



AFR IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.6 of 2011

Mahadei Nath

....

Petitioner

Mr. D. P. Pattanaik, Advocate

-Versus-

Ritu Ranjan Gupta

....

Opposite Party

Mr. S. Harichandan, Advocate

CORAM:

JUSTICE R.K. PATTANAIAK

DATE OF HEARING:14.11.2025

DATE OF JUDGMENT:23.02.2026

1. Instant revision under Section 401 Cr.P.C is filed by the petitioner challenging the impugned judgment in Criminal Appeal No.8 of 2010 dated 1st December, 2010 of the learned Additional Sessions Judge, Rourkela in dismissing the appeal and confirming the order of conviction and sentence dated 14th December, 2009 directed by the learned J.M.F.C., Panposh, while disposing the complaint in 1.C.C. Case No.275 of 2007 for an offence under Section 138 of the NI Act on the grounds inter alia that such decision suffers from infirmity and hence, therefore, the same is liable to be set aside.

2. The opposite party as complainant filed the complaint in 1.C.C. Case No.275 of 2007 for commission of an offence punishable under Section 138 of the NI Act in the court of learned J.M.F.C., Panposh at Rourkela by the petitioner alleging therein that he had given a friendly loan of Rs.6 lac to the latter for developing his business in the name and style of



M/s Laxmi Traders dealing with Cement Agency etc. and when the same was not refunded in time, instead, a cheque was issued and on its presentation before the Bank failed to be honoured for insufficient fund, legal notice was issued demanding its repayment, but it was not served and returned back with a postal endorsement of refusal. Under the above circumstances, when the complaint was filed, the learned J.M.F.C, found the petitioner guilty of the alleged offence and convicted him thereunder with a sentence of SI for one year and to pay compensation of Rs.7 lac to opposite party with a default sentence of SI for a period of three months. The aforesaid decision was challenged and according to the petitioner, the appeal preferred by him was dismissed by the learned court below thereby confirming the order of conviction and sentence. It is contended by the petitioner that the notice was not proved to have been refused with the examination of the postal staff and that apart, it was not correctly addressed to him and therefore, not right and justified on the part of the learned courts below to hold that an offence under Section 138 of NI Act is proved and therefore, the order of conviction and sentence is bad in law and thus, liable to be interfered with in the interest of justice.

3. Heard Mr. Pattanaik, learned counsel for the petitioner and Mr. Harichandan, learned counsel for the opposite party.

4. According to Mr. Pattanaik, learned counsel for the petitioner, the impugned judgment confirming the order of conviction by the learned court below suffers from serious infirmity on the ground that such demand notice was not and



never sent in the correct address of the petitioner and therefore, cannot be treated as a valid service in the eye of law and as such, no presumption would be attached vis-à-vis service and furthermore, there has been an endorsement as refusal, but then, the postal staff was not examined from the side of the opposite party and therefore, the initial burden of proof has not been discharged and hence, the order of conviction cannot be sustained in law. The further contention of Mr. Pattanaik, learned counsel is that a blank cheque was handed over to the opposite party as a means of security and not in respect of any legally enforceable debt or liability under Section 138 of the NI Act, the fact which was completely lost sight of by the learned courts below. It is alleged that the opposite party misused the blank cheque issued by the petitioner. The further contention is that the cheque was issued by and in the name of M/s Laxmi Traders, which has not been made a party to the complaint. In absence of valid service of notice and such notice having not been issued in the correct address of the petitioner and when the cheque was drawn in the name of M/s Laxmi Traders, which has not been impleaded along with the opposite party, no case under Section 138 of the NI Act would lie and therefore, the impugned judgment of the learned court below cannot stand and therefore, on such grounds, it shall have to be set aside. Lastly, it is contended that the cheque was issued by the proprietor of M/s Laxmi Traders with which the account is maintained, but it has not been arrayed as an accused and there is nothing on record to suggest that the petitioner was in charge of its affairs, hence, she could not have been held guilty for the alleged offence. Referring to a decision **Jugesh Sehgal Vrs.**



