



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLLP No.17 of 2021

(In the matter of an application under Section 419(4) of Bharatiya Nagarik Suraksha Sanhita, 2023 corresponding to Section 378(4) of Criminal Procedure Code, 1973).

Ashok Kumar Pati *Appellant (s)*

-versus-

Jagannath Barik *Respondent (s)*

Advocates appeared in the case through Hybrid Mode:

For Appellant (s) : *Mr. Ashok Kumar Behera, Adv.*

For Respondent (s) : *Mr. R. Behera, Adv.*

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-09.04.2026

DATE OF JUDGMENT:-17.04.2026

Dr. Sanjeeb K Panigrahi, J.

1. The Appellant has filed the instant CRLLP under Section 378(4) of the Code of Criminal Procedure, 1973/ Section 419(4) of Bharatiya Nagarik Suraksha Sanhita, 2023, invoking the appellant jurisdiction of this Court. The appeal is preferred against the Judgment dated 03.05.2021 passed by the learned J.M.F.C, Jajpur, in J.O. Code-OD-00825, in 1CC Case No. 295/2018 (T.R. No. 92/2021), whereby the Respondent has been acquitted for the offence committed under Section 138 of Negotiable Instrument Act, 1881.

I. FACTUAL MATRIX OF THE CASE:

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



- (i) On 02.11.2018, the Appellant instituted a complaint petition, being 1CC Case No. 295 of 2018, under Section 138 of the Negotiable Instrument Act, 1881, against the Respondent, alleging dishonour of a cheque issued by the Respondent in favour of the Appellant towards discharge of a legally enforceable debt/liability.
- (ii) It was stated therein that the Appellant and the Respondent were well acquainted with each other, being residents of the same village. The Respondent had taken a cash loan of Rs. 4,50,000/- from the Appellant to meet the expenses of his daughter's marriage, with a promise to repay the said amount within 15 days from the date of receipt.
- (iii) Thereafter, the Respondent received the said amount but failed to repay the same within the stipulated period as promised. Despite repeated demands made by the Appellant, the Respondent avoided repayment on one pretext or the other.
- (iv) Ultimately, on 24.06.2018, the Respondent issued a cheque bearing No. 012455 drawn on Bank of India, Chittalo Branch, Jajpur for an amount of Rs. 4,50,000/- in favour of the Appellant, assuring that sufficient funds were available in his account for its encashment. Thereafter, on 24.09.2018, the Appellant presented the said cheque in his collecting bank, i.e., Union Bank of India, Jajpur Town Branch, for encashment, but the same was returned unpaid with the endorsement "Funds Insufficient".



- (v) Thereafter, on 10.10.2018, the Appellant issued a statutory demand notice under Section 138 of N.I. Act, 1881, to the Respondent by registered post, demanding payment of the cheque amount, which was duly received by the Respondent.
- (vi) On the basis of the said complaint, a complaint case was registered on 02.11.2018, wherein the initial statement of the complainant under Section 200 of Cr.P.C. was recorded on 05.01.2019, and cognizance under Section 138 of N.I. Act, was taken against the Respondent.
- (vii) Thereafter, the Appellant substantiated his case by adducing both oral as well as documentary evidence. The learned Magistrate framed as many as six issues for determination; however, upon an erroneous appreciation of the materials on record, vide judgment dated 03.05.2021, acquitted the Respondent by holding him not guilty of the offence punishable under Section 138 of N.I. Act, 1881.

Being aggrieved by the aforesaid facts and circumstances, the Petitioner has been constrained to approach this Court by way of the present criminal appeal.

II. SUBMISSIONS ON BEHALF OF THE APPELLANT:

- 3. The learned counsel for the Appellant respectfully and earnestly made the following submissions in support of his contentions:
 - (i) The Appellants submits that the judgment of acquittal passed by the learned J.M.F.C , Jajpur, whereby the appellant has been



acquitted, is wholly erroneous, unsustainable both on facts and in law, and is liable to be set aside.

