A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLLP No.18 of 2023

(From the judgment dated 02.01.2023, passed by the learned J.M.F.C. (LR & LTV), Baripada in 1C(c) Case No.128/ 2017/ T.C. No.608/2019)

Sarat Chandra Pani .... ***Appellant(s)***

-versus-

State of Odisha & Anr. .... ***Respondent (s)***

Advocates appeared in the case:

For Appellant(s) : *Mr. Debi Prasad Dhalsamant, Adv.*

-versus-

For Respondent(s) : *Mr. Udit Ranjan Jena, AGA*
Mr. J.K. Khuntia, Adv.

CORAM:
DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-25.02.2026
DATE OF JUDGMENT:-17.04.2026

Dr. Sanjeeb K Panigrahi, J.

1. The Appellant/complainant has preferred this CRLLP under Section 378 of the Code of Criminal Procedure, 1973 challenging the judgment dated 02.01.2023, passed by the learned J.M.F.C. (LR & LTV), Baripada in 1C(c) Case No.128/ 2017/ T.C. No.608/2019, whereby the Respondent No.2 has been acquitted of the charge under Section 138 of the N.I. Act.

I. CASE OF THE PROSECUTION:

2. Bereft of unnecessary details, the prosecution story is that the accused person has a business organization in the name and style of proprietor, Maa Sarala Tour & Travels at Plot No.2472/288,

Ganeswarpur Januganj, a Balasore. The accused has promised to provide an auction sale of Tata Magic Vehicle to the complainant at the cost of Rs.2,30,000/- (Rupees Two Lakhs Thirty Thousand only). As per the instruction of the accused, the complainant had deposited Rs.1,00,000/- (Rupees One Lakh only) on 08.03.2017 and another Rs.1,00,000/- (Rupees One Lakh only) on 28.03.2017 in the SBD Account No.551620110000033 of the accused accused/ Respondent No.2 with Bank of India, Ganeshwarpur, Ganuganj Branch, Balasore through the Appellant/complainant in Bank of India, Kuliana Branch. The accused had handed over a piece of paper mentioning the accused person's and his wife's SBD account number. The terms of agreement were that the remaining amount of Rs.30,000/- (Rupees Thirty Thousand only) shall be paid on the date of delivery of the said auctioned vehicle on 05.04,2017. However, the accused failed to deliver the said auctioned vehicle.

3. On 07.04.2017, the Respondent No.2/ accused on his own accord handed over a cheque amounting to Rs.2,00,000/- bearing No.001730 dated 07.04.2017 of Bank of India, Ganeswarpur Januganj Branch towards dues of the Appellant/ complainant and requested to deposit on 08.06.2017 for encashment.

4. Accordingly, on 08.06.5017 the Appellant submitted the cheque for encashment with Bank of Indian Kuliana Branch in his SBD Account No.5479101100002418. But, the said cheque was dishonored due to insufficient funds in the account of the Respondent No.2/ accused.

5. Thereafter, the Appellant/ complainant issued a Pleader's Notice/Demand Notice through its Advocate Sri B.K. Padhi to the accused. However, the registered notice with A.D. dated 21.06.2017 was returned on 30.06.2017 with postal remaks "All Times Closed". Thereafter, the Appellant filed 1C(c) Case No.128 of 2017 before the learned Judicial Magistrate First Class (LR & LTV), Baripada, Mayurbhanj.
6. The accused appeared on 27.11.2017 and denied the allegations. The prosecution examined and cross-examined three witnesses. On the other hand, no witness was examined by the accused.
7. The learned trial court held that the complainant failed to prove the major averment which questions the maintainability of the case, of difference in the address of the accused in the demand notice for which the case is not maintainable as because Section 138(b) of the N.I. Act has not been complied with. Hence, the accused has not been found guilty for offences under Section 138 of the N.I. Act and acquitted therefrom as per the provision under Section 255(1) of the Cr.P.C.
8. Being aggrieved by the said judgment of acquittal, the Appellant/ complainant has preferred the present CRLLP.

II. SUBMISSIONS ON BEHALF OF THE APPELLANT/COMPLAINANT:

9. In assailing the impugned judgment, learned counsel for the Appellant/complainant submitted that though the Court below satisfied that the cheque in question was issued by the accused in

favour of the Appellant to discharge his legally enforceable debt and the cheque was returned unpaid due to insufficient funds in the account of the accused, but found the Respondent No.2 not guilty is bad in law.

10. Learned court below erred in law and fact that in the demand notice the address of the accused was given as Plot No.247/288, Ganeswarpur, Janugang, Balasore as per the address of the accused mentioned in his Bank account and in the complaint petition the address of the complainant has been mentioned as Plot No.2472/2188 Ganeswarpur, Janugang, Balasore which is a typographical error. Therefore, the demand notice has not been duly served.

