2020 was withdrawn by the petitioner with a liberty to take recourse to law under Section 482 of the Cr.P.C. to challenge the order dated 25.02.2020 before the competent Court. Hence, this petition.

8. Learned counsel for the petitioner submitted that the learned impugned order dated 25.02.2020 is illegal, bad in law and not sustainable. The learned trial Court failed to consider that Section 197 of CrPC stipulates that prior sanction is a condition precedent before institution of any legal proceedings against a public servant, accused of any offence alleged to have been committed while acting or purporting to act in discharge of official duty. The learned revisional Court failed to consider that the law on the issue of sanction is settled that question of sanction is of paramount importance for protecting a public servant who acted in good faith while performing his duty. The revisional Court further failed to consider that the provisions of sanction has been made in order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on part of executive authority to protect him.
9. It is further submitted by learned counsel for the petitioner that against the order of discharge, the revision preferred by the complainants would not have been entertained and remedy to the complainant was to prefer petition under Section 378(4) of CrPC, as such, the impugned order remanding the matter to the trial Court is bad in law and without any jurisdiction. It is further submitted that the trial Court as well as the revision Court failed to consider that a complaint under Section 138 of NI Act is maintainable only if there is any debt or liability on the accused. A bare perusal of the complaint would show that the cheque

was issued in pursuance of an award and there was no debt or liability of the petitioner, on the other hand the cheque was issued from the state ex-chequer and not from the accounts of the petitioner which is the core ingredient for the offence punishable under Section 138 of NI Act. Hence, the order dated 25.02.2020 is illegal and without jurisdiction and as such liable to be set aside.

10. Learned counsel appearing for the respondent submits that from the perusal of the order-sheet of the trial Court, it appears that the very settled view of law regarding framing of charge is that at the time of framing of charge, the trial Court is required to consider the complaint and documents filed herewith. Certainly, the material available on record it clearly shows that prima-facie case is made out to frame the charge against the petitioner under Section 138 of NI Act. It is further contended that after issuing the cheque to the respondents, the duty regarding land acquisition has been completed from the end of Land Acquisition Officer, Raigarh, and after completion of matter the Land Acquisition Officer, Raigarh cannot alter, modify or change his order. Hence, there is no any illegality in the impugned order warranting any interference of this Court.
11. I have heard learned counsel for the parties and considered the rival submissions made herein and gone through the record with utmost circumspection.
12. Taking into consideration the fact that respondent Nos.1 and 2 were the landowners in whose favour a cheque of Rs.1,13,02,569/- was issued on 29.05.2017 towards land acquisition compensation by the petitioner, who was then functioning as Sub-Divisional Officer-cum-Land

Acquisition Officer, Raigarh. The cheque was presented for encashment but was dishonoured on 31.05.2017 on account of stop-payment instructions issued by the petitioner. It is alleged that on 02.06.2017 the petitioner formally instructed the bank to stop payment and thereafter, by order dated 23.10.2017, he stayed the operation of the cheque on the ground that there was a dispute regarding title over the acquired land and the matter was pending before the competent civil court. Treating the cheque as having been issued towards a legally payable compensation amount and alleging that its dishonour was solely on account of the petitioner's deliberate instructions, respondent Nos.1 and 2 issued a statutory notice dated 06.06.2017 demanding payment. Since the amount was not paid within the prescribed period, they instituted a complaint under Section 200 of Cr.P.C. alleging commission of an offence under Section 138 of the Negotiable Instruments Act against the petitioner for dishonour of the cheque despite service of legal notice.

13. After the complaint under Section 138 of the Negotiable Instruments Act was filed by respondent Nos.1 and 2, the petitioner entered appearance and, on 14.03.2018, moved an application under Section 197 Cr.P.C. contending that he was a public servant and that the act of issuing the cheque and subsequently stopping its payment was done in the discharge of his official duties as Sub-Divisional Officer-cum-Land Acquisition Officer, and therefore, in the absence of prior sanction, the Court was barred from taking cognizance. The Trial Court, upon considering the nature of the transaction and the official character of the petitioner's acts, allowed the said application by order dated 29.11.2019 and discharged the petitioner from the complaint.

Aggrieved thereby, respondent Nos.1 and 2 preferred a criminal revision, wherein the Revisional Court held that the Trial Court had erred in entertaining and allowing the application under Section 197 Cr.P.C. at that stage, that the proceedings under Section 138 of the NI Act were summary in nature, and that the question whether the petitioner had acted in good faith or in discharge of official duty required adjudication on the basis of evidence at the final stage. The Revisional Court further observed that since the cheque was issued on 29.05.2017, dishonoured on 31.05.2017 and the stop-payment memo was issued thereafter, the alleged illegality could not be ruled out without a full trial, and accordingly, by order dated 25.02.2020, it set aside the discharge order and restored the complaint.

