2026:JHHC:26731

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No. 1116 of 2016

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1. Sanjay Bhattacharjee, son of Sadhan Chandra Bhattacharjee
2. Sadhan Chandra Bhattacharjee, son of Late Harish Chandra Bhattacharjee

Both are residents of Kasida, Durgabari, P.O. & P.S.-Ghatsila, District-East Singhbhum

... ... **Petitioners**

Versus

1. The State of Jharkhand
2. Bikash Kumar Guha, son of Late Binoy Kumar Guha, resident of 32, Khasmahal, Asha Niketan, P.O. & P.S.-Parsudih, Town-Jamshedpur, District-East Sighbhum

… … **Opp. Parties**

P R E S E N T

CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Petitioners : Mr. Sankalp Goswami, A.C. to
Mr. A.K. Das, Sr. Advocate
For the State : Mr. Prabhu Dayal Agrawal, A.P.P.
For the O.P. No.2 : Mr. Arbind Kumar, Advocate

C.A.V. on 12.08.2026 **Pronounced on 03/09/2026**

1. I have already heard the arguments of Mr. Sankalp Goswami, learned counsel for the petitioners, Mr. Prabhu Dayal Agrawal, learned A.P.P. and Mr. Arbind Kumar, learned counsel appearing for the opposite party No.2.

2. Instant criminal revision is directed against the judgment dated 28.02.2015 passed by learned Additional Sessions Judge-II, Jamshedpur, in Criminal Appeal No. 180 of 2008, whereby and whereunder the learned Appellate Court has dismissed the appeal and affirmed the judgment of conviction and order of sentence dated 22.07.2008 passed by learned Judicial Magistrate, 1st Class, Jamshedpur in C/1 Case No. 203 of 2002, T.R. No. 1364 of 2008 whereby and whereunder, the petitioners have been convicted for the offences under Sections 406, 420/34 of the I.P.C. Further**, petitioner**

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No.1, Sanjay Bhattacharjee has been held guilty for the offence under Section 138 of the N.I. Act. Accordingly, both the petitioners have been sentenced to undergo S.I. for two years along with fine of Rs.10,000/- with default stipulation for the offence under Section 406/34 of the I.P.C. and S.I. for three years along with fine of Rs.10,000/- for the offence under Section 420/34 of the I.P.C. each with default stipulation. P**etitioner No.1, Sanjay Bhattacharjee** has also been separately sentenced to undergo S.I. for one year and to pay compensation of Rs.1,02,000/- to the complainant for the offence under Section 138 of the N.I. Act along with interest @ 18% per annum, apart from the sentences imposed upon him for the aforesaid offences.

Factual Matrix

3. Factual matrix giving rise to this revision is that the complainant is an employee of Atomic Minerals Division, Department of Atomic Energy, Khashmahal, Jamshedpur where accused No.2 was also employed. There was good relationship between the complainant and accused No.2 on account of their being a co-employee in the same department and posted at the same place, i.e., Jamshedpur. Accused No.2 being a co-employee and friend of complainant, used to frequently visit the complainant's house along with accused no.1, his son. Consequently, they also established good relations with the family members of complainant. By their acts and behaviour, the accused persons had established a good faith in the mind of complainant and his family members. Accused No.2 introduced

accused No.1, his son, to the complainant by stating that he is an agent of various non-banking financial institutions and also an agent of L.I.C., K.V.P., and N.S.C. of Postal Department. He induced the complainant to invest some amounts in non-banking financial institutions for earning better income and profits. The accused No.2 also induced the complainant to purchase Kishan Vikash Patra through accused No.1, as he was also working as an agent in Postal Department. Accused No.2 induced and influenced the complainant, in the presence of accused No.1 and the family members of the complainant, to invest a substantial amount through accused No.1 sometime in April, 2000. After being induced by accused Nos.1 and 2, the complainant issued three cheques. Out of these, two were self cheques for Rs.50,000/-and Rs.49,500/- of Canara Bank, Khasmahal Branch and State Bank of India, Parsudih Branch, respectively from Savings Bank Account No.60999, dated 08.04.2000 and dated 18.4.2001, respectively, which were duly received by accused No.2. One cheque was issued for Rs.1,07,900/- of State Bank of India, Parsudih Branch in favour of accused. No.1 from Savings Bank Account No.01190008261, dated 13.11.2000, for purchasing of ICICI Bond and certificate of Safar Resort Ltd. Accused Nos.1 and 2 insisted that the complainant should purchase certificates and bonds of the aforesaid financial institutions for more earning than any other financial institutions. Accordingly, believing the statement and insistent made by the accused persons, the complainant gathered the courage to make such substantial investments in different institutions.

