

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.518 of 2007

CNR-ODHC010004822007

(In the matter of an application under Section 397 read with Section 401 of the Criminal Procedure Code, 1973)

Jitendra Kumar Pradhan

.....

Petitioner

-Versus-

Ajay Kumar Pandey

.....

Opp. Party

For the Petitioner : Mr. Niranjana Singh, Advocate

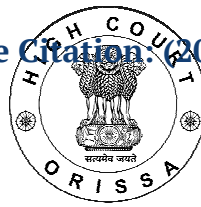
For the Opp. Party : Mr. S.R. Patra, Advocate

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 30.06.2026 : Date of Judgment: 30.07.2026

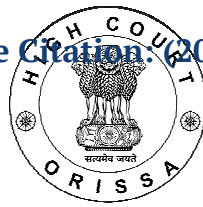
S.S. Mishra, J. The present Criminal Revision has been preferred by the petitioner-accused assailing the judgment dated 12.02.2007 passed by the learned Additional Sessions Judge, Rourkela in Criminal Appeal No.72 of 2006, whereby the appellate court affirmed the judgment of conviction and order of sentence dated 02.08.2006 passed by the learned Civil Judge (Junior Division)-cum-J.M.F.C., Rourkela in I.C.C. Case No.26 of 2006 (Trial No.340 of 2006) for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.



2. Heard Mr. Niranjana Singh, learned counsel appearing for the petitioner and Mr. S.R. Patra, learned counsel appearing for the opposite party.

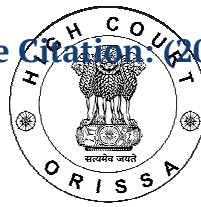
3. The prosecution case, leading to the present revision, is that the petitioner was the owner of a passenger bus bearing Registration No. BR-14-F-3675. The opposite party-complainant, who was unemployed and desirous of earning his livelihood through transport business, entered into an agreement with the petitioner for purchase of the said bus on instalment basis. Pursuant to the agreement, the complainant paid the initial instalment and took possession of the vehicle. However, owing to continuous losses in the transport business and the burden of accumulated tax and penalty payable in respect of the vehicle, the complainant expressed his inability to continue with the arrangement and requested the petitioner to terminate the agreement and take back possession of the bus. The petitioner accordingly resumed possession of the vehicle with an assurance that the amount already received from the complainant would be refunded after necessary adjustment.

4. It is the further case of the complainant that despite repeated demands, the petitioner failed to return the agreed amount.



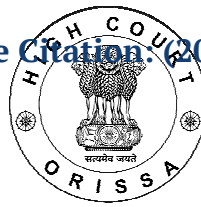
Consequently, on 01.02.2005, with the intervention of the local police, the parties arrived at a settlement under which the petitioner undertook to repay the outstanding amount in seven instalments. Towards discharge of the said liability, the petitioner allegedly issued a post-dated cheque bearing No.990445 dated 10.09.2005 for a sum of Rs.70,000/- drawn on Syndicate Bank, Rourkela. According to the complainant, after obtaining permission from the petitioner, he presented the cheque through his banker, namely United Bank of India, Bondamunda Branch, for encashment. The cheque, however, was returned unpaid on 26.12.2005 with the endorsement "Insufficient Funds". Thereafter, the complainant caused a statutory demand notice dated 03.01.2006 to be issued to the petitioner calling upon him to make payment of the cheque amount within the statutory period. Although the notice was duly served, the petitioner failed to comply with the demand, compelling the complainant to institute the complaint under Sections 138 and 142 of the Negotiable Instruments Act before the learned Sub-Divisional Judicial Magistrate, Panposh.

5. Upon presentation of the complaint, the learned Magistrate examined the complainant on solemn affirmation and, being satisfied that a prima facie case under Section 138 of the Negotiable

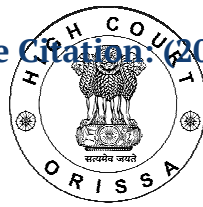


Instruments Act was made out, took cognizance of the offence and transferred the case to the Court of the learned Civil Judge (Junior Division)-cum-J.M.F.C., Rourkela for trial. During trial, the complainant examined himself in support of his case and proved the cheque, bank return memo, statutory notice and other connected documents.

