IN THE HIGH COURT OF ORISSA AT CUTTACK

AFR

CRLREV No.307 of 2025

Meghnad Padhan .... Petitioner
Mr. Niranjan Singh-1, Advocate

-Versus-

Ashok Kumar Sinha .... Opposite party
Mr. Pankaj Kumar Jain, Advocate

CORAM:
JUSTICE R.K. PATTANAIK

DATE OF HEARING:11.11.2025
DATE OF JUDGMENT:23.02.2026

1. Instant revision under Section 438 read with Section 442 of the BNSS is filed by the petitioner challenging the impugned judgment in Criminal Appeal No. 04 of 2023 of learned Additional Sessions Judge, Titilagarh confirming the order of conviction and sentence directed in 1.C.C. Case No.14 of 2019 by the learned J.M.F.C., Titilagarh on the grounds inter alia that the same is not legally tenable and hence, liable to be set aside.

2. According to the petitioner, the impugned order of conviction and sentence is otherwise bad in law and hence, liable to be interfered with. The contention of the petitioner is that the learned Trial Court has failed to appreciate the evidence on record in its proper perspective and erroneously reached at a conclusion that he is guilty of the alleged offence punishable under Section 138 of the N.I. Act. One of the grounds of challenge is that the petitioner had taken a consistent plea before the learned courts below that he had never maintained the Bank Account, rather, such an account had been opened in his name by the opposite party with a view to reutilize the same to manage financial liabilities, but it has not been taken judicial notice of and therefore, the conviction order is not sustainable in law. The further contention is that taking advantage of prior acquittance with the petitioner, the complainant himself procured the signed cheque and misutilized it with a view to harass him and therefore, the conclusion arrived at by the learned Courts below cannot be sustained. It has been the plea of the petitioner that the opposite party's claim to the effect that he had given a friendly accommodation/loan to him was believed despite having contradictions in the evidence regarding the date of transaction etc., inasmuch as, the alleged transaction said to have taken place on 9th May, 2018 but in the affidavit mentioned to have taken place in the month of October, 2018. The contention of the petitioner is, therefore, that the impugned order of conviction is entirely based on surmise and conjecture in absence of any concrete evidence to establish his guilt. That apart, according to the petitioner, no specific question was put to him at the time of his examination under Section 313 Cr.P.C. towards the drawal of the cheque in question and the handwriting available thereon. It has been claimed further that the Bank Account of the petitioner was lying dormant and at no point of time, he had submitted any application to revive the same and therefore, in the light of the evidence on record, the presumption of guilt has been sufficiently rebutted, hence, the learned courts below committed a serious wrong in passing the order of conviction and confirming the same, while dealing with the appeal. With such other grounds, it has been pleaded by the petitioner that the conviction order and the decision of the learned courts below are liable to be set at naught.

3. Perused the LCR.

4. Heard Mr. Singh, learned counsel for the petitioner and Mr. Jain, learned counsel for the opposite party.

5. The opposite party as the complainant claimed that he had given a friendly loan of Rs.9,50,000/- (rupees nine lac fifty thousand) to the petitioner and in that regard, the latter had issued a post-dated cheque for the said amount drawn at the Corporation Bank, Titilagarh for payment to him from an account maintained there. It is further claimed that the cheque was presented by the opposite party time and again and lastly on 7th June, 2019 for payment through its banker but the same was returned with an intimation dated 10th June, 2019 and a remark 'funds insufficient, whereafter, sent a legal notice on 20th June, 2019 to bring it to the knowledge of the petitioner about the dishonour of the cheque and requested to make payment of the amount within a period of fifteen days from the date of receipt of the notice. According to the opposite party, though, the notice was sent by him through Registered Post with AD on 5th July, 2019 and duly received by the petitioner, when the payment was not made within fifteen days, the complaint was filed registered as I.C.C. No.14 of 2019.