Shamsher Singh Gogi (2009)14 SCC 683, it is contended by Mr. Pattanaik, learned counsel that the cheque has been issued by M/s Laxmi Traders and not the petitioner and therefore, one of the essential ingredients of Section 138 of the NI Act is not satisfied which is to the effect that the cheque must be drawn on the account maintained by the accused. Finally, it is contended that the petitioner being a woman, even though held guilty and sentenced, the learned courts below should have extended the benefit of the Probation of Offenders Act, 1958 but it has not been considered either and therefore, the impugned judgments by the court of first instance and thereafter, in appeal by the learned court below are liable to be set at naught.

5. On the contrary, Mr. Harichandan, learned counsel for the opposite party would submit that there is no illegality committed by the learned courts below. It is contended that the cheque was drawn by the petitioner as the proprietor of M/s Laxmi Traders and it was handed over to the opposite party and when was presented before the Bank, the same stood dishonoured. It is also contended that after receiving the intimation from the Bank that the account has no sufficient fund, legal notice was issued to the petitioner, but the same was refused and with such a postal endorsement, it was received back and ultimately, the opposite party was left with no option except to file the complaint under Section 138 of the NI Act and therefore, there is absolutely no wrong or any error committed by the learned courts below in reaching at a conclusion that such an offence has been committed by her and it was followed by the sentence. It is further contended that the



learned courts below rightly did not extend the benefits of the Probation of Offenders Act, 1958 to the petitioner and correctly sentenced, directing her payment of compensation with a default sentence. In such view of the matter, the contention is that considering the evidence on record rightly appreciated by learned J.M.F.C., Panposh, the order of conviction sentence was passed and finally confirmed in appeal, hence, therefore, the same need not be disturbed, rather, deserves to be upheld.

6. In course of hearing, a decision of the Apex Court in **Aneeta Hada Vrs. Godfather Travels & Tours Pvt. Ltd. (2012) 5 SCC 661** is cited at the Bar to contend that M/s Laxmi Traders was a necessary party and ought to have been impleaded as an accused along with the petitioner and in its absence, the complaint could not have been proceeded with. Mr. Pattanaik, learned counsel for the petitioner would submit that the cheque is signed by the petitioner but in the name of M/s Laxmi Traders, hence, therefore, the company should have been impleaded as an accused besides the petitioner but the same having not been done, the complaint was not properly constituted and such an aspect of the case was overlooked by the learned courts below.

7. It is revealed from the record that the opposite party examined two witnesses and proved eight documents as exhibits, whereas, no evidence was received from the side of the petitioner. In other words, the petitioner neither adduced any oral nor documentary evidence in support of the defence. The complainant, namely, opposite party examined himself as C.W.1 with another witness (C.W.2), namely, Deepak



Mohapatra and proved the alleged cheque as Ext.1 and signature of the petitioner thereon as Ext.1/1 with such other documents including the Bank's deposit slip as Ext.2. Considering the evidence received from the side of the opposite party, the learned J.M.F.C, Panposh, Rourkela held that a case under Section 138 of the NI Act is proved and established and accordingly, directed conviction and sentence besides payment of compensation of Rs.7 lac as against the cheque for an amount of Rs.6 lac. As earlier discussed, the order of conviction and sentence was confirmed in appeal by learned Additional Sessions Judge, Rourkela.

8. Admittedly, the cheque was drawn in the name of M/s Laxmi Traders and signed by the petitioner as its proprietor. The cheque was drawn by the petitioner and was received by the opposite party and it was for an amount of Rs.6 lac. In fact, the petitioner issued a post-dated cheque for the said amount drawn on ICICI Bank Limited, Rourkela Branch on 17th January, 2007 in favour of the opposite party. In order to encash the amount, the opposite party presented the cheque on 14th March, 2007, but the same was dishonoured and returned back with a memo of intimation dated 28th March, 2007 by the Bank with an endorsement as 'insufficient fund'. On receipt of such intimation from the Bank, the opposite party issued a legal notice to the petitioner on 16th April, 2007 sent by Registered Post with AD intimating the fact about the cheque having been dishonoured and calling upon him to pay the amount within fifteen days of receipt of the notice. But such notice returned back with a postal endorsement that the opposite party refused receipt of the same on 17th April, 2007,



