



1

CRR-2494-2018

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE GAJENDRA SINGH

CRIMINAL REVISION No. 2494 of 2018*BADRI PRASAD OJHA**Versus**SHUBHAM HARDWARE STORES THROUGH SUDHIR*

.....  
Appearance:

Shri Raghvendra Singh Raghuvanshi - Advocate for the petitioner.

Shri Manoj Kumar Soni- Advocate for the respondent.

.....  
WITH

CRIMINAL REVISION No. 5111 of 2018

*SHUBHAM HARDWARE PROP. SUDHIR S/O RAMAJI PATNI AGED  
35 YEARS*

*Versus**BADRIPRASAD*

.....  
Appearance:

Shri Manoj Kumar Soni- Advocate for the petitioner.

Shri Raghvendra Singh Raghuvanshi - Advocate for the petitioner.

.....  
(Heard on: 24.02.2026)

(Delivered on: 22.06.2026)

ORDER

Both the criminal revision has been preferred against the order dated 04.05.2018 in Criminal Appeal No.482/2017 passed by the learned 13th Additional Sessions Judge, arising out of judgment dated 28.07.2017 passed by the learned J.M.F.C., Indore in RCT No.15733/2011 whereby the conviction of the revision petitioner under Section 138 of the Negotiable



Instruments Act, 1881 recorded by the trial Court, has been affirmed. but the sentence of six months rigorous imprisonment and compensation of Rs.6,50,628/- with a default stipulation of one month's simple imprisonment was modified by setting aside the substantive sentence of six months' rigorous imprisonment and directing payment of interest at the rate of 9% per annum from 10.08.2011 on the cheque amount of rupees Rs.4,22,486/- along with compensation of Rs.6,50,628/- with default stipulation of six months SI.

2. Facts of the case in brief are that:- a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 was preferred on behalf of M/s Shubham Hardware through its Proprietor, Shri Sudhir Patni mentioned the fact that M/s Shubham Hardware is engaged in the business of supplying parts used for assembling truck bodies whereas Shri Badriprasad Ojha was engaged in the business of truck body assembling under the titling of 'Mukesh Body Builder' situated at Mangal Nagar, A.B. Road, near Rajiv Gandhi crossing, Indore. They have commercial relationship and Badriprasad Ojha purchased the materials required for assembling truck bodies from the complainant. Bill No.1565 dated 01.06.2011 for an amount of Rs.2,38,227/- and Bill No.1807 dated 16.05.2011 value of Rs.1,84,259/- were issued, in total sum of Rs.4,22,486/- were issued against Ravi Prasad Ojha. Badriprasad Ojha issued a Cheque No.057451 dated 08.06.2011 value of Rs.4,22,486/- drawn on his account maintained with Transport Cooperative Bank Ltd., Indore. It was further submitted that Shri Sudhir Patni, presented the aforesaid cheque for encashment through his banker, Bank of Baroda, Transport Nagar Branch, Indore. However, the cheque was dishonoured and



returned unpaid vide bank return memo dated 10.06.2011 with the endorsement "Insufficient Funds". Thereafter, despite requests made by the complainant for payment of the cheque amount, the accused, Shri Badriprasad Ojha, failed to discharge his liability. Consequently, the complainant, through his counsel Shri Lalit Soni, issued a notice dated 18.06.2011 to the accused. The said notice was duly served upon the accused on 28.06.2011. However, the accused neither made payment of the cheque amount within the prescribed period nor complied with the demand made in the notice. Instead, he sent a reply to the notice through his counsel Shri Suresh Sharma on 04.07.2011. Accordingly, the complaint was filed on 29.07.2011. Sudhir Patni filed an affidavit under section 145 of the Negotiable Instruments Act, 1881 and adduced the Exhibit-P/1 to P/11 to substantiate the allegations contained in the complaint. In defence, the accused, Shri Badriprasad Ojha, after seeking permission from the Trial Court by filing an application under Section 315 of the Code of Criminal Procedure, 1973 and examined himself as DW-1 with defense that his son, Mukesh Ojha, was engaged in the business of truck body building and that the transactions in question were connected with the said business. Badriprasad Ojha, submitted that his son, Mukesh Ojha, had business dealings with M/s Shubham Hardware. According to the accused, his son had purchased certain materials from the M/s Shubham Hardware in the year 2003 and M/s Shubham Hardware had insisted upon furnishing security whereupon the accused had handed over a blank signed cheque as a security cheque. It was further stated that the materials supplied by M/s Shubham



Hardware were not of the requisite quality, resulting in disputes between the parties and settlement of accounts thereafter. According to the accused, following the said dispute, no business transactions took place between M/s Shubham Hardware and his son after the year 2003. The accused further stated that he had subsequently demanded the return of the security cheque. However, the complainant assured him that the cheque had already been destroyed. Relying upon such assurance, the accused took no further steps regarding the cheque. Thereafter this complaint has been preferred misusing the blank signed cheque after a period of more than seven years. Badriprasad Ojha examined his brother Rambabu as DW-2.