6. The learned Trial Court framed issues for determination to find out and ascertain whether the petitioner had issued any such cheque for the alleged amount in favour of the opposite party and it was towards discharge in whole or in part of any such legally enforceable debt or liability and a case of dishonour of cheque is made out. In course of trial, the opposite party examined himself as C.W.1 and the petitioner an official witness, namely, Chandra Mohan Kumbhar as D.W.1. Both sides adduced documentary evidence in support of and against their respective plea. Considering the evidence received on record, the learned J.M.F.C., Titilagarh held and concluded that the opposite party has successfully established a case under Section 138 of the N.I. Act against the petitioner and accordingly, convicted him and directed a sentence of one year SI and to pay a fine of Rs.18,00,000/- (rupees eighteen lac) payable as compensation as per Section 357 Cr.P.C. for the loss suffered by the opposite party due to such non-payment, which includes interest on the cheque amount, besides a default sentence of three months SI with a further direction that the compensation so awarded in case of default shall be realized as per Section 421 Cr.P.C.

7. Against the order of conviction and sentence, the petitioner approached the learned court below with an appeal filed by him, however, it was dismissed on contest, confirming the order of conviction in 1.C.C. Case No. 14 of

2019. The learned Additional Sessions Judge, Titilagarh, upon re-appreciation of evidence adduced by both the sides, concluded that there is no reason to intervene with the order of conviction for the fact that the learned JMFC correctly appreciated it without any error having been committed with a finding that the petitioner is guilty of the offence punishable under Section 138 of the N.I. Act.

8. Mr. Singh, learned counsel for the petitioner would submit that gross error has been committed by both the learned courts below in ignoring the evidence on record. It is the contention of Mr. Singh, learned counsel that the cheque i.e. Ext. P-2 bears a signature as Meghnada Padhan, whereas, the legal notice as at Ext.P-8 carries the name and is said to have been served on one Meghanada Pradhan so also the postal notice and receipt. It is claimed that the name of the opposite party is Meghanada Pradhan before the learned Trial Court and again there has been discrepancies in the record and therefore, the impugned order of conviction and sentence is liable to be quashed for being a case of mistaken identity. It is further contended by Mr. Singh, learned counsel that legal notice was shown to have been served on Meghnad Pradhan S/o. Krushna Pradhan without any date mentioned as to when the petitioner received the cheque amount from the opposite party. That apart, the legal notice issued on 25th September, 2019 to the said Meghnad Padhan marked as Ext.P-8 does not bear any signature of the Advocate. Finally, it is contended that the bank account was opened in the name of Meghnad Padhan, S/o. Krushan Padhan, whereas, the case has been filed with the legal notice in the name of Meghnad Pradhan. The contention is that the learned courts below ignored the decisions of the Apex Court in **K. Prakashan Vrs. P.K. Surenderan (2008) 1 SCC 258** and **Rahul Builders Vrs. Arihant Fertilizers & Chemicals and others (2008) 2 SCC 321** and erroneously reached at a conclusion regarding an offence under Section 138 of the NI Act to have been committed by the petitioner and hence, the same deserves to be nullified in the interest of justice.

9. Mr. Jain, learned counsel for the opposite party, on the other hand, submits that any such ground with regard to the identity of the petitioner was never a question before the learned courts below. Rather, it is submitted that issuance of post-dated cheque has been proved and the liability of the petitioner and for the fact that cheque was dishonoured for the reason of insufficiency of fund in the alleged account and regard being had to the fact that a presumption is always drawn in favour of discharge of a lawful debt or liability, it has been rightly concluded by the learned courts below that such presumption could not be rebutted. The material facts, such as, the cheque was drawn and handed over to the opposite party and presented before the Bank for encashment and its dishonour with intimation and thereafter, legal notice issued to the petitioner and his default in payment have been established with evidence, hence, was the presumption towards a lawful debt and therefore, the learned courts below arrived at a conclusion that the petitioner is guilty of the offence under Section 138 of the N.I. Act and thus, it has to be again confirmed.

