

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 672 of 2016

Gopal Prasad Sinha, son of Late Kamla Prasad Sinha, Resident of
KhasSijua, Near Denobili School, P.O. & P.S.-Tetulmari, District-Dhanbad
.....Petitioner

Versus

1. The State of Jharkhand
2. Manoj Kumar Singh, son of Bhagwanji Singh, Resident of Khas Sijua,
P.O & P.S.-Gogra, Dist.Dhanbad Opp. Parties

For the Petitioner : Mr. Nitish Krishna, Advocate
For the State : Mrs.Vandana Bharti, A.P.P.

PRESENT

CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
ORDERS

C.A.V. On 01/07/2026

Pronounce On 29/07/2026

1. Heard Mr. Nitish Krishna, learned counsel for the petitioner and learned
A.P.P.
2. It is pertinent to mention that notice was issued for appearance of the
complainant/opposite party No.2, Manoj Kumar Singh, which was
returned with the report of process server that complainant has left the
present address and residing at his permanent address at village-
Kamalpur, P.S. Barhara, Dist. Bhojpur, Ara (Bihar). Therefore, notice
was again send to his address recorded in his deposition as C.W.1,
which could not be served. Thereafter, a step was taken by the petitioner
to serve notice upon the opposite party No.2/complainant by way of
paper publication and the notice against the opposite party
No.2/complainant was published in daily newspaper, Awaj on

04.03.2024 and thereafter notice through D.L.S.A., Dhanbad was issued but opposite party No.2 could not be located and till the date of hearing on 01.07.2026, the complainant did not turn up to contest this revision.

3. Instant criminal revision is directed against the judgment dated 04.05.2016 passed by learned Additional Sessions Judge-V, Dhanbad in Criminal Appeal No.279 of 2012, whereby and whereunder, the judgment and order of conviction dated 18.08.2012 passed by learned Judicial Magistrate, 1st, Dhanbad in connection with C.P. Case No.1567 of 2004/T.R. No.1436 of 2012 holding the petitioner guilty for the offence under section 138 of N.I. Act has been upheld with modification in sentence, which reduced to fine and compensation only, setting aside the sentence of imprisonment. Therefore, petitioner was directed to pay a fine of Rs.3 lakhs out of which Rs.2.90 lakhs was directed to be paid to the complainant as compensation.

Factual Matrix

4. Factual Matrix giving rise to this revision is that on 04.03.2004, the present petitioner visited the complainant at his home and demanded Rs.1.50 lakhs as a friendly loan for running a business. The complainant gave Rs.1.50 lakhs to the petitioner on assurance that he will return the said amount till June, 2004. It is further alleged that the present petitioner in order to satisfy the above loan amount issued a cheque of Canara Bank vide cheque No.237704 dated 04.06.2004. It is further alleged that the said cheque was deposited by the complainant in his

account maintained at Bank of India, Tetulmard Branch on 04.06.2004, which was dishonored due to “Insufficient Fund” in the account of the drawer and the cheque returned memo dated 08.06.2004 was received by the complainant. Then, the complainant informed to the accused and again produced the said cheque on 20.08.2004 within a valid period, which was again bounced due to “Stop Payment” by the drawer. Thereafter, when no reply was given to the legal notice issued through registered post demanding the cheque amount from the petitioner, this complaint case was lodged.

5. The accused appeared and contested the case. In the course of trial, the complainant, Manoj Kumar Singh has been examined himself as a witness.
6. Apart from the oral testimony, following documentary evidence have been adduced by the prosecution i.e.

Ext.1-Cheque

Ext.2-Deposit Slip

Ext.3& 3/1-Bank Memo and deposit slips

Ext.4 & 4/1-Signature of complainant on complaint

Mark X for identification-Xerox of demand notice

Mary Y for identification-Xerox of postal receipt

7. On the other hand, no oral or documentary evidence was adduced by the defence.

8. The case of defence is denial from any transaction with the complainant and false implication in this case.
9. Learned trial court after scrutinizing the evidence adduced by the complainant held the petitioner guilty for the offence under section 138 of N.I. Act and awarded sentence for S.I. of 2 years along with fine and compensation of Rs.3 lakhs. The convict (petitioner) filed Cr. Appeal No.279 of 2012, which was also dismissed modifying the sentence of imprisonment awarded to the petitioner by maintaining the compensation and fine amount, which has been assailed in this revision.