- (ii) The Appellant further submits that the learned Trial Court has failed to properly appreciate the materials and evidences available on record and thereby erroneously recorded the order of acquittal. It is contended that the learned Court below has not applied the cardinal principles of criminal jurisprudence and the settled principles governing appreciation of evidence, as a result of which the impugned judgment has become legally unsustainable.
- (iii) The Appellants contends that the learned Magistrate has lost sight of the admitted factual matrix, namely that the cheque in question was issued by the Respondent on 24.06.2028; the same was presented by the complainant for encashment and was returned unpaid by the bank on 24.09.2018; thereafter, a statutory demand notice was issued on 10.10.2018, which was duly received by the Respondent on 11.10.2018; and consequently, the complaint petition was filed on 02.11.2018, well within the prescribed period of limitation.
- (iv) The Appellant further submits that the learned Magistrate has committed a grave error in disregarding the categorical admission made by the accused during his cross-examination; wherein he admitted the receipt of the demand notice dated 10.10.2018, albeit without specifying the exact date of receipt. It is contended that, such an admission being a material and



undisputed fact, the learned magistrate ought not to have disbelieved or ignored the same.

- (v) The Appellant further contends that the learned Magistrate, without proper application of judicial mind, has accepted the plea of fraud in respect of the admittedly issued cheque, which was raised by the Respondent for the first time after an inordinate delay of nearly two years. It is submitted that such a belated and unsubstantiated plea ought not to have been entertained, particularly in the face of admitted issuance of the cheque.
- (vi) The Appellant further submits that the learned Magistrate has misinterpreted the relevant provisions of law, in holding that the was premature on the ground that it had not been filed after the expiry of thirty days, and consequently, that no cause of action had arisen under the N.I Act. It is contended that, on such erroneous reasoning, the learned Magistrate proceeded to acquit the accused, which finding is legally unsustainable.

III. SUBMISSIONS ON BEHALF OF THE RESPONDENT:

- 4. *Per contra*, the learned counsel for the Respondent earnestly made the submission that the present CRLLP deserves to be rejected in limine.
 - (i) The Respondent submits that, the learned Magistrate, upon proper appreciation of the oral and documentary evidence available on record, has rightly passed the impugned judgment of acquittal against the Respondent. The findings recorded by the learned Magistrate are well-reasoned, based on cogent and



credible evidence. Therefore, it is humbly prayed that the judgment of acquittal passed by the learned Magistrate be upheld and the appeal preferred by the Appellant be dismissed.

- (ii) It is vehemently contended on behalf of the Respondent that the prosecution has successfully established the commission of the offence under Section 138 of N.I. Act, by adducing cogent, credible, and reliable evidence, thereby proving the case beyond all reasonable doubts.
- (iii) It is further submitted that the testimony of the complainant, in itself, is sufficient to sustain the order of acquittal, and the same stands duly corroborated by the surrounding circumstances brought on record. It is therefore, contended that the learned Magistrate has rightly arrived at the conclusion that the Appellant had not committed the offence as alleged.
- (iv) The Respondent submits that there is no longer res integra and stands settled by a catena of judgments of the Supreme Court, wherein it has been consistently held that the power to permit production of additional evidence at the appellate stage is not to be exercised in a routine or casual manner, but only in exceptional circumstances. It is further contended that such discretion may be invoked only where the party seeking to adduce additional evidence establishes that, despite due diligence, it was prevented from producing the same during the course of trial.



- (v) The Respondent further submits that on 24.06.2018, he issued a Cheque bearing No. 012455, drawn on Bank of India, Chittalo Branch, Jajpur, for an amount of Rs. 4,50,000/- , assuring that sufficient funds were available in his account for due realization of the said cheque.
- (vi) The Respondent contends that, out of grudge and undue anxiety, the complainant has devised the present proceedings with an oblique motive to harass his father-in-law, as D.W.1 did not accede to the proposal land transaction in accordance with the complainant's wishes.
- (vii) The Respondent further contends that, as evident from the ocular evidence elicited during the cross-examination of C.W.1, it has been admitted that the accused had filled in the particulars on the cheque and handed over the same to the complainant. It is further stated that the witness could not even recollect whether the entries on the cheque were written in English or any other language, thereby rendering his version doubtful and unreliable.