14. After the revisional Court passed the impugned order dated 25.02.2020 reviving the criminal proceedings, the petitioner approached this Court by filing a writ petition (criminal) under Article 226 of the Constitution of India, registered as WPCR No.196/2020, challenging the legality and correctness of the said order. Upon consideration, this Court, by interim order dated 18.03.2021, stayed the effect and operation of the order dated 25.02.2020, thereby protecting the petitioner from further proceedings in the complaint during the pendency of the writ petition. During the continuance of WPCR No.196/2020, respondent No.1 expired, whereupon the petitioner moved an application on 02.07.2023 seeking substitution of his legal representatives in the cause title. Thereafter, when the matter came up for consideration before the Division Bench on 03.08.2023, the petitioner sought permission to withdraw the writ petition with liberty to avail the appropriate statutory remedy under Section 482 CrPC for challenging the revisional Court's

order. Accepting the said request, this Court permitted withdrawal of WPCR No.196/2020 with liberty as prayed for, which ultimately led to the filing of the present petition under Section 482 Cr.P.C. assailing the order dated 25.02.2020 passed by the Revisional Court.

15. It transpires from the records that a WPC No.1440/2015 was also filed by the private respondents of the present case, which has been disposed of by co-ordinate Bench of this Court vide order dated 25.11.2025, and learned counsel for the parties have drawn the attention of this Court towards paragraph 18 of the said judgment which is quoted herein below:

*“18. Accordingly, it is directed to the respondent authorities to disburse the amount of compensation against the award dated 29.03.2011. passed by the Land Acquisition Officer, Raigarh, in Land Acquisition Case No. 32-A/82/08-09 with respect to the total lands admeasuring 3.076 hectares of the lands of the petitioners, which have been acquired by the Land Acquisition Officer, Raigarh to the petitioners, in accordance with law. The petitioners are bound by their undertaking given before this Court as per their undertaking/ affidavits dated 24.11.2025.”*

And the learned counsel for the parties are jointly agreed that in the light of the said observation in paragraph 18 of the aforesaid judgment the present petitioner be disposed of.

16. Mr. Prafull N. Bharat, learned Senior Advocate also contended that in the order dated 25.11.2025 passed in WPC No.1440/2015, the undertaking has already been given by the respondents in paragraph 17 of the said judgment which is reproduced here as under:

*“17. Since, the Land Acquisition Officer crave leave of this Court to permit them to disburse the same in favour of the petitioners and considering the overall facts and circumstances of the case, they filed their undertaking in the form of affidavit dated 24.11.2025 that, if the compensation amount, as per the award*

*dated 29.03.2011, disbursed to the petitioners, they will not prosecute the complaint case filed by them under Section 138 of Negotiable Instruments Act, 1881 against the said cheque issued by the Land Acquisition Officer pursuant to the compensation under the award, which is pending before the learned Judicial Magistrate First Class, Raigarh and to file appropriate application in the proceeding, either before the learned trial Court or before this Court in criminal miscellaneous petition. They have also furnished undertaking that, they shall bound by any order judgment decree passed in any proceeding, if any, subject to availing appropriate legal remedy available under the law. Along with their application for taking affidavit/undertaking documents on record, they have filed the affidavits of Sushma Sahu, Devendra Kumar Gupta, Surubali Gupta, Suchitra Gupta, Sudha Gupta, Pramod Gupta, Savitri Devi and Savita Barik, who are the complainants in the complaint case filed under Section 138 of Negotiable Instruments Act, 1881 before the learned Judicial Magistrate First Class, Raigarh who are the legal representatives of Dhananjay and Daitari, in whose names the said cheque was issued by the Land Acquisition Officer in the year 2017 and after their death the names of these persons, who have filed affidavits in the form of undertaking have been substituted before this Court in the pending criminal miscellaneous petition. It is also necessary to quote the relevant part of their application for taking affidavit/undertaking documents on record (I.A. No. 12 of 2025) as well as the affidavit of one of the persons, as the contents of the affidavits of all these persons are one and same:-*

**Contents of application for taking affidavit/ undertaking documents on record:-**

*“ 3. That, it is worth here to mention that Daitari & Dhananjay filed a complaint under section 138 of the Negotiable Instrument Act against then and their sub divisional officer and land acquisition officer. The complaint so filed dismissed on 29.11.2019 for want of necessary sanction under section 197 of CrPc against which Daitari Gupta and LR's of Dhananjay Gupta namely Smt. Savitri W/o Late Dhananjay, Pramod Kumar S/o Late Dhananjay and Savita Barik Dio Late Dhananjay Gupta filed Criminal Revision no. 133/2019 before the Session judge Raigarh, and the revision was allowed by 25.02.2020 and order of Acquittal/dismissal of complaint by Judicial Magistrate First Class set aside and the Learned JMFC is directed to proceed further in accordance with law against order dated 25.02.20220, Prakash Kumar Sarway filed WP(Cr) No. 196/2020 by order dated 08.03.2021 the effect and*

operation of 25.02.2020 stayed and during pendency of WP(Cr) Daitari Gupta also died and though application filed for bringing the LR's on record the writ petition itself was withdrawn on 03.08.2023 with liberty to file petition. under section 482 of CrPc.