6. The defence of the petitioner was one of complete denial of criminal liability. According to him, there existed no legally enforceable debt or liability corresponding to the cheque amount. It was specifically pleaded that the cheque had not been voluntarily issued towards discharge of any debt but had been obtained forcibly at the police station through the intervention and pressure of police officials. The petitioner asserted that the cheque was intended merely as a security and that he had subsequently repaid the amount in instalments. In support of his defence, the petitioner examined himself as D.W.1 and examined one Khageswar Barik as D.W.2. The defence also relied upon a photocopy of the agreement between the parties, though no documentary proof of the alleged repayment was produced.



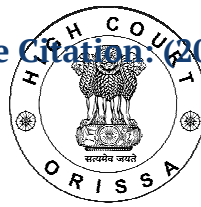
7. The learned trial Court, upon consideration of the oral and documentary evidence adduced by the parties, held that the complainant had successfully established all the essential ingredients of the offence punishable under Section 138 of the Negotiable Instruments Act. The Court found that the cheque in question had been issued by the accused towards discharge of a legally enforceable debt, that the same was presented within its period of validity, and that it was dishonored on account of insufficiency of funds. The Court further held that the statutory demand notice had been duly served upon the accused, who failed to make payment within the prescribed period. Rejecting the defence plea that the cheque had been obtained under coercion through police intervention and was issued merely as a security, the learned trial Court observed that no cogent or reliable evidence had been produced to substantiate such allegations or to prove repayment of the amount. Invoking the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act, the Court concluded that the accused had failed to rebut the presumption that the cheque was issued towards a legally enforceable liability. Consequently, the accused was convicted under Section 138 of the Negotiable Instruments Act and sentenced accordingly.



8. Aggrieved by the aforementioned findings of the learned trial Court, the accused-petitioner approached the Appellate Court questioning the judgment of conviction and the order of sentence passed by the learned trial Court by filing Criminal Appeal No.72 of 2006. The learned Additional Sessions Judge, Rourkela, on detailed analysis of the evidence on record, arrived at a conclusion that the learned trial Court has aptly appreciated the evidence adduced by the parties, hence, no interference is called for. Finally, the Court concluded as under :

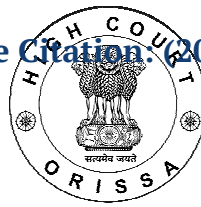
“10. In view of the settled principles of law, the materials available on record I fully agree with the findings of the court below that the presumption under section 118 and 139 of the Act are in favour of the complainant-respondent and the accused failed to rebut the presumption which has been drawn in favour of the complainant-respondent challenging his criminal liability.

Accordingly I donot find any wrong, illegality, the perverse in the findings of the learned lower court to warrant my interference. Therefore, the impugned order passed by the learned trial court in convicting and sentencing the accused-appellant is found to be just, proper and according to law. Hence the same is confirmed and thus the appeal filed by the accused-appellant being devoid of merit is dismissed.”



9. The accused-petitioner has now filed the present Criminal Revision assailing the judgment dated 12.02.2007 passed by the learned Additional Sessions Judge, Rourkela in Criminal Appeal No.72 of 2006 whereby the judgment of conviction and the order of sentence passed by the learned trial Court have been affirmed.

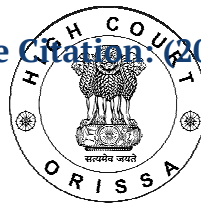
10. The present Criminal Revision has been pending since 2007. Several attempts were made by this Court affording opportunity to the parties to settle their dispute. It was placed before this Court on 21.11.2013, but both the parties have not cooperated. On 06.12.2014, the petitioner expressed before the Court that he is ready and willing to pay the entire cheque amount. Therefore, this Court directed the revision petitioner to deposit the entire amount by Bank Draft within a period of two weeks. Again, the matter was listed on 14.02.2015 with no result. Subsequently on 14.03.2015, the matter was listed before the National Lok Adalat. But the learned counsel appearing for the petitioner sought time. Finally, in the last 2nd National Lok Adalat held on 09.05.2026, the revision petition was again listed, but unfortunately, neither the petitioner nor the opposite party appeared before the said 2nd National Lok Adalat. Hence, the matter is now



listed before this Court to finally decide on merit. When the matter was taken up for hearing today, none has appeared for the parties.