consequent upon which, on a presumption that the notice was delivered and has become valid, the complaint was filed. The learned J.M.F.C., Panposh, Rourkela considered the complaint and received evidence and ultimately, concluded that the petitioner being the drawer of the cheque for and on behalf of M/s Laxmi Traders and for the non-payment or refund of the cheque amount within the stipulated period of fifteen days after refusal of notice, an offence under Section 138 of the NI Act is proved and established and it has been confirmed by the learned Additional Sessions Judge, Rourkela, while disposing of the appeal.

9. The alleged cheque is marked as Ext.1. In support of receiving the cheque, the opposite party examining himself as C.W.1. It has been alleged by C.W.1 that the petitioner was the proprietor of M/s Laxmi Traders and she was in charge of it and responsible in its regular business. Apart from the above, the opposite party examined the Manager of the ICICI Bank as C.W.2 proving the extract of the account of the petitioner and proved that such account i.e. Ext.7 stands in the name of M/s Laxmi Traders with an address statement of the petitioner. First and foremost, the plea of the petitioner is that the demand notice was never sent to the correct address. It has been the consistent plea of the petitioner that the address was different than the one, in which, he resided at the relevant point of time and therefore, any such refusal of notice cannot be deemed as a valid service in the eye of law and therefore, the presumption is not attached to the same, rather, the inference would be that it has been incorrectly addressed to him. The said aspect has been dealt with by the learned court below, while dealing with the



appeal, wherein, it has been discussed that in the same address in which the account of M/s Laxmi Traders stands, the petitioner has received notice in the complaint and it has been responded to with the appearance. The demand notice was sent with an address 'near Quarter No.C/174, Sector-6, Rourkela' is no different than the one which is claimed by the petitioner 'as Quarter No.C/174, Sector-6, Rourkela' and according to the Court, the learned court below did not attach too much importance to the above plea and rightly so. When notice in the complaint was received by the petitioner in the same address, but claiming to the contrary, it has to be held that such a plea is only to avoid the liability and nothing else. It is, according to the Court, entirely a false claim is put forth by the petitioner to deny the liability when the demand notice was rightly addressed and in the same address, he received the notice for the complaint. Having said that, the Court is of the conclusion that the learned court below and also the learned J.M.F.C, Panposh, Rourkela did not commit any wrong in rejecting the plea of the petitioner on any such ground.

10. With regard to refusal of the notice with an endorsement by the postal staff, it has been challenged by the petitioner and Mr. Pattanaik, learned counsel appearing for him would submit that there is no evidence on record to show that the notice was refused. Again, in the considered view of the Court, no significance should be attached to the plea on the premise that the postal staff was not examined by the opposite party. An endorsement in the postal document with 'refusal' is presumed to be correct with a conclusion that upon such service, the same has been refused by the person, to whom, it was



addressed. In regular course of business, any such postal endorsement received by the Court is considered sufficient to hold that there is a valid service. In other words, a presumption of service shall have to be inferred. For non-examination of the postal staff, again the plea of the petitioner that initial burden of proof has not been discharged by the opposite party, hence, the proceeding stands vitiated in view of Section 142 of the NI Act, is wholly misconceived. Even after receipt of notice in the complaint, the cheque amount was not paid back to the opposite party, which is a fact that prevailed upon the learned court below to disbelieve the plea of the petitioner. Added to the above and the fact that the notice was addressed correctly, such refusal has been accepted by the learned courts below as valid service. Unless a correct address was furnished, as it is rightly concluded by learned court below, there could not have been a refusal of receiving the notice by the petitioner. In other words, it has to be held that not only the address was correct but also the postal endorsement with such notice received back with a refusal. The Court is not inclined to differ from the view expressed by the learned court below on such service of notice held to have been valid against the petitioner.

