# IN THE HIGH COURT OF ORISSA AT CUTTACK

## CRLREV No.397 of 2014

**CNR-ODHC010261292014**

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

***Nalini Kanta Acharya*** ……. ***Petitioner***

***-Versus-***

***State of Odisha and another*** ……. ***Opp. Parties***

For the Petitioner: Mr. Pabitra Kumar Nayak, Advocate

For the Opp. Parties : Mr. Ashok Kumar Apat, AGA

**CORAM**:

**THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA**

Date of Hearing: 21.05.2026: Date of Judgment: 30.07.2026

***S.S. Mishra, J.*** The present criminal revision is arising out of the judgment and order dated 20.05.2013 in Criminal Appeal No. 63/06 of 2007-13, whereby the learned 2nd Addl. Sessions Judge, Rourkela, while confirmed the order of conviction, modified the sentence passed against the petitioner. The sentence of imprisonment for a period of one year and fine of Rs.5,000/-, in default to undergo R.I. for a period of one month passed on 02.07.2007 by the learned S.D.J.M., Panposh, Rourkela in 1.C.C. Case No. 7 of 2006 (Trial

No. 3365 of 2006) under Section 138 of the Negotiable Instruments Act stood modified to pay the compensation amount of Rs.4,00,000/- to the complainant within a period of two months.

**2.** Heard Mr. Pabitra Kumar Nayak, learned counsel for the petitioner and Mr. Ashok Kumar Apat, learned Addl. Govt. Advocate for the State. None appeared for the complainant.

**3.** The case of the complainant is that she is a rustic widow (Adivasi widow), whereas the accused is running a driving training institution. The accused persuaded her to purchase a second hand Tata Sumo vehicle in the name of her son, who was then un-employed and due to her innocence she agreed to the proposal of the accused to purchase a vehicle for Rs.3,50,000/-. She paid a sum of Rs.3,15,000/- to the accused in shape of pay order and cash of Rs.35,000/- on 16.09.2004 to purchase the vehicle. The accused after receipt of the aforesaid amount from her executed one money receipt acknowledging the receipt of the amount, but he could not arrange a vehicle for her son. After much persuasion, he agreed to repay the said amount already taken from her and towards the discharge of the said liability issued one account payee cheque bearing no.0053929 dated 11.11.2005 for Rs.3,50,000/- drawn on Bank of India, Chhend Branch. She deposited the said cheque on 12.11.2005 for collection, but her bankers returned the cheque unpaid to her on 14.11.2005 with an intimation that due to insufficient of funds in the bank account of the accused, the cheque could not be honoured. Thereafter, the complainant issued a demand notice to the accused through her advocate by registered post with A.D. calling upon him to pay the cheque amount within 15 days of receipt of the said notice. Though the accused received the said notice on 10.12.2005, but he failed to pay the cheque amount, for which the complainant filed the complaint case.

**4.** In order to prove the charge, the complainant examined herself as P.W.1, whereas the P.W.2 was another independent witness. P.W.3 was the Advocate, who had issued the demand notice to the accused on her behalf. On the other hand, the accused examined himself as D.W.1 to substantiate his plea.

**5.** By appreciating the evidence adduced on record, the learned trial Court arrived at a conclusion that the petitioner, in order to discharge his liability, issued the cheque of Rs.3,50,000/-, which is exhibited as Ext.2 and the signature of the petitioner is proved in the said cheque at Ext.2/1. The respondent initially paid a sum of 4,00,000/- for the purpose of purchasing a second hand Tata Sumo vehicle. On receipt of the said amount, the petitioner had issued a money receipt, which is exhibited as Ext.1. The signature of the petitioner in the said money receipt is also proved as Ext.1/1. The deposit slip is proved and exhibited as Ext.3. The intimation letter is exhibited as Ext.4, the demand notice issued by the respondent under Section 138(b) of the N.I. Act is proved and exhibited as Ext.5. The learned trial Court, taking into consideration the aforementioned documentary evidence, which have been proved on record and on taking into consideration the ocular evidence of three witnesses, came to the following conclusion:

> *"11. Considering the nature of the offence and the circumstances under which the same was committed, I do not feel it proper to extend the benefits of the Probation of Offenders Act in favour of the convict. On the other hand, some deterrent punishment is required to control such type of crimes which is increasing day by day in the business World and commercial market. Therefore, while convicting under section 138 of the Negotiable Instruments Act, I sentence him to undergo Rigorous Imprisonment for a period of one year and to pay a fine of Rs.5,000/- and in default to undergo Rigorous Imprisonment for a period of one month. In addition to the aforesaid sentence, I direct him to pay a compensation of Rs.4,00,000/- (Four Lakhs) to the complainant within a period of two months failing which the same shall be realized as criminal fine."*