An amount of Rs.49,500/- was paid to accused persons for purchasing Kishan Vikash Patra, an amount of Rs.50,000/- was paid through cheque for purchasing certificate of Versatile Resort Ltd. and certificate of I.L. & F.S. Thereafter, the complainant paid Rs.1,07,900/- to the accused persons through cheques, as mentioned above, for purchasing ICICI Bond of Rs.60,000/- and out of the remaining amount of Rs.47,900/- a certificate of Sagar Resort Ltd. After receiving the aforesaid amounts, the accused persons neither visited the complainant's house, nor supplied any certificates or bonds against the amounts received by them, despite having assured the complainant that they would do so. The accused persons kept assuring the complainant that they would supply all the certificates and bonds against the amounts received by them shortly. However, from the date of receipt of the amounts, they continued to postpone the supply of the certificates and bonds on one pretext or another. From the conduct and activities of the accused persons, the complainant became suspicious that some mischief had been committed. He immediately approached ICICI Bank with a view to ascertain whether accused No.1 had deposited the amount in the bank for purchasing the bond or not. The complainant came to know about the fraud and cheating committed by accused persons, when he learnt that no amount had been deposited by accused No.1 with the bank for purchasing the ICICI Bond in his name. The complainant also came to know that the certificates relating to Versatile Resort Ltd. and I.L & F.S. were forged documents and no office of Sagar Resort Ltd. is situated at the address given. The

accused persons did not supply any original certificates as had been represented by them before receiving the amount from the complainant. The accused persons neither purchased the Kishan Vikash Patra nor gave any reasons for not purchasing the same, despite repeated requests made by the complainant. The complainant thereafter came to know about the fraud and cheating committed by the accused persons in respect of the amounts received by them through false and dishonest inducement. He then started pressing the accused persons, with the help of some friends and well-wishers, for the return of the amounts received by them in a respectable manner. However, with the assistance of some co-employees and friends of the office, the complainant succeeded in obtaining a cheque from accused No. 1. After being insisted upon and pressurized by certain persons and friends, accused No. 1 issued a cheque drawn on Union Bank of India, Jamshedpur, for an amount of Rs. 51,000/-, dated 09.08.2001, from Savings Bank Account No. 13998, with an assurance that the remaining amount would be paid within two to three months. Again believing the assurances of accused Nos. 1 and 2, the complainant presented the aforesaid cheque on 10.08.2001 through his Savings Bank Account No. 30604 maintained with Punjab National Bank, Jamshedpur. However, the cheque was dishonoured due to insufficient funds in the account of accused No. 1 and was accordingly returned to the complainant. Thereafter, on the assurance and instructions of the accused persons, the complainant again presented the said cheque on 14.09.2001 through his Savings Bank Account No. 60999 maintained

with Canara Bank, Khasmahal Branch. The cheque was again dishonoured due to insufficient funds. The complainant once again presented the said cheque through his Account No. 60999 with Canara Bank, Khasmahal Branch, on 27.11.2001 and again on 11.01.2002, on the assurance of accused No. 1 that the cheque would be honoured upon presentation. However, on both occasions, the cheque was again dishonoured due to insufficient funds in the account of accused No. 1. The complainant came to know on 15.01.2002 from the bank about the dishonour of the cheque on account of insufficient funds. The complainant had been a victim of false and dishonest inducement by the accused persons right from the beginning, when the accused persons received the amounts from him. The accused persons had dishonest intentions to cheat and deceive the complainant when they induced him to invest such a substantial amount in the aforesaid non-existing and fraudulent non-banking institutions. The complainant was thereby caused a loss of Rs. 2,07,400/- by the accused persons, who took advantage of their relationship with him, particularly the fact that accused No. 2 was his co-employee and friend. If the complainant known from the beginning about the false and dishonest inducement of the accused persons, he would neither have issued the cheques in their favour nor accepted the cheque for Rs. 51,000/- on the false assurance that the remaining amount would be paid within two to three months. Thereafter, the complainant caused three notices to be issued to the accused persons through his lawyer, Sri R. C. Pandey, Advocate, at their addresses at Ghatsila and Jamshedpur, on

24.01.2002 under Sections 138 and 142 of the Negotiable Instruments Act, calling upon them to return the cheque amount within 15 days. Out of the said notices, two were returned, while another notice was served upon accused No. 2 at his Ghatsila address. The notice issued to accused No. 1 was returned with an endorsement dated 04.02.2002 stating, "Addressee always out of station." The notice issued to accused No. 2 at his office address at Jamshedpur was returned with an endorsement dated 25.01.2002 stating, "Addressee refused." However, the other notice issued to accused No. 2 at his Ghatsila address was duly served upon him. Thereafter, the complainant received a reply from accused No. 2 to the notice issued jointly to accused Nos. 1 and 2, wherein accused No. 2 denied the allegations of false inducement for investment of the substantial amount by the complainant. Accused No. 2, however, denied having any relationship with accused No. 1 in connection with any such transaction. The notice issued under Sections 138 and 142 of the Negotiable Instruments Act would be deemed to have been served upon accused No. 1, as he had constructive knowledge of the said notice. The complainant, having waited for the statutory period of 15 days from the date of service of the notice, filed the complaint within 30 days thereafter.