4. That, presently CRMP No. 2102/2019 Prakash Kumar Sarway V/s Daitari Gupta (died) through LR's and Others Is pending consideration before the Hon'ble court and Hon'ble court by order dated 05.09.2024 and was pleased to grant interim relief.

5. In CRMP no. 2102/2023 the legal representative of Late Daitari Gupta and Late Dhananjay Gupta are impleaded and the legal representative are filing herewith undertaking/ affidavit to the effect that if the amount under award is paid in accordance with the Land Acquisition Act to them they will not prosecute the complaint case under section 138 of N.I. Act. The aforesaid Affidavit/Undertaking are marked as Annexure A (Colly) with copy of order passed in CRMP No. 2102/2023, order dated 29.11.2029 passed in complaint case no. 34/2018 in case of Daitari Gupta & another Vs. Prakash Kumar Sawary and another passed by JMFC Raigarh (C.G) and also order dated 25.02.2020 passed in Criminal Revision No. 133/2019 between Daitarai Gupta and Ors Vs Prakash Kumar Sawary and another."

**Contents of affidavit of Sushma Sahu W/o Ramakant Sahu R/o village Banora, Tahsil and District Raigarh:-**

"1. That I am the legal representative of Daitari Gupta and party to the complaint under section 138 of NI Act and also in CRMP. No. 2102/2023 do, hereby undertake that if the amount of award passed in land Acquisition proceeding dated 29.03.2011 is disbursed in accordance with Land Acquisition Act, 1894 in favor of petitioners in the instant writ petition then shall withdraw the complaint case pending before JMFC, Raigarh in complaint case no. 34/2018 Daitari Gupta and Another Vs. Prakash Kumar Sawraya and another and also undertakes to file suitable application in pending CRMP No. 2102/2023 for withdrawal of complaint case and shall bound by any order/judgment/decreed passed in any proceeding if any subject to availing appropriate legal remedy available under the law.

2. The contents of this affidavit has been drafted under my instruction and read above and explained to me in Hindi

*and Local language.*

*3. The contents of this affidavit are true and correct to the best of my knowledge and belief and I am fully aware about the judicial proceedings pending."*

17. In view of the categorical directions issued by the co-ordinate Bench of this Court in WPC No.1440/2015 by order dated 25.11.2025, whereby the petitioner has been directed to disburse the compensation amount in accordance with the award dated 29.03.2011, coupled with the solemn undertakings furnished by the legal representatives of respondent Nos.1 and 2 that upon receipt of the said compensation they shall not prosecute and shall withdraw the complaint filed under Section 138 of the Negotiable Instruments Act against the present petitioner, no further adjudication on merits in the present petition is required, as there appears to be no any good ground given by the counsel for the petitioner for quashment of the impugned order.
18. Thus, the prayer made in this petition for quashing of the impugned order dated 25.02.2020 passed by learned revisional Court, is hereby refused.
19. But in light of the binding undertakings recorded by this Court and the operative directions contained in the order dated 25.11.2025 passed in WPC No.1440/2015, the present petition stands disposed of in terms thereof, with an expectation that the petitioner shall release the compensation strictly in accordance with law and the respondents shall faithfully abide by their undertakings by withdrawing and not prosecuting the proceedings under Section 138 of the Negotiable Instruments Act against the petitioner.

20. Accordingly, the instant petition is **disposed of**, and it is further directed that for a period of one month from today, the proceedings arising out of the complaint under Section 138 of the Negotiable Instruments Act, pending before the learned Judicial Magistrate First Class, Raigarh, shall remain in abeyance.
21. It is made clear that if the order dated 25.11.2025 passed by the co-ordinate Bench of this Court in WPC No.1440/2015 is not complied with and the amount of compensation is not disbursed by the petitioner in terms of the said order within the aforesaid period, the learned trial Court shall be at liberty to proceed with the trial in accordance with law.
22. Office is directed to send a copy of this order to the trial Court concerned for necessary information and compliance forthwith.

**Sd/-**  
**(Ramesh Sinha)**  
**Chief Justice**

Rajshekhar