

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Revision Petition No. 381/2025

Khivraj Jat S/o Mula Ram, Aged About 35 Years, R/o Sandarda,
Tehsil Sojat, Police Station Shivpura, District Pali (Rajasthan)

-----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Om Singh Rajpurohit S/o Ram Singh, R/o Birawas, Tehsil
Sojat, Police Station Shivpura, District Pali. (Raj)

-----Respondents

For Petitioner(s)	:	Mr. Parwat Singh
For Respondent(s)	:	Mr. Surendra Bishnoi, AGA Mr. Gajraj Singh, for the respondent No.2

HON'BLE MR. JUSTICE FARJAND ALI

Order

24/02/2026

1. The present criminal revision is directed against the judgment dated 15.02.2025 passed by the learned Additional Sessions Judge, Sojat in Criminal Appeal No. 14/2022, whereby the conviction and sentence recorded by the learned Additional Chief Judicial Magistrate, Sojat in Criminal Case No. 353/2016 for the offence under Section 138 of the Negotiable Instruments Act have been affirmed.

2. The grievance raised on behalf of the petitioner relates primarily to the manner in which the appeal has been decided. It is submitted that though the appeal assailed both conviction and sentence, the learned appellate court, in the absence of the appellant, affirmed the judgment of the trial court without

undertaking an independent re-appreciation of the evidence and without dealing separately with the grounds urged in the memorandum of appeal. According to the revisionist, the disposal of the appeal, though described as being on merits, does not reflect the nature of scrutiny contemplated under Section 386 of the Code of Criminal Procedure.

3. This Court has examined the appellate judgment. The learned appellate court has set out the factual background, referred to the evidence led by the complainant, considered the return memo reflecting “insufficient funds” and “signature differ”, dealt with the plea regarding service of statutory notice, adverted to the payments made during the pendency of proceedings and applied the statutory presumptions under Sections 118 and 139 of the Act. The appeal was not dismissed for default and the merits have been addressed.

4. However, a criminal appeal against conviction carries with it a substantive statutory right. The first appellate court is the final court on facts and is expected to independently assess the entire evidence and record its own conclusions. While the appellate judgment discusses the issues raised, the reasoning substantially affirms and endorses the findings of the trial court. The discussion does not reflect a fresh and independent re-appraisal of the evidence or a distinct evaluation of the defence pleas raised in appeal.

5. The contention regarding dishonour on the ground of “signature differ” has been noticed and answered by observing

that the accused did not deny his signature and that such ground would not by itself exonerate him. The question of service of notice has been dealt with by holding that the acknowledgment bore the signature of the accused's brother residing with him. The reliance on part-payments has been treated as indicative of subsisting liability. These aspects have been considered, yet the reasoning remains largely in concurrence with the trial court's approach rather than an independent assessment of the material on record.

6. On the question of sentence, though the quantum was under challenge, the affirmation of punishment has been recorded without separate and independent consideration of proportionality or other relevant circumstances.

7. It is well settled that even where the appellant or his counsel remains absent, the appellate court may proceed to decide the appeal on merits. However, the principle of *audi alteram partem*, which underlies fair adjudication, requires that the statutory right of appeal be meaningfully exercised. The obligation of the appellate court is not merely to record concurrence with the trial court but to independently examine the record and render its own findings. Where the reasoning reflects substantial affirmation without distinct re-appreciation, the requirement of effective appellate consideration may not stand fully satisfied.

8. In revisional jurisdiction, this Court would ordinarily be slow to interfere where there are concurrent findings of fact. However, since the first appellate court is the final court on facts, and as the

judgment does not sufficiently reflect an independent re-evaluation of the evidence in the manner expected at that stage, it would be appropriate that the appeal be reconsidered so that the statutory exercise is carried out in its proper perspective.

9. Accordingly, the judgment dated 15.02.2025 passed by the learned Additional Sessions Judge, Sojat in Criminal Appeal No. 14/2022 is set aside. The matter is remanded to the learned appellate court for fresh disposal of the appeal in accordance with law after affording opportunity of hearing to both sides and after independently considering the grounds raised in the memorandum of appeal.

10. It is clarified that this Court has not expressed any opinion on the merits of the case and all issues are left open to be considered by the appellate court.

11. The revision petition stands allowed in the above terms.

(FARJAND ALI),J