10. The opposite party examined him as P.W.1 and during examination-in-chief, it is deposed by him that he is a respected businessman having a business dealing with fertilizer and pesticide at Titilagarh and a close friend of the petitioner for nearly ten years and in the month of October, 2018, the latter approached and requested him for a loan of Rs.9, 50,000/- and on such request and as he was in dire need of money, agreed to give the friendly loan and against such loan, the alleged cheque was issued in his favour drawn on an account in the Syndicate Bank at Titilagarh, which is maintained by the petitioner himself. It is further deposed by him that he kept on requesting the petitioner to make the payment and at last, the cheque was presented before the banker three times on 6th May, 2019, 27th May, 2019 and finally on 7th June, 2019 and every time, the cheque was returned with a Bank memo and remark 'referred to the drawer/funds insufficient and account dormant'. All the returned Bank memos have been marked as Exts. P-5, P-6 and P-7 from the side of the opposite party. The legal notice dated 22nd June, 2019 and the postal slips of the said notice have been marked as Exts.P-8 and P-9. Referring to the Postal Tracking Report of the consignment as Ext.P-10, it was further deposed by the opposite party that the notice was duly served on the petitioner. A reminder notice dated 25th September, 2019 was sent through an Advocate marked as Ext. P-11 and proved by the opposite party, according to whom, the AD of such notice was received back with an acknowledgement on 1st October, 2019. The opposite party was cross-examined in great detail and it has been reiterated that the petitioner was in need of money as his brother was ill by then. It has also been reiterated that the alleged cheque was presented in the Bank thrice and every time, it was informed that there has been no sufficient fund in the account of the petitioner. On the other hand, the petitioner did not examine himself but Branch Manager of the Bank as D.W.1 and the evidence received from him was to the effect that the alleged account was maintained in the name of one Meghnath Padhan and admitted the fact that the cheque was presented couple of times and was rejected as fund to be insufficient. As per the evidence of D.W.1, on the first two occasions, the account was shown as dormant. It is also deposed by the said witness that he had intimated the opposite party about the cheque having been rejected twice. In course of cross-examination, D.W.1 claimed that he does not know or having any acquittance with the parties. The statement of the account maintained in the Bank by Meghnath Padhan was sought to be proved by D.W.1., who, while under examination, further deposed that it was the sole account of the account holder and cannot be operated by the guarantor or introducer, to clear any doubt as to whether such transaction had taken place on 6th May, 2019. It has been an attempt on the part of the petitioner to deny the liability with the examination of D.W.1. In fact, as per the evidence on record, it is suggested by the petitioner that the account of Meghnath Padhan was dormant and unless anything in writing was received, it could not have been revived and regularized. The Court finds that the account was revived before the third time, when the cheque was presented. In any case, the legal notice was issued to the petitioner, when the cheque could not be honoured after the presentation for the last time, admittedly, when the account of the opposite party was no longer dormant. The question is, whether, under the above circumstances, the petitioner having issued the alleged cheque failed to discharge any liability and hence, guilty of the offence under Section 138 of the N.I. Act.

11. The cheque has been marked as Ext. P-2 from the side of the opposite party. The signature of the petitioner thereon was never in dispute. It is only alleged by the petitioner that the cheque was not issued in discharge of any legally enforceable debt. Law is well settled that the burden of proving such a fact is upon the petitioner. In other words, the onus to prove a fact regarding the debt or liability rests on who claims its existence, but in a case under Section 138 of the N.I. Act, reverse presumption is to apply, which means, it is for the drawer of the cheque to prove that the cheque was not issued towards any such liability. Section 118 of the N.I. Act stipulates that it shall be presumed and until the contrary is proved that every negotiable instrument was made or drawn for consideration. Furthermore, Section 139 of the N.I. Act inter alia stipulates that the holder of the cheque was received for discharge of whole or part of any debt or liability and such presumption is to remain unless proved to the contrary. For the said purpose, two incriminating circumstances are to exist, one is, when the drawer of the cheque admits issuance of the cheque and the other one when the complainant proves that the cheque was issued to him by the drawer in discharge of a lawful debt. When issuance of cheque is admitted by the drawer, in view of the reverse onus clause, it shall have to be presumed that there is a debt or liability to discharge with. The concept of reverse presumption has been elaborately discussed and dealt with by the Apex Court in **ANSS Rajashekar Vrs. Augustus Jeba Ananth (2020) 15 SCC 348**.