IV. FINDINGS OF THE J.M.F.C, JAJPUR:

- 5. The learned Trial Court framed charges under Section 138 of N.I. Act, alleging that the Opp. Party has not committed the alleged offence. Upon conclusion of the trial and appreciation of the evidence adduced by the prosecution, it was found that the Opp. Party was not guilty and accordingly acquitted him.



6. Upon appreciation of the oral and documentary evidence available on record, the learned Magistrate held that sufficient materials were not available to substantiate the charges framed against the Opp. Party. On a careful evaluation of the testimonies of the witnesses, the learned Trial Court arrived at the conclusions that there was no such dishonour of cheque. Accordingly, the Trial Court held that the charges under Section 138 of N.I. Act does not stood proved.
7. The accused admitted that the signature was executed in Odia language, and he alleged that the complainant had played fraud and deception while obtaining his signatures on certain bank documents for the purpose of opening a bank account. The said circumstances, according to the defence, stand corroborated by the testimony of D.W.2.
8. The evidence on record pertaining to issuance of the statutory legal demand notice, as well as the returned postal A.D. or the tracking report indicating the date of receipt of the said notice, has not been placed on record by the complainant so as to corroborate the ocular testimony with the averments in the complaint petition.
9. On the basis of the aforesaid findings, the learned Magistrate concluded that the prosecution had not successfully established the offence under Section 138 of N.I. Act. Consequently, the accused was acquitted.

V. COURT'S REASONING AND ANALYSIS:

10. The offence under Section 138 of Negotiable Instrument Act, 1881, necessitates a careful and meticulous scrutiny of the entire factual



matrix, having regard to the legislative intent underlying the provision. The statement of Objects and Reasons of Act 66 of 1988 makes it abundantly clear that the provision was introduced "...to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the accounts or for the reason that it exceeds the arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers". Thus, the provision seeks to strike a delicate balance between ensuring the credibility of commercial transactions and protecting bona fide drawers from undue prosecution.

11. The appellant/complainant, being a person aggrieved by the dishonour of cheque, squarely falls within the ambit of a "*victim*" as contemplated under the proviso to Section 372 of the Cr.P.C/ Section 413 of the BNSS, read with the definition of "*victim*" under Section 2(wa) of the Cr.P.C. In such view of the matter, the Appellant was contemplated to prefer an appeal in his capacity as a victim and was not required to invoke the provision of Section 378(4) of the Cr.P.C/ Section 419(4) of the BNSS.
12. In the context of offences under the N.I. Act, 1881, particularly those falling within the ambit of Section 138 thereof, the complainant is undeniably the aggrieved party, having suffered pecuniary loss and legal injury on account of the default in payment by the accused consequent upon dishonour of the cheque, which is statutorily deemed to constitute an offence, in such circumstances, it would be



just, reasonable and in consonance with the underlying spirit of the Cr.P.C to hold that the complainant under the Act would also fall within the definition of a “victim” as envisaged under Section 2(wa) of the Cr.P.C/ Section 2(1)(y) of the BNSS. Consequently, such a complainant would be entitled to avail the benefit of the proviso to Section 372 of Cr.P.C/ Section 413 of BNSS, thereby enabling him to maintain an appeal against an order of acquittal in his own right, without the necessity of seeking special leave under Section 378(4) of the Cr.P.C/ Section 419(4) of the BNSS.

13. This Court also places reliance upon the decision of the Supreme Court in **M/s. Celestium Financial v. A. Gnanasekaran**¹, wherein a similar interpretation has been adopted. In the said decision, reference has been made to the judgment in was echoed by referring to the case of **Mallikarjun Kodagali (dead) represented through Legal Representative v. State of Karnataka**², (herein referred as **Mallikarjun Kodagali**), wherein the Supreme Court took note of four significant reports dealing with the the rights of victims of crime and the remedies available to the victim. The same may be briefly discussed as hereunder:

- i. *The first report is the 154th Report of the Law Commission of India of August, 1996. The said Report touched upon, inter alia, compensation to be paid to the victim of crime their rehabilitation, etc.*
- ii. *In March 2003, Justice Malimath Committee submitted its report on ‘Reforms of Criminal Justice System’. Paragraph*

¹ 2025 (SC) 666

² (2019) 2 SCC 752



2.21 in the chapter on Adversarial Rights under the subheading of 'Victims Right to Appeal', states as under:

"2.21. The victim or his representative who is a party to the trial should have a right to prefer an appeal against any adverse order passed by the Trial Court. In such an appeal he could challenge the acquittal, or conviction for a lesser offence or inadequacy of sentence, or I. regard to compensation payable to the victim. The appellate court should have the same powers as the trial court in regard to assessment of evidence and awarding of sentence."