Submission on behalf of Petitioner:-

10. Learned counsel for the petitioner has submitted that the complainant has failed to prove his case that Rs.1.50 lakhs was given to the petitioner in presence of one Akhilesh Kumar Singh, who has not been examined by the complainant to corroborate the aforesaid facts who appears to be most material witness in this case. The complainant has also failed to comply the essential ingredients of section 138 of N.I. Act. It is also admitted by the complainant that in the legal notice, he has mentioned no date. Moreover, the photocopies of legal notice and postal receipt without any date and seal have been produced and marked exhibits for identification and the original documents were never brought on record. Therefore, there is no authenticity in sending the legal notice as required under law by the complainant to the petitioner.

It is also admitted by the complainant that he is unemployed person rather his father was working in BCCL as loading supervisor and at the time of whole transaction, his father's monthly salary was Rs.10,000/- to 13,000/- and his father gave him Rs.1.50 lakhs from his account to give the petitioner but the above facts has also not been proved by examining the father of the complainant or producing the pass-book of the father of the complainant showing withdrawal of Rs.1.50 lakhs on the relevant date. **It is further submitted that the complainant has also admitted in his cross-examination that the complete address of the petitioner was not mentioned in the legal notice rather the only village, Sijua was mentioned.** Therefore, sending the notice at improper address is also non-compliance of provision under section 138 of N.I. Act. The complainant has produced the cheque twice in the bank but on first occasion itself, when the mischievous activity of any person depositing the cheque without any endorsement of date or amount, came to the knowledge of the petitioner, he promptly directed the bank for "Stop Payment". It is further submitted that learned trial court as well as learned appellate court have recorded perverse findings regarding the guilt of the petitioner for the offence under section 138 of N.I. Act in spite of the fact that there is violation of mandatory provision of section 138 of N.I. Act and the complaint case was not entertainable at all. The petitioner has no legal obligation or ever entered into any transaction of money as friendly loan with the complainant. Therefore, the concurrent

findings regarding conviction and sentence of fine imposed against the petitioner is absolutely illegal, perverse, improper and not justified under law, which is liable to be set aside and the petitioner deserves acquittal from the charge levelled against him.

Submission on behalf of State

11. On the other hand, learned A.P.P. has opposed the aforesaid points raised on behalf of the petitioner. Learned A.P.P. has further submitted that there is no legal substance in the arguments of learned counsel for the petitioner. There are concurrent findings about issuance of legal notice and proper compliance of all formality as provided under section 138 of N.I. Act. The petitioner has never challenged the aforesaid grounds either before the learned trial court or before the appellate court and never objected the photocopy of the notice and the registered letter receipt due to loss and misplace of the original. There are concurrent findings about guilt of the petitioner for the offence under section 138 of N.I. Act, which requires no interference in this revision, which devoid of merits and fit to be dismissed.

12. I have gone through the judgment of the learned trial Court as well as appellate Court and perused the record.

13. The only question for determination in this revision is as to whether the impugned judgments passed by the Courts below suffer from any error of law, which requires any interference in this revision?

Analysis, Reasons and Decision:-

14.I have given anxious consideration to overall aspects of the case. It appears that learned trial court as well as learned appellate court had discussed the evidence of the complainant that a friendly loan of Rs.1.50 lakhs was taken by the petitioner for the purpose of running a business and in this regard, the accused/petitioner has issued a cheque bearing No.237704 dated 04.06.2004, which was deposited for encashment but dishonored due to 'Insufficient Fund' and the complainant again produced the said cheque after informing the accused on 20.08.2004 within a valid period, which was again bounced due to "Stop Payment" by the drawer. Thereafter, legal notice was issued to the petitioner through registered speed-post, but he did not make the payment. Thereafter, the complaint case was lodged.