12. It is made to understand from the record that the opposite party opened the account for the petitioner to meet certain exigencies, but no such evidence was let in to prove that it was the opposite party, who was responsible for the account opened in the name of the petitioner at the Bank. Even by considering the evidence of D.W.-1, any such plea from the side of the petitioner alleging the opposite party being responsible for reviving the dormant account cannot be accepted as it is not proved thereby. It was the petitioner alone, who was entitled to manage the account and request the Bank to revive the same, if it had become dormant. That apart, as earlier stated, no dispute was ever raised by the petitioner alleging that there was any identity crisis, a ground which has been pleaded at present. According to the Court, such a ground is an afterthought and without any substance, when it had not been an issue at the time of trial.

13. The issuance of the cheque in the case at hand and denial of the same by the petitioner has not been successfully proved and therefore, the presumption is in support of the debt or liability, which would arise forthwith. The burden of proof is on the petitioner to show that there has been no liability as such, which could not be established in spite of the testimony of D.W.1. For no apparent reason, the petitioner did not examine himself and simply by referring to a fact regarding the date and month of the transaction differing with each other, the petitioner cannot be allowed to take advantage of it when the fundamental facts regarding the issuance of cheque and presentation of the same and its dishonour followed by a legal notice have been proved to the hilt. The intimation about the dishonour of the alleged cheque with a Banker's slip is prima facie evidence in view of Section 146 of the N.I. Act. The legal notice received by the petitioner is also proved through Ext. P-10 followed by the reminder notice as Ext.P-11. The postal AD of the reminder notice stands proved as Ext. P-12. With such evidence received from the side of the opposite party, it has to be held that the notice was duly served on the petitioner and received back with postal acknowledgement and hence, it was sufficient having been sent in the correct address of the drawer of the cheque in view of the Section 27 of the General Clauses Act. Considering the evidence in its entirety with reference to the provisions of the N.I. Act discussed hereinbefore and the settled position of law, it has to be concluded that the petitioner failed to discharge the onus in disproving the fact vis-à-vis debt or liability with any such rebuttal evidence and therefore, the learned J.M.F.C. did not commit any error in reaching at such a conclusion. Similarly, the learned court below while dealing with the appeal discussed and reappreciated the evidence adduced by both the sides and concluded that reverse onus lies on the petitioner which could not be proved even by preponderance of probability. A reference has been made of a case law in **Rangappa Vrs. Sri Mohan (2010) 11 SCC 441** by the learned court below in reaching at a conclusion that the petitioner was to account for and in the event, a cheque is admitted to have been issued by him, the presumption as contemplated under Section 138 of the N.I. Act has to be drawn in favour of the complainant and that mere assertion and explanation would not amount to rebuttal of the presumption. According to the Court, in order to rebut the presumption under Section 139 of the N.I. Act, the petitioner is required to prove the circumstances under which the cheque in question was issued. In the statement under Section 313 Cr.P.C, the petitioner claimed false implication in the hands of the opposite party but it has no substance to stand with. As earlier stated, the petitioner himself never stepped in to the witness box to adduce evidence and rebut the claim of the opposite party. In such view of the matter and having considered the plea of the petitioner and his defence before the learned courts below and the stand of the opposite party all along, it has to be concluded that the order of conviction and sentence does not suffer from any legal infirmity. But, at the same time, the Court is inclined to reduce the amount of compensation to Rs. 12,00,000/- (rupees twelve lac), which is fair and reasonable, as the learned courts below did not resort to any kind of exercise in that regard, rather, imposed maximum fine permissible extending upto twice the cheque amount.

14. Accordingly, it is ordered.

15. In the result, the revision petition stands disposed of and dismissed, however, with a modification of the compensation amount awarded in favour of the opposite party. It is directed that the learned J.M.F.C., Titilagarh shall have the liberty to consider payment of the compensation in installments on such terms and conditions as would be just and expedient in the facts and circumstances of the case.

(R.K. Pattanaik)
Judge

Balaram

Signature Not Verified
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Designation: PERSONAL ASSISTANT
Reason: Authentication
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