3. Appreciating the evidence trial court convicted and sentence the appellant and appellate court affirmed the conviction and modified the sentence as mentioned in para-1 of the order.

4. Challenging the conviction as well as sentence CRR No.2494/2018 has been preferred by Badriprasad Ojha and challenging the modification of the sentence awarded by the trial court CRR No.5111/2018 has been preferred by the M/s Shubham Hardware.

5. Trial court has discarded the defense of Badriprasad Ojha recording the finding in para-13 that in examination under section 313 of the Cr.P.C., 1973 Badriprasad Ojha had admitted that Sudhir Patni runs the business in the title of M/s Shubham Hardware Stores and recorded the finding in para-12 that Badriprasad Ojha is not consistent in his statement and after settlement of the accounts there was no business transaction



5

CRR-2494-2018

between Badriprasad Ojha and his son and M/s Shubham Hardware and Exhibit-P/1 and P/2 are payment in the course of business and there is no reason to discard them and attracted presumption under section 118(a) and 139 of the of the Negotiable Instruments Act, 1881 and further recorded the finding that Badriprasad Ojha could not rebut the presumption as he has not lodged any complaint in the police station that his cheque has not been returned and approached to Sudhir Patni for compromise and thereafter the trial court has affirmed the findings.

6. Perusal of both the judgments reveals that trial court has not dealt with the issue that cheque of the series issued after Exhibit-P/3 were issued in the year 2003 and appellate court also did not deal with the defence in this regard whereas in reply Exhibit-P/11 dated 04.07.2011 to notice Exhibit-5 dated 18.06.2011. Badriprasad Ojha have raised the issue that there was no relation since 2003 and the cheque was issued as security cheque prior to year 2003.

7. Now come to the bank statement of Badriprasad Ojha for the period of 01.06.2023 to 29.06.2007 maintained with Transport Cooperative Bank, Branch Transport Nagar, Indore and it mentions the details of the cheque issued as below:-

Cheque No.	Date	Value
57452	23.06.2003	Rs.2,000/-
57453	28.07.2003	Rs.2,500/-
57456	11.08.2003	Rs.1,500/-
57454	14.09.2023	Rs.2,000/-
57464	06.11.2003	Rs.2,000/-



6

CRR-2494-2018

57462	02.11.2003	Rs.3,000/-
57465	03.12.2003	Rs.5,000/-
57466	06.01.2004	Rs.4000/-
57468	09.01.2004	Rs.2,000/-
57469	10.08.2004	Rs.43,000/-
57471	11.08.2004	Rs.22,000/-
54076	12.08.2004	Rs.5000/-

8. The above description of the cheque reveals that the cheque bearing number 57452 and thereafter are issued in the year 2003 and 2004 and para-16 of Sudhir Patni examined as PW-1 admits that cheque Exhibit P/3 bears signature of Badriprasad Ojha but the name, amount and date are filled by person accompanied by Badriprasad Ojha and in Para-14 he has admitted that invoices Exhibit-P/1 and P/2 does not bear signature of accused Badriprasad Ojha and in para-15 he further admits that there is no receipts that could demonstrate delivery of goods on 01.01.2011 to accused Bardriprasad Ojha.

9. When analyse with the averments the cheque is stated to be issued after a period of 8 years from the utilization of cheque of Sl. No.57452 dated 23.06.2023 and this cheque appears only signature of Badriprasad Ojha, and the rest of the details are not filled by Badriprasad Ojha and Exhibit-P/1 and P/2 also does not bears the signature of Badriprasad Ojha, the evidence taken together satisfy the standard of proof required to prove the defense on the part of the accused i.e. preponderance of the probability and the finding of the trial court and appellate court have been recorded without considering the above evidence and that evidence when considered establishes the defense of the accused up to the standard of preponderance of the probability and establish that the aforesaid cheque Exhibit-P/3 was issued in the year



7

CRR-2494-2018

2003 and not in year 2011. Hence both the courts committed illegality in convicting the appellant/accused under section 138 of the Negotiable Instruments Act, 1881. Accordingly, Criminal Revision No.2494/2018 succeed and is hereby allowed and Revision petitioner/accused is acquitted from the charges under section 138 of the Negotiable Instruments Act, 1881. Consequently his sentence is also set aside. His bail bonds are cancelled and sureties are discharged. Consequently Criminal Revision No.5111/2018 preferred by the complainant is hereby dismissed.

10. Record be remitted back to the courts below along with a copy of this order.

(GAJENDRA SINGH)  
JUDGE

ajit