There is also discussion on the other rights of victims under the Chapter titled, 'Justice to Victims'. In paragraph 6.(14)(v), Justice Malimath Committee made the following recommendations:

"6.(14)(v) The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence or granting inadequate compensation. Such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court."

- iii. In July 2007, a report of the Committee on the Draft National Policy on Criminal Justice was submitted which is also known as '**Professor Madhava Menon Committee Report**'. Observations with regard to providing victim-oriented criminal justice and a balance between the constitutional rights of an accused and victim of crime have been discussed. One of the suggestions made is that the victim must be impleaded in the trial proceedings so that such a party would have right to file an appeal against an adverse order, particularly an order of acquittal.
- iv. In the 221st Report of the Law Commission of India submitted in April, 2009, it has been noted that as the law then stood, an aggrieved person could not file an appeal against an order of acquittal. However, a revision petition could be filed. Nothing that the powers of a revisional court



are limited and the process involved is cumbersome, a recommendation was made by the Law Commission that as against an order of acquittal passed by a Magistrate, a victim should be entitled to file an appeal before the revisional court. Similarly, in complaint case, the appeal should be provided to the Sessions Court instead of the High Court. However, it was suggested that the aggrieved person on complaint should have the right to prefer an appeal with the leave of the appellate court.

- v. *It was further recommended that Section 378 of the Cr.P.C requires an amendment with a view to enable filing of appeals in complaint cases also in the Sessions Court in the case of Mallikarjun Kodagali. There are Division Bench decisions of the High Court taking different views. Mallikarjun Kodgali and referred to the Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the General Assembly of the United Nations in the 96th Plenary Session on 29.11.1985. wherein, it was observed that:*

“75. Under the circumstances, on the basis of the plain language of the law and also as interpreted by several High Courts and in addition the resolution of the General Assembly of the United Nations it is quite clear to us that a victim as defined under Section 2(wa) Cr.P.C would be entitled to file an appeal before the Court to which an appeal ordinarily lies against the order of conviction....

76. The language of the proviso to Section 372 Cr.P.C is quite clear, particularly when it is contrasted with the language of Section 378(4) Cr.P.C. The text of this provision is quite clear and it is confined to an order of acquittal passed in a case instituted upon a complaint. The word “complaint” has been defined in Section 2(d) Cr.P.C and refers to any allegation made orally or in writing to a Magistrate. This has nothing to do with the lodging or the registration of an FIR, and therefore it is not at all necessary



to consider the effect of a victim being the complainant as far as the proviso to Section 372 Cr.P.C is concerned."

14. It is by virtue of the amendment act of 2009 that the proviso to Section 372 of Cr.P.C came to be incorporated, thereby conferring upon the victim a statutory right to prefer an appeal against an order of acquittal. The Court has observed that the definition of "victim" is of an inclusive nature, intended to encompass any person who has suffered loss or injury as a consequence of the act or omission for which the accused has been charged. The said provision read as follows:-

"Section 2(wa) of Cr.P.C/ Section 2(1)(y) of BNSS- "Victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charges and the expression victim includes his or her guardian or legal heir."

In the present case in hand, the Appellant is aggrieved by the Judgment dated 03.05.2021 passed by the learned J.M.F.C, Jajpur, whereby the Respondent has been acquitted of the charge. In such circumstances, the Appellant, having suffered legal injury on account of the said acquittal, squarely falls within the ambit of a "victim" in relation to the offence in question. Consequently, the Appellant is duly entitled, in law, to prefer an appeal against the order of acquittal by invoking the proviso of Section 372 of CrPC/ Section 413 of the BNSS, which specifically confers such a right, without recourse to any other provision.