**6.** Aggrieved by the aforementioned findings recorded by the learned trial Court, the petitioner filed Criminal Appeal No.63/06 of 2007-13 before the Court of the learned 2nd Additional Sessions Judge, Rourkela. The learned Appellate Court, by a detailed judgment dated 20.05.2013 confirmed the judgment of conviction and modified the order of sentence passed by the learned trial Court against the petitioner as has been mentioned above. The petitioner, being aggrieved by the aforementioned judgment of the learned Appellate Court, has filed the present Criminal Revision.

**7.** The present Criminal Revision is pending since 2014. Several attempts were made by this Court to explore the possibility of settlement. The matter was listed before this Court on 09.02.2015. On that day, learned counsel for the petitioner made a statement that the petitioner is ready and willing to pay the amount and compromise the matter. On 14.02.2015 and 14.03.2015 again the matter was listed before the National Lok Adalat, but did not yield any result due to non-operation. Hence, eventually the matter was placed before the 2nd National Lok Adalat held on 09.05.2026, but unfortunately, neither the petitioner nor the respondent appeared before the 2nd National Lok Adalat. Hence, the matter is placed before this Court for adjudication.

**8.** Mr. Nayak, learned counsel for the petitioner, by taking this Court to the evidence on record, tried to highlight the contradictions appearing in the prosecution version. He has also taken this Court to the documentary evidence and submitted that in the present case, the procedural requirement as contemplated under Section 138 of the N.I. Act has not been complied with. He submitted that the statutory notice alleged to have been issued by the complainant under Section 138(b) of the N.I. Act being not signed by the Advocate, cannot be treated to be a statutory notice in the eye of law. He further submitted that in absence of any proper notice issued to the petitioner before initiating the complaint case, the very ingredient of the offence under Section 138 of the N.I. Act is lacking in this case. This aspect of the matter was also vehemently argued by the defence at the trial as well as the appellate stage. The learned trial Court in paragraph-10 of its judgment has meticulously dealt with the defence plea. Similarly, the Appellate Court has also dealt with this issue in particular. Paragraphs- 12, 13 and 14 of the impugned judgment of the learned Appellate Court would reflect the true appreciation of the defence plea, which reads as under:

> *"12. So far the first point i.e. whether there was no proper compliance of the provisions of section 138(b)*

*of the N.I. Act due to lack of signature of the Advocate for the complainant on the demand notice sent on behalf of the complainant is concerned, here in this case at hand, the accused/appellant has not specifically denied about the sending of demand notice under section 138(b) of the N.I. Act to him on behalf of the complainant by her Advocate. But he (accused/ appellant) has seriously disputed that the said demand notice does not contain the signature of her Advocate.*

*13. The main purpose of object of the demand notice under section 138(b) of the N.I. Act is to give a chance to the drawer of cheque to rectify his omission, for which, there will be no chance for him to face the trial. When the object and purpose of the demand notice is to bring it to the knowledge of the accused in respect of the demanded amount through notice on behalf of the complainant, then, at this juncture, bearing and non-bearing of the signature of the Advocate on the said demand notice has no significance at all. Because, absence of signature of the Advocate on the demand notice cannot and shall not reduce the quality of the demand notice in any manner. The above proposition of law finds support from the ratio of the decision reported in 2005 Cr.L.J. (NOC) 148 Kerala (A. Janardhan Vrs. C.V. Jayachandran & another) which has been relied upon by the learned Court below and wherein, it has been held that the demand notice which was sent to the accused through the Advocate without bearing his signature, is a valid notice and the same cannot be ignored as because the counsel for the complainant failed to put his signature or to certify the same to be true copy.*

*14. So, in view of the aforesaid proposition of law, the grounds raised by the learned Amicus Curiae on behalf of the appellant that the demand notice sent on behalf of the complainant without the signature of her Advocate, shall not be treated as a demand notice, is not sustainable under law."*

**9.** Mr. Nayak, learned counsel has reiterated his submission, which has been adequately addressed by both the learned trial Court as well as by the learned Appellate Court.

**10.** This Court finds no reason to disagree with the reasoning given by both the learned Courts below while dealing with the plea of the petitioner as has been highlighted by Mr. Nayak, learned counsel for the petitioner.

**11.** 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)*
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> > *"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. …"*
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> ***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.*

***XXXX XXXX XXXX***

***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."*

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

**13.** 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