4. On the basis of the aforesaid allegations, C/1 Case No. 203 of 2002 was instituted and the case was subsequently transferred to the Court of the learned Judicial Magistrate. The complainant examined three witnesses, including himself, who were cross-examined by the

defence before charge. Thereafter, upon hearing on the point of charge, charges under Sections 138 of the N.I. Act and 406/420/34 of the I.P.C. were framed against accused No.1, Sanjay Bhattacharya, while charges under Section 406/420/34 I.P.C. were framed against the accused No.2, Sadhan Bhattacharya.

5. The charges were read over and explained to the accused persons in Hindi, to which they pleaded not guilty and claimed to be tried.

6. In order to substantiate the case, the complainant has adduced following documentary evidence:-

(i) Exhibit-1-The counterfoil of cheque dated 13.04.2000 issued in the name of accused Sanjay Bhattacharya for amount of Rs.1,07,900/- by complainant.

(ii) Exhibit-2-The counterfoil of self/bearer cheque bearing No.895899 dated 18.04.2001 issued for amount Rs.49,500/- by complainant upon which accused Sadhan Bhattacharya has signed as token of acknowledgement of receipt of the same.

(iii) Exhibit-3-the counterfoil of self/bearer cheque bearing No.7030263 dated 08.04.2000 for Rs.60,000/- issued by complainant, which was received by Sadhan Bhattacharya by putting signature on it.

(iv) Exhibit-4-Letter sent by ICICI in the name of complainant.

(v) Exhibit-5-Letter dated 11.04.2002 sent by IL & FS in the name of complainant

(vi) Exhibit-6-Cheque bearing No.0577157 dated 09.08.2001 issued by accused Sanjay Bhattacharya in the name of complainant.

(vii) Exhibits-7, 7/1, 7/2 and 7/3 are bank return memos dated 27.11.2001, 14.09.2001, 11.01.2002 and 10.08.2001 respectively.

(viii) Exhibit-8-Returned registered envelope and A.D.

(ix) Exhibit-9-Returned registered envelope and A.D.

7. In their statements under Section 313 Cr.P.C., the accused persons denied the incriminating evidence and pleaded innocence.

8. After conclusion of trial, the petitioners were convicted and sentenced as stated above, which was upheld by learned Appellate Court against which has been assailed in this criminal revision.

9. Learned counsel for the petitioners has submitted that the impugned judgments are absolutely illegal and not sustainable in the eyes of law, as the learned court below has miserably failed to appreciate the law applicable to the facts and circumstances of the case. It is submitted that the essential ingredients of the alleged offences have not been established against the petitioners particularly, no offence under Section 138 of the Negotiable Instruments Act is made out against petitioner no. 1, who is alleged to have issued the cheque and there is absolutely no material or evidence to establish any inducement or dishonest representation on the part of petitioner no. 2 so as to implicate him in the criminal case. Learned counsel further submits that petitioner no. 2, being aged about 70 years, had no money

transactions whatsoever either with O.P. No. 2 or with his son and has been falsely implicated merely because he happens to be the father of petitioner no. 1, with whom O.P. No. 2 allegedly had certain financial dealings and investments. It is further submitted that the learned court below has failed to appreciate the material fact that O.P. No. 2 did not produce any cogent evidence from the concerned bank to establish that the alleged cheques were ever debited or transferred in favour of petitioner no. 1. It is also contended that the complainant's witnesses are none other than the mother and mother-in-law of O.P. No. 2, who admittedly had not witnessed the alleged handing over of the cheques to the petitioners, and their testimony, being interested and tutored in nature, could not have been relied upon without independent corroboration. It is also submitted that the conviction of the petitioners simultaneously under Sections 420 and 406 IPC is legally unsustainable in the facts of the present case, which aspect has also been completely overlooked by the learned court below. Hence, the impugned judgments are liable to be set aside and the petitioners deserve to be acquitted from the charges leveled against them. Hence, this revision may be allowed.