15. On the plain reading of the provision *Section 372 of the Cr.P.C/ Section 413 of the BNSS* makes it abundantly clear that *No appeal to lie unless otherwise provided* and states that-

“No appeal shall lie from any judgment or order of a Criminal Court except as provided by this Code by any other law for the time being in force.

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.”

In consequence of the aforesaid provision, the appropriate forum for the Appellant was to initially approach the Court of Sessions, where the statutory remedy was efficaciously available. Resort to such forum would have ensured expeditious consideration and effective adjudication of the grievance by invoking the remedy contemplated under the said provision.

16. In the case involving an offence under Section 138 of the N.I. Act, this Court is of the considered view that the complainant, having suffered on account of the dishonour of a cheque, squarely falls within the category of a “victim”. In such circumstances, the complainant is entitled to invoke the proviso to Section 372 of the CrPC/ Section 413 of the BNSS and may avail the remedy provided therein. It is therefore, not obligatory for the complainant to resort to the provisions of Section 378 of the CrPC/ 419 of the BNSS for preferring an appeal against an order of acquittal.



17. The complainant in a proceeding under Section 138 of the N.I. Act, being the person who has suffered on account of the dishonour of the cheque, is in fact the “victim” and, as such, is entitled to prefer an appeal under the said provision. Merely because the proceeding under Section 138 of the Act is initiated by way of a complaint under Section 200 of the CrPC, the complainant does not lose the character of a victim, inasmuch as it is only the person aggrieved by the dishonour who is competent to set the criminal law in motion. Thus, in proceedings under Section 138 of the Act, the complainant and the victim are, in essence, one and the same person, and are entitled to avail the remedies conferred upon a victim under law.
18. In the aforesaid circumstances, this Court finds that Section 138 of the N.I. Act, 1881, being a penal provision engrafted by way of a legal fiction, contemplates prosecution at the instance of the person aggrieved by the dishonour of the cheque. Consequently, in the event of an order of acquittal, such a person, being the one entitled to the proceeds of the dishonoured cheque, would squarely fall within the ambit of a “victim”. As such, he is legally contemplated to assail the order of acquittal by invoking the proviso to Section 372 of the CrPC/ Section 413 of BNSS, and to pursue the remedy of appeal in his capacity as a victim under the said provisions.
19. It is also pertinent to note that the role of the State in prosecutions under Section 138 of the N.I., 1881, is conspicuously minimal, inasmuch as such proceedings are instituted by way of a private complaint under Section 200 of the Cr.P.C. Further, Section 143 of the



Act, by express legislative mandate, incorporates the procedure prescribed under the Cr.P.C for the trial of such offences, which are deemed to be criminal in nature.

20. In view of the aforesaid statutory scheme, the complainant, being the person who has suffered on account of the dishonour of the cheque, must necessarily be construed as a “victim” within the meaning of Section 2(wa) of the CrP.C/ Section 2(1)(y) of the BNSS. Consequently, such a complaint is entitled, in law, to prefer appeal against an order of acquittal by invoking the proviso to Section 372 of the Cr.P.C/ Section 413 of the BNSS, in his capacity as a victim of the offence.
21. In view of the foregoing discussions, this is of the considered opinion that a victim of an offence possesses an independent and substantive right to prefer an appeal under Section 372 of the CrPC/ Section 413 of BNSS, irrespective of whether such victim is also the complainant in the case. Even where the victim assumes the role of a complainant, he does not forfeit or dilute the said right and may, in law, avail the remedy under the proviso to Section 372 of the Cr.P.C./ Section 413 of the BNSS, without being compelled to resort to sub-section (4) of Section 378 of the CrPC/ Section 419 of BNSS.

VI. CONCLUSION:

22. In view of the foregoing analysis and upon an anxious and meticulous consideration of the material facts and circumstances of the case, this Court is of the considered and firm opinion that the CRLLP stands **disposed of.**



23. However, with a direction that, the liberty is reserved in favour of the Appellant to avail the appropriate statutory remedy by preferring an appeal against the order of acquittal, in terms of the proviso to Section 372 of CrPC/ Section 413 of the BNSS, within a reasonable time. Consequently, this Court is not inclined to accede to the relief sought for by the Appellant.
24. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

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