11. Perusal of the revision petition reveals that the petitioner is challenging the impugned judgment solely on the ground that the cheque was obtained by the complainant/respondent by playing fraud and forcibly obtained at the instance of the police. It is contended by the petitioner that although there was an agreement between him and the complainant before the police on 01.02.2005 and on the instance of the police, he had to issue the cheque, but the cheque was deposited only on 10.09.2005 after expiry of the validity period of six months. He contended that the very conduct of the complainant/accused to obtain the cheque by involving the local police would go to prove that there was no legally recoverable debt towards which he had allegedly issued the cheque.

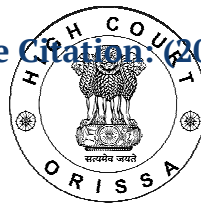
12. To counter the aforementioned defence of the petitioner, the complainant led adequate evidence. Learned Courts below have arrived at a conclusion on appreciation of evidence that although the cheque was issued by the petitioner on 01.02.2005, but he assured the complainant that he would make good the payment within seven months and in the event, he fails to pay the amount within said seven



months period, it was left open to the complainant to resort to the legal recourse. Since the petitioner has failed to pay the amount within the stipulated time frame agreed upon, the complainant had to deposit the cheque, which eventually got dishonoured and he initiated the criminal prosecution by filing the complaint case.

13. It is also recorded by the learned Courts below that the statutory notice was duly served upon the petitioner under Section 138 (b) of the N.I. Act. The petitioner has not responded to the same. Since there is no denial on the part of the petitioner regarding issuance of the cheque and even after receiving the statutory legal notice, the petitioner failed to either respond to the notice or make good the payment, the presumption under Sections 118 and 139 of the N.I. Act operated against him. He desperately failed to rebut the presumption by adducing appropriate evidence. Hence, the learned trial Court as well as the learned Appellate Court have concurrently recorded the finding against the petitioner and convicted him.

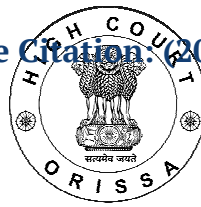
14. It is trite law that the revisional jurisdiction of this Court under Sections 397 and 401 of the Code of Criminal Procedure is a limited and supervisory jurisdiction, which cannot be equated with that of an appellate court. The settled legal position is that a Revisional Court



does not ordinarily re-appreciate the evidence or substitute its own view for that of the courts below, unless the impugned findings are shown to be perverse, wholly unreasonable, based on no evidence, or have resulted in a gross miscarriage of justice. The scope and ambit of the revisional jurisdiction have been authoritatively settled by the Hon'ble Supreme Court in ***Kishan Rao vs. Shankargouda*** reported in ***2018 (8) SCC 165***, wherein the Court held as follows:

“12. This Court has time and again examined the scope of Sections 397/401 CrPC and the ground for exercising the revisional jurisdiction by the High Court. In State of Kerala v. Puttumana Illath Jathavedan Namboodiri [State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452 : 1999 SCC (Cri) 275] , while considering the scope of the revisional jurisdiction of the High Court this Court has laid down the following: (SCC pp. 454-55, para 5)

“5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its



jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ...”

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke* [*Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke*, (2015) 3 SCC 123 : (2015) 2 SCC (Cri) 19] . This Court held that the High Court in exercise of revisional jurisdiction shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. Following has been laid down in para 14: (SCC p. 135)

“14. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.”

14. In the above case also conviction of the accused was recorded, the High Court set aside [*Dattatray Gulabrao Phalke v. Sanjaysinh Ramrao Chavan*, 2013 SCC OnLine Bom 1753] the order of conviction by substituting its own view. This Court set aside the High Court's order holding that the High Court exceeded its jurisdiction in substituting its views and that too without any legal basis.

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23. No evidence was led by the accused. The defence taken in the reply to the notice that cheque was stolen



having been rejected by the two courts below, we do not see any basis for the High Court coming to the conclusion that the accused has been successful in creating doubt in the mind of the Court with regard to the existence of the debt or liability. How the presumption under Section 139 can be rebutted on the evidence of PW 1, himself has not been explained by the High Court.

24. In view of the aforesaid discussion, we are of the view that the High Court committed error in setting aside the order of conviction in exercise of revisional jurisdiction. No sufficient ground has been mentioned by the High Court in its judgment to enable it to exercise its revisional jurisdiction for setting aside the conviction.”

15. In view of the aforementioned, while exercising the restricted revisional jurisdiction, this Court is not inclined to interfere in the concurrent findings recorded by both the learned Courts below.

16. Hence, the Criminal Revision stands dismissed.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack.
Dated the 30th Day of July, 2026/ Subhasis Mohanty