10. *Per contra*, learned A.P.P. for the State as well as learned counsel for the opposite party No.2 controverting the arguments raised on behalf of petitioners has submitted that the learned Courts below have rightly appreciated the oral as well as documentary evidence available on record and have rightly convicted the petitioners for the offences alleged against them. It is submitted that the complainant had

handed over the substantial amounts to the petitioners on their assurance and inducement for investment in different financial schemes, but neither the certificates/bonds were supplied nor the amounts were returned. The issuance of cheque of Rs.51,000/- by petitioner No.1 and its repeated dishonour due to insufficient funds clearly establishes the liability of petitioner No.1 under Section 138 of the Negotiable Instruments Act. It is further submitted that the evidence on record establishes the active involvement of petitioner No.2, who being a close acquaintance and co-employee of the complainant, induced him to make the investments through petitioner No.1. Hence, there is no perversity or illegality in the concurrent findings of conviction recorded by the Courts below and the present revision is liable to be dismissed.

11. I have gone through the record of the case and perused the impugned judgment passed by learned Trial Court as well as the learned Appellate Court in the light of contentions raised on behalf of both side.

12. In so far as **petitioner No.1, Sanjay Bhattacharjee**, is concerned, the complainant has specifically deposed regarding the amount paid to him for the purpose of investment and has proved the relevant cheque counterfoils as Exts.1 to 3. The subsequent issuance of cheque No.0577157 dated 09.08.2001 for Rs.51,000/- by petitioner No.1, marked as Ext.6, and its repeated dishonour for insufficiency of funds, duly proved by Ext.7 series, further establishes the liability of petitioner No.1. The statutory presumption under Section 139 of the

N.I. Act has also not been rebutted by any cogent material or defence evidence. Thus, the conviction of petitioner No.1 under Section 138 of the N.I. Act does not call for interference.

13. As regards the conviction of **petitioner No.1, Sanjay Bhattacharjee,** under Sections 406 and 420/34 of the I.P.C. is concerned, the evidence of the complainant, coupled with Exts.1 to 5 and the subsequent conduct of petitioner No.1, sufficiently establishes that the amount was received for the purpose of investment but was not invested in the manner represented to the complainant. The findings recorded by the learned Courts below against petitioner No.1 do not suffer from any perversity or illegality warranting interference in revisional jurisdiction.

14. However, the case of **petitioner No.2, Sadhan Bhattacharjee**, stands on a different footing. The principal allegation against him is that he was a co-employee and friend of the complainant, introduced his son Sanjay Bhattacharjee and persuaded the complainant to make investment through him. Mere introduction of his son or the existence of a friendly relationship, by itself, cannot establish dishonest intention or participation in the alleged offence.

15. There is no sufficient independent documentary evidence showing that **petitioner No.2, Sadhan Bhattacharjee** received or misappropriated the alleged amount. The cheque forming the basis of the Section 138 N.I. Act proceeding was also admittedly issued by petitioner No.1. The evidence of C.W.1 and C.W.2 does not establish any specific act of entrustment or misappropriation by petitioner No.2.

In the absence of cogent evidence showing that **petitioner No.2, Sadhan Bhattacharjee** shared the common intention with petitioner No.1 from the very inception, Section 34 of the I.P.C. cannot be invoked merely on the basis of their relationship.

16. Thus, though the evidence may raise suspicion regarding the involvement of **petitioner No.2, Sadhan Bhattacharjee** the same falls short of the standard required for sustaining a criminal conviction. The benefit of reasonable doubt, therefore, has to go to petitioner No.2.

17. Accordingly, the conviction of **petitioner No.1, Sanjay Bhattacharjee,** under Sections 406 of the I.P.C. and Section 138 of the N.I. Act is hereby affirmed. However, the conviction for offence under Section 420 of the I.P.C. can't simultaneously be sustained. It is a case of criminal breach of trust as defined under Section 405 of the I.P.C. The ingredients of cheating as defined under Section 415 of the I.P.C. have not been proved by prosecution, hence conviction and sentence of petitioner No.1 for the offence under Section 420 of the I.P.C. is set aside. The conviction and sentence of **petitioner No.2, Sadhan Bhattacharjee**, under Sections 406 and 420/34 of the I.P.C. are set aside and he is acquitted of the said charges by extending the benefit of doubt.

18. Consequently, this criminal revision is **partly allowed**.

19. The **petitioner No.1 Sanjay Bhattacharjee** is on bail, his bail bond is cancelled and he is directed to surrender before the concerned Trial Court within two months from the date of this order to sustain

the remaining period of sentence awarded to him, failing which, learned Trial Court shall take all coercive steps for arrest and detention of the petitioner No.1 for serving the remaining period of sentence awarded to him.

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

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

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court
Dated 03/09/2026
Arpit/ ***N. A. F. R.***
Uploaded on 05/09/2026