11. In so far as, an offence under Section 138 of the Act is concerned any such plea that the cheque was issued as a security deposit shall have to be proved by evidence. But the petitioner did not lead any such evidence in support of the above plea. A cheque was drawn and issued by a person shall have to adduce evidence to prove that it was not issued in connection with any liability. The moment, the cheque is in the hand of the complainant, a presumption would arise that it was



drawn and issued by the accused in furtherance of a debt or liability. In a case under Section 138 of the NI Act, a reverse presumption would apply. In other words, when a cheque is received and it has been presented before the Bank and could not be encashed, it shall have to be presumed that the same was issued by the drawer in discharge of legally enforceable debt or liability unless and until, contrary is proved. In the case at hand, the dishonoured cheque was signed by the petitioner on behalf of M/s Laxmi Traders. The signature of the petitioner on Ext.1 is not in dispute. When the signature is not disputed and plea of having handed over the alleged cheque as a security deposit could not be established, the only presumption would be that it was drawn for discharging a debt. It has to be held that such presumption is in favour of the opposite party and it was needed to be rebutted. But no rebuttal evidence has been led from the side of the petitioner. A bald claim that the cheque was issued for and as security deposit without proof of the same with any such evidence on record, the inference would be that the same was received by the opposite party towards discharge of debt or liability incurred by the petitioner. The said aspect has also been elaborately dealt with by the learned courts below and the conclusion is, therefore, that the presumption in favour of the opposite party could not be dismantled by the petitioner with any evidence in defence.

12. In so far as, the judgment in **Aneeta Hada** (supra) is concerned, it was in relation to a company and while dealing with a complaint under the NI Act alleging an offence under Section 138 thereof having been committed and therein with reference to Section 141 thereof, it was held and observed that



a complaint is not properly constituted unless and until the company is impleaded as an accused. But with due respect, the Court is of the view that the decision (supra) is inapplicable to the case at hand. When a company has issued a cheque with the liability alleged against it and also the officials managing its affairs, in view of Section 142 of the NI Act, it shall have to be impleaded as an accused. A company is a juridical person and a legal entity and therefore, according to Section 141(2) of the Act, it has to be made and impleaded as an accused. In such view of the matter, the Apex Court in the above decision held that company shall have to be arraigned as an accused and the same is imperative. But, in the case of the petitioner, she is a proprietor and M/s Laxmi Traders is proprietary concern and not a company and therefore, the decision in **Aneeta Hada** (supra) does not apply.

13. According to the Court, a sole proprietorship does not require to be made as an accused in a case under Section 138 of the NI Act because it is not a separate legal entity. Rather, it is legally considered synonymous with the proprietor, thus, thereby, impleading a proprietor alone as an accused would be sufficient. The key legal principles which are to be borne in mind is that a proprietary concern has no legal standing independent of its owner. It is merely a trade name used by the proprietor. The liability under the NI Act and for an offence under Section 138 thereof lies personally with the proprietor, who is the drawer of the cheque making it necessary to array the business name and as a matter of fact, Section 141 of the NI Act is not to apply, which needs compliance in respect of a company or a firm. In other words, such compliance under



Section 141 of the NI Act does not relate to a proprietorship. The Court is also of the conclusion that while it is often safe practice to mention the name of the business concern in the complaint but failing to do so does not invalidate the same as it has been filed against the proprietor. Furthermore, as earlier stated, a proprietary concern is not a legal entity, hence, a complaint shall not lie and would be sufficient enough, if the proprietor represents it.