11. The demand notice dated 21.06.2017 was returned with a postal remark All Times Closed. In view of the law laid down by the Apex Court that in order to avoid to receive notice if the accused closed the shop, the notice itself be treated as sufficient.

12. The Learned Court below is erred that the demand notice was issued in a wrong address but the accused/ Respondent No.2 has submitted his address in bank Account as Plot No.2472/288, Ganeswarpur, Janugang, Balasore and the accused received the notice issued from the court below in a wrong address (Plot No.2472/2188 mentioned in the complaint petition.

13. In such view of the matter, it was contended that the impugned judgment of acquittal should be set aside.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.2:

14. In reply, learned counsel for the Respondent No.2 submitted that the Appellant had given Rs.2,00,000/- to the Respondent No.2 for purchasing one auction sale TATA Magic vehicle. However, the Respondent No.2 failed to deliver the said auctioned vehicle and promised to return the amount but handed over a cheque of Bank of India, Ganeswarpur, Januganj Branch towards dues. The Appellant deposited the said cheque in Bank of India but the same was dishonoured due to insufficient funds in the account of the accused. Hence, this case arises.

15. He further submitted that the legal notice has not been served in the correct address of the Respondent No.2. Section 138 of N.I. Act mandates issuance of the statutory notice as a precondition to filing of a complaint. The cause of action to file a complaint under Section 138 of N.I. Act arises only on issuance and service of statutory notice and failure of the accused to comply with the statutory notice as has been decided in ***M/s. Ajeet Seeds -vrs- K. Gopala Krishnaiah***[1].

16. It was contended that in absence of service of statutory notice, the cause of action would not accrue. Service of statutory notice would also include legal presumption of service of circumstances so warrant.

17. The Clause (b) of Section 138 of NI Act clearly states that the said demand notice has not been duly served to the accused.

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[1] (2014) 12 SCC 685

18. In this case, the complainant/Appellant failed to prove his case against the accused beyond all reasonable doubt and the complainant failed to prove the major factor which question the maintainability of the case oi difference on the address of the accused in the demand notice.

19. Since the provision under Section 138(b) of N.I. Act is not complied with which is mandatory for the complainant, the accused (Respondent No.2) is not found guilty and no cause of action arose for initiation of the complaint case under Section 138 of N.I. Act.

20. Based on the aforementioned submissions, it is submitted that there is no merit in the present Appeal filed by the Appellant/complainant, and the same is liable to be dismissed in limine.

IV. FINDINGS OF THE LEARNED TRIAL COURT:

21. The learned trial court while passing the impugned judgment of conviction and order of sentence has recorded as follows:

(i) After taking into consideration the facts and circumstances and also the materials available on record, the trial court held that the complainant has entirely failed to prove its case against the accused beyond all reasonable doubt. The complainant has also failed to proof the major averment which questions the maintainability of the case, of difference in the address of the accused in the demand notice and complaint petition which has not been duly satisfied by the complainant. Therefore, the said case is not maintainable as Section 138(b) of the NI Act has not been complied with which is *sine qua non* for the complainant to bring forth the said case. In the result, the accused is not found guilty for the offence under Section 138 of N.I. Act and is acquitted therefrom as per the provision under Section 255(1) of the Cr.P.C. as no cause of action for launching a prosecution on the basis of a cheque being dishonoured is made out.

V. COURT'S REASONING AND ANALYSIS:

22. This Court has heard the submissions made by the learned counsel for the Parties and also carefully perused the evidence on record.

(i) At the outset, this Court is mindful of the settled parameters governing interference with an order of acquittal. Though the appellate court possesses full power to reappreciate evidence, such power must be exercised with circumspection. However, where the findings of the trial court are manifestly erroneous, based on erroneous application of law, or result in miscarriage of justice, interference by this Court is not only permissible but imperative. The present case falls squarely within such an exception, as the acquittal rests not on an appreciation of evidence but on a hyper-technical interpretation of statutory compliance.

(ii) The basic facts are largely undisputed. The issuance of the cheque by the accused and its dishonour for insufficiency of funds have been accepted by the learned trial court. Once these foundational facts are established, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act, 1881 come into operation which compel the Court to presume that the cheque was issued in discharge of a legally enforceable debt or liability. This presumption, though rebuttable, places a reverse burden upon the accused. In the present case, the accused has chosen not to adduce any evidence to rebut such presumption. A mere denial, bereft of supporting material, does not suffice to discharge this burden. Thus, the existence of legally enforceable liability stands proved.