15.Before imparting my verdict on the above issues involved in this case, it is desirable to quote the relevant provisions of the Negotiable Instrument Act:

"Section 138. Dishonour of cheque for insufficiency, etc., of funds in the account.—*Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that*

account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”

Explanation.-For the purposes of this section “debt or other liability” means a legally enforceable debt or other liability.

16. On a bare perusal of the aforesaid provision, following mandatory ingredients is to be established for invoking Section 138 of N.I. Act:-

- i. The drawal of the cheque by a person in discharge of a legally enforceable debt or other liability;
- ii. The presentation of the cheque to the bank within six months or within the period of its validity whichever is shorter;
- iii. The return of the cheque unpaid;
- iv. The giving of a notice in writing demanding payment of the amount of the cheque from the drawer within thirty days from the date of receipt of information regarding the return of the cheque unpaid”.
- v. The failure of the drawer to pay the amount within fifteen days of receipt of the notice;

17.Now, I proceed to examine whether the above ingredients have been fulfilled or not?

18. In the instant case, the complainant has failed to produce original copy of legal notice and postal receipt to prove the issuance to notice demanding the cheque amount from its drawer. Moreover, it is also admitted fact that complete and correct address of the accused was also not mentioned in the said notice.

19.Now, the question arises here as to whether only mentioning the name of village of the addressee is sufficient without mentioning all details of addressee? The hon’ble Apex Court in the case of **C.C. Alavi Haji Vs. Palapetty Muhammed & Anr.** Reported in **(2007) 6 SCC 555** has held that when the notice is sent by registered post by correctly addressing

the drawer of the cheque, the mandatory requirement of issue of notice in terms of Clause (b) of proviso to Section 138 of the Act stands complied with and **it is then for the drawer to rebut the presumption about the service of notice and show that he had no knowledge that the notice was brought to his address or that address mentioned on the cover was incorrect.** The relevant paragraph 15 reads as under:-

“15.when the notice is sent by registered post by correctly addressing the drawer of the cheque, the mandatory requirement of issue of notice in terms of Clause (b) of proviso to Section 138 of the Act stands complied with. It is needless to emphasis that the complaint must contain basic facts regarding the mode and manner of issuance of notice to the drawer of the cheque. It is well settled that at the time of taking cognizance of the complaint under section 138 of the Act, the court is required to be prima facie satisfied that a case under the said section is made out and the aforementioned mandatory statutory procedural requirement have been complied with. It is then for the drawer to rebut the presumption about the service of notice and show that he had no knowledge that notice was brought to his address or that the address mentioned on the cover box is incorrect or that a letter was never tendered or that the report of the postman was incorrect.”

20. In view of above legal position, it is crystal clear that the complainant of this case has not proved the mandatory requirement of sending demand notice to the present petitioner on present and correct address. Therefore, the provision of Section 138 of N.I. Act cannot be invoked against the accused (petitioner). The learned trial Court as well as appellate Court have grossly overlooked the material evidence lacking

in this case to initiate prosecution for offence under Section 138 of N.I. Act.

21. In view of the above discussions and reason, I find substance in the point of argument raised on behalf of the petitioner that mandatory requirement of issue of notice in terms of clause (b) of proviso to Section 138 of the N.I. Act has not been complied with hence no case under Section 138 of N.I. Act is made out. Resultantly, the impugned judgment passed by the learned trial court and upheld by the learned Appellate Court is hereby **set aside** and this **revision is allowed**.

22. Pending I.A(s), if any, stands disposed of, accordingly.

23. Let a copy of this order along with Trial Court Records be sent back to the concerned trial court for information and needful.

(Pradeep Kumar Srivastava, J.)

High court of Jharkhand, Ranchi

Date: 29 / 07/2026

Pappu/Basant- N.A.F.R.

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