14. Section 141 of the NI Act deals with offences by the companies and in explanation, it is mentioned that company means anybody corporate and includes a firm or other association of individuals and Director in relation to a firm means a partner in the firm. A proprietary concern is not a firm or company and hence, it is to be held that Section 141 of the NI Act is not applicable. The proprietor is a person, who does the business but for trading convenience, it is done in the name of proprietary concern. A proprietorship is not an independent and juristic entity having legal recognition and therefore, it can neither initiate proceedings nor proceedings be initiated against it. In case of proprietary concern, the proprietor is always an affected person, who can either indict or be indicted. It is profitable to refer to the following decision, such as, **Raman Vrs. Arikant Metal Corporation 1992 LW(Crl.) 347**, wherein, the proprietor represented the proprietary concern for an offence under Section 138 of the NI Act and therein, it has been held that both are the same person and as such, the proceeding is maintainable even without the latter arrayed as an accused. Furthermore, when the proprietary concern is not a legal entity, the proprietor is the drawer of the cheque on its



behalf and therefore, the law is well settled that a complaint is maintainable, even though, it is not impleaded as an accused.

15. In a decision of the Gujarat High Court in **Satish Jayantilal Shah Vrs. Pankaj Mashruwala and another 1996 Cri LJ 3099**, it has been concluded that definition of a person under Section 11 of the Indian Penal Code and as per the provisions of the General Clauses Act does not include a proprietor and hence, a proprietary concern is not legal entity or juristic person and therefore, it can neither initiate any action nor any such proceeding be initiated against it. In yet another decision of Madras High Court in **N. Vaidyanathan Deepkika Milk Marketing Vrs. Dodia Dairy Limited 2000 (1) Crimes 291 (Mad.)**, it has been held by that law is well settled and it is to the following effect that a proprietorship concern by itself is not a legal entity apart from its proprietor; such concern and the proprietor are one and the same person. Having regard to the above settled legal position discussed with reference to the case laws cited, the Court concludes that M/s Laxmi Traders was not to be impleaded as an accused being a non-juristic person and since, it was represented by the petitioner, who is the drawer of the alleged cheque, she was alone to be prosecuted. So, therefore, the plea of Mr. Pattanaik, learned counsel for the petitioner on such a ground relying on the decision in **Aneeta Hada** (supra) is misconceived, since, such argument is based on the premise that the cheque was issued in the name of a company.

16. Considering the evidence on record and when the opposite party examined himself as C.W.1 and was elaborately



cross-examined but nothing could be elicited to rebut the presumption in view of the issuance of the cheque in favour of the opposite party, the inescapable conclusion of the Court is that an offence under Section 138 of the NI Act is made out and when Section 118 of the NI Act stipulates that until contrary is proved, a negotiable instrument shall be presumed for consideration and acceptance of it to be in discharge of liability and that Section 139 thereof deals with the discharge of legally enforceable debt either in whole or in part and the cheque having been presented and returned dishonoured with any such intimation of insufficiency of fund etc. that an offence thereunder shall be made out. In absence of any such rebuttal evidence from the side of the petitioner, the Court is left with no option except to hold that she is deemed to have committed an offence punishable under Section 138 of the NI Act. That apart, according to Section 139 of the NI Act, it shall be presumed, unless and until, contrary is proved that the holder of a cheque received the same referred to in Section 138 shall be for discharge of any debt or other liability. Considering the aforesaid provisions and presumption in favour of the opposite party and having no rebuttal evidence received from the side of the petitioner, it shall have to be presumed that an offence under Section 138 of the NI Act has been committed by the petitioner and rightly, it has been concluded by the learned courts below appreciating the evidence in its entirety and therefore, the impugned judgment of the learned court below does not suffer from any legal infirmity for having confirmed the order of conviction.



17. However, this Court is of the view that it would not be proper to direct the petitioner, who is a lady, to undergo the sentence at this distant point of time, rather, the proper course of action would be to release her under Section 4(1) of the Probation of Offenders Act, 1958, however, maintaining the compensation with default sentence but payable in installments within a reasonable period of time and hence, for the above purpose, to appear before the court of learned J.M.F.C., Panposh in I.C.C. Case No.275 of 2007 and to receive further orders and accordingly, it is directed.

18. In the result, the revision petition stands disposed of and dismissed, however, with the modification of the impugned judgment in Criminal Appeal No.8 of 2010 dated 1st December, 2010 of the learned Additional Sessions Judge, Rourkela subject to compliance of the direction as aforesaid.

(R.K. Pattanaik)
Judge

Rojina