



IN THE HIGH COURT OF ORISSA AT CUTTACK

A.F.R.

CRLMC No.3072 of 2025

(A petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.)

Sambhu Nath *Petitioner(s)*

-versus-

Soumya Enterprises, represented by *Opposite Party(s)*
its managing partner Manas Ranjan
Jena, Keonjhar & Anr.

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. Amlan Mohanty, Adv.*

For Opposite Party(s) : *Mr. Subash Chandra Jena, Adv.*
Mr. S.K. Jena, Adv.
Mr. S. Satapathy, Adv.
Mr. S. Sahoo, Adv.

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-05.03.2026

DATE OF JUDGMENT:-31.03.2026

Dr. SanjeebK Panigrahi, J.

1. The petitioner in the present petition challenges the order dated 15.05.2025 passed by the learned Additional Sessions Judge, Champua in Criminal Revision Case No. 03 of 2024, whereby the order dated 20.01.2024 passed by the learned J.M.F.C., Barbil in I.C.C. Case No. 21 of 2020 was affirmed.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:



- i. The petitioner/complainant had advanced a friendly loan of Rs.5,00,000/- (Rupees Five Lakhs) to the Opposite Parties in the month of January, 2020 due to their urgent business needs, with an assurance to repay the same by March, 2020. In discharge of the said liability, Opposite Party No. 2, in his capacity as Managing Partner of Opposite Party No. 1, issued a post-dated cheque bearing No. 093016 dated 16.03.2020 drawn on Indian Bank, Joda Branch in favour of the petitioner, with instructions to present the same on the due date.
- ii. When the complainant presented the said cheque for encashment through Syndicate Bank, Barbil Branch on 16.03.2020, the same was returned unpaid vide bank memorandum dated 08.05.2020 stating that the funds were insufficient.
- iii. The petitioner contacted the Opposite Parties and informed them of the dishonour of the cheque, but the Opposite Parties failed to make payment of the said amount.
- iv. Thereafter, the petitioner/complainant caused a legal notice to be issued to the Opposite Parties on 14.05.2020 by registered post with A.D., calling upon them to pay the cheque amount within 15 days. However, the Opposite Parties failed to comply with the said notice.
- v. As the Opposite Parties did not make payment, the petitioner filed a complaint under Section 138 of the N.I. Act, which was registered as I.C.C. No. 21 of 2020 before the court of the learned J.M.F.C., Barbil.
- vi. Upon filing of the complaint, the sworn statement of the P.O.A. holder was recorded, and the petitioner proved the documents



relating to issuance of notice. The learned court took cognizance of the offence and issued process against the Opposite Parties.

- vii. In response to the summons, the Opposite Parties appeared through counsel and denied the allegations made against them.
- viii. To prove his case, the petitioner examined himself as C.W.1, examined the Branch Manager as C.W.2, and relied upon certain documents. The P.O.A. holder was examined-in-chief and was partly cross-examined on 29.09.2023.
- ix. During the pendency of the cross-examination of the P.O.A. holder, the Opposite Parties filed a petition on 08.11.2023 seeking to summon the complainant, namely Sambhu Nath, to depose along with the P.O.A. holder. The same was allowed by the learned J.M.F.C., Barbil vide order dated 20.01.2024.
- x. Being aggrieved by the said order, the petitioner preferred a revision under Section 397 Cr.P.C. before the learned Additional Sessions Judge, Champua in Criminal Revision Case No. 03 of 2024. The revisional court dismissed the revision and affirmed the order of the learned trial court. Aggrieved thereby, the petitioner has filed the present petition.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel for the petitioner made the following submissions in support of his contentions:
 - i. The petitioner submitted that the impugned order is illegal, irregular, and unsustainable in the eye of law.



- ii. It was further contended that the learned trial court failed to appreciate the materials on record in their proper perspective and passed the impugned order in a hyper-technical manner.
- iii. The petitioner submitted that the P.O.A. holder is well aware of the facts and circumstances of the case as well as the transactions in question.
- iv. It was contended that the learned court below failed to apply its judicial mind in allowing a vexatious application filed by the Opposite Parties at a stage where no such request ought to have been entertained, thereby resulting in abuse of process of law.
- v. The petitioner submitted that during the stage of prosecution evidence, neither had the evidence been closed nor had all witnesses been examined, and therefore, entertaining such an application for summoning a witness for the prosecution is contrary to settled principles of law.
- vi. It was further contended that the right to choose witnesses lies with the complainant, and the accused have no right to seek summoning of prosecution witnesses at such stage of trial.
- vii. The petitioner submitted that the complaint has been filed through a P.O.A. holder and is primarily based on documentary evidence, rendering the personal examination of the complainant unnecessary.
- viii. It was contended that where the attorney holder has personal knowledge of the transactions, such attorney holder alone is competent to depose, and in the present case, the P.O.A. holder has complete knowledge.



- ix. The petitioner submitted that for adjudication under Section 138 of the N.I. Act, the necessary ingredients can be established through the evidence already adduced by the P.O.A. holder.
- x. It was contended that summoning the complainant to examine issues such as source of income or I.T. returns is unnecessary, particularly when there is material to establish a legally enforceable debt.
- xi. The petitioner further submitted that the learned court below committed an illegality in directing summoning of the complainant during the pendency of cross-examination of the P.O.A. holder.
- xii. It was finally contended that the impugned order is based on surmises and conjectures rather than the materials on record.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. Per contra, learned counsel for the opposite parties made the following submissions in support of his contentions:
 - i. A P.O.A. holder cannot depose for the principal in respect of acts done by the principal, nor can he depose on matters which are within the personal knowledge of the principal.
 - ii. It was contended that the deposition of the complainant, namely Sambhu Nath, is necessary to bring clarity to the facts of the case and in the interest of justice, and that the claim of the petitioner that the deposition of the P.O.A. holder alone is sufficient is misplaced.
 - iii. It was further contended that the learned court below has rightly exercised its jurisdiction in summoning the complainant and that the impugned order does not suffer from any illegality, perversity or non-application of mind so as to warrant interference.