(iii) The principal ground on which the learned trial court has recorded acquittal pertains to alleged non-compliance with clause (b) of Section 138, namely, non-service of the statutory demand notices due to discrepancy in the address. This Court finds such reasoning to be legally untenable.

(iv) The requirement of issuance of notice under Section 138(b) is indeed mandatory; however, the law does not insist upon actual service in every conceivable circumstance. Jurisprudence in this aspect has consistently evolved to recognize the doctrine of deemed service, particularly where the conduct of the drawer indicates evasion. When a notice is dispatched to the correct or substantially correct address of the drawer and is returned with endorsements such as "refused," "not claimed," or, as in the present case, "All

Times Closed," the Court is entitled to draw a presumption of due service. Any contrary interpretation would enable a dishonest drawer to defeat the statutory mandate by the simple expedient of avoiding service.

(v) The discrepancy in the address, which weighed heavily with the trial court, appears on closer scrutiny to be trivial rather than substantive. The address mentioned in the notice and that in the complaint substantially refer to the same premises and locality. Significantly, the address corresponds with what has been furnished by the accused in his bank records. More importantly, the accused has received process from the court at the very address now alleged to be incorrect. This circumstance demolishes the defense of non-service and reinforces the presumption that the notice, when sent, was directed to the correct destination.

(vi) The law does not require pedantic perfection in drafting of addresses; it requires substantial compliance sufficient to identify and reach the addressee. To hold otherwise would be to elevate form over substance, thereby frustrating the object of the statute.

(vii) It is also necessary to bear in mind that the object of introducing Chapter XVII of the Negotiable Instruments Act was to enhance the credibility of commercial transactions and to instill faith in the banking system. The provision must, therefore, receive an interpretation that advances the legislative intent rather than defeats it.

(viii) The approach of the learned trial court, in isolating a minor clerical discrepancy and treating it as fatal, runs contrary to this settled principle of purposive interpretation. Courts are not to be swayed by inconsequential irregularities when the substantive ingredients of the offence stand established.

(ix) Furthermore, the reasoning of the trial court reflects an error in law inasmuch as it failed to consider that the accused had knowledge of the transaction, issuance of cheque, and the consequential liability. The purpose of the statutory notice is to afford an opportunity to the drawer to make payment and avoid prosecution. In the present case, the conduct of the accused, coupled with the surrounding circumstances, clearly indicates awareness of the liability and deliberate avoidance. In such a situation, insistence on strict proof of actual service would amount to rewarding evasive conduct, which the law does not countenance such a proposition.

(x) Viewed from another angle, even assuming arguendo that there was some irregularity in the address, the same does not go to the root of the matter so as to vitiate the entire prosecution. Criminal jurisprudence recognizes that procedural prescriptions are handmaids of justice and not its mistress. Unless prejudice is demonstrated, such irregularities cannot be elevated to the status of fatal defects.

In the present case, no prejudice whatsoever has been shown to have been caused to the accused.

(xi) Thus, the overall effect of the above discussion leads this Court to the irresistible conclusion that the learned trial court has erred in law by discarding an otherwise cogent prosecution case on an untenable and hyper-technical ground. The finding of non-maintainability is perverse, being contrary to both the evidence on record and the settled legal position governing Section 138 of the Negotiable Instruments Act.

VI. CONCLUSION:

23. In the conspectus of the foregoing analysis, this Court is persuaded to hold that the impugned judgment of acquittal is vitiated by a clear misapplication of law and an approach that accords undue primacy to inconsequential technicalities over substantive justice. The learned trial court, having rightly appreciated the foundational facts relating to issuance and dishonour of the cheque, fell into manifest error in non-suiting the complainant on the purported ground of non-service of statutory notice, without appreciating the settled doctrine of deemed service and the principle of substantial compliance.

24. The discrepancy in the address, being purely clerical in nature and not affecting the identity or reachability of the accused, could not have been construed as fatal to the prosecution. The statutory presumptions operating in favour of the complainant under the

Negotiable Instruments Act, 1881 having remained unrebutted, the existence of a legally enforceable debt stands firmly established. The accused, by neither rebutting the presumption nor demonstrating any prejudice arising from the alleged defect, cannot be permitted to escape liability on such tenuous grounds.

25. This Court, therefore, finds that the acquittal recorded by the learned trial court is perverse, unsustainable in law, and has resulted in a miscarriage of justice. The same is, accordingly, set aside. The prosecution having successfully established all essential ingredients of the offence under Section 138 of the Act, the liability of the accused stands proved in accordance with law.

26. The Criminal Leave Petition is thus **allowed**, and the impugned judgment is hereby reversed, restoring the sanctity of the legislative intent underlying the statute and reaffirming that the process of law cannot be thwarted by evasive tactics or trivial irregularities.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 17th April, 2026/