IV. COURT'S REASONING AND ANALYSIS

1. Heard learned counsel for the parties and perused the materials available on record.
2. The central issue for consideration in the present case is whether the learned trial court erred in allowing the application filed by the Opposite Parties for summoning the complainant for examination, despite the complaint under Section 138 of the Negotiable Instruments Act, 1881 being prosecuted through a Power of Attorney holder.
3. At the outset, it is apposite to advert to the settled position of law governing the role of a Power of Attorney holder in proceedings under Section 138 of the Negotiable Instruments Act, 1881.
4. The Supreme Court in *A.C. Narayanan v. State of Maharashtra*¹ observed that filing of a complaint under Section 138 of the N.I. Act through a power of attorney is legally permissible and that a power-of-attorney holder can depose and verify the contents of the complaint on oath, provided he has witnessed the transaction or has due knowledge thereof. The relevant observations are replicated hereinunder:

“29. From a conjoint reading of Sections 138, 142 and 145 of the NI Act as well as Section 200 of the Code, it is clear that it is open to the Magistrate to issue process on the basis of the contents of the complaint, documents in support thereof and the affidavit submitted by the complainant in support of the complaint. Once the complainant files an affidavit in support of the complaint before issuance of the process under Section 200 of the Code, it is thereafter open to the Magistrate, if he thinks fit, to call upon the complainant to remain present and to examine him as to the facts contained in the affidavit

¹(2014) 11 SCC 790.



submitted by the complainant in support of his complaint. However, it is a matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the court and to examine him upon oath for taking decision whether or not to issue process on the complaint under Section 138 of the NI Act. For the purpose of issuing process under Section 200 of the Code, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the NI Act. It is only if and where the Magistrate, after considering the complaint under Section 138 of the NI Act, documents produced in support thereof and the verification in the form of affidavit of the complainant, is of the view that examination of the complainant or his witness(s) is required, the Magistrate may call upon the complainant to remain present before the court and examine the complainant and/or his witness upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the NI Act.”

“33.1. Filing of complaint petition under Section 138 of the NI Act through power of attorney is perfectly legal and competent.

33.2. The power-of-attorney holder can depose and verify on oath before the court in order to prove the contents of the complaint. However, the power-of-attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the said transactions.

33.3. It is required by the complainant to make specific assertion as to the knowledge of the power-of-attorney holder in the said transaction explicitly in the complaint and the power-of-attorney holder who has no knowledge regarding the transactions cannot be examined as a witness in the case.

33.4. In the light of Section 145 of the NI Act, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the



complaint under Section 138 of the NI Act and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant or his witness upon oath for taking the decision whether or not to issue process on the complaint under Section 138 of the NI Act.

33.5. The functions under the general power of attorney cannot be delegated to another person without specific clause permitting the same in the power of attorney. Nevertheless, the general power of attorney itself can be cancelled and be given to another person."

5. Thus, it is evident that while a complaint under Section 138 of the N.I. Act can be validly instituted and prosecuted through a Power of Attorney holder, such arrangement does not create an absolute bar against the examination of the complainant. The court retains the discretion to summon the complainant where the facts and circumstances of the case so warrant, particularly in respect of matters falling within his personal knowledge, which cannot be adequately addressed through the Power of Attorney holder.
6. In light of the above position, the question that arises is whether the discretion exercised by the learned trial court in summoning the complainant suffers from any illegality or material irregularity.
7. In the present case, it is not in dispute that the complaint has been prosecuted through a Power of Attorney holder, who has already been examined-in-chief and partly cross-examined. The application for summoning the complainant was made during the course of such cross-examination, indicating that certain aspects of the transaction required further clarification.



8. The learned trial court, taking note of the stage of the proceeding and the nature of the evidence, has recorded that the Power of Attorney holder may not be in a position to answer all material questions, particularly those falling within the personal knowledge of the complainant, and that his examination is necessary for a proper and effective adjudication of the case. The learned revisional court, upon reappraisal of the record, has concurred with the said view and has held that the discretion exercised by the trial court is in consonance with the settled legal position.
9. Upon consideration of the reasoning assigned by the courts below, this Court does not find any infirmity therein. The learned trial court has exercised its discretion having due regard to the stage of the proceedings and the nature of the evidence, and has recorded reasons for summoning the complainant, particularly in respect of matters falling within his personal knowledge. The said view has been duly examined and affirmed by the learned revisional court. In such circumstances, the exercise of discretion cannot be said to be arbitrary or contrary to law, nor does it suffer from any illegality or non-application of mind so as to warrant interference by this Court.
10. The contention of the petitioner that the complainant cannot be summoned once the proceedings are conducted through a Power of Attorney holder is misconceived, inasmuch as the law does not impose any such restriction.
11. In such circumstances, no ground is made out to interfere with the concurrent findings of the courts below.



V. CONCLUSION:

12. In view of the foregoing discussion, this Court finds no merit in the present petition. The impugned order passed by the learned trial court, as affirmed by the learned revisional court, does not suffer from any illegality, perversity or material irregularity warranting interference by this Court.
13. Accordingly, the CRLMC stands **dismissed**.
14. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 31st March, 2026/