IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No. 1254 of 2016

Sabud Ansari, S/o. Late Jabar Asnari, R/o. Vill.- Nari Nawadih, P.O. & P.S.- Kisko, Dist.- Lohardaga. ... ... Petitioner

Versus

1. The State of Jharkhand
2. M/s. Sri Ram Transport Finance Company Limited, represented through its Branch Manager, J.P. Complex, P.P. Compound, P.O. & P.S.- Chutia, Dist. Ranchi, Jharkhand.

…… Opp. Parties

PRESENT

CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Petitioner : Mr. Zaid Ahmed, Advocate
For the State : Mr. Pankaj Kr. Mishra, A.P.P.
For the O.P. No. 2 : Mr. Rajeev Kr. Sinha, Advocate

Judgment

C.A.V. On: 20th July, 2026 **Pronounced On: 08/10/2026**

1. Heard learned counsel for the petitioner as well as learned A.P.P. and learned counsel for the Opposite Party No. 2.

2. Instant Criminal Revision is directed against the judgment dated 30.07.2016 passed by the learned Sessions Judge, Lohardaga in Criminal Appeal No. 77 of 2015, whereby and whereunder, the conviction of the petitioner for the offence under Section 138 of the N.I. Act has been affirmed with modification in sentence, which was preferred against the judgment of conviction and order of sentence dated 04.07.2015 passed by the learned Trial Court in Complaint Case No. 35 of 2015, whereby the learned Appellate Court has directed the petitioner to pay the compensation amount of Rs.6,00,000/- (rupees six lakhs only) within 30 days from the date of the order, failing

which the compensation amount is to be realized from movable or immovable property of the petitioner and in default of payment of compensation within stipulated time, the petitioner shall undergo S.I. for one and half years apart from the realization of the compensation amount from his movable or immovable property.

Factual Matrix:-

3. Factual matrix giving rise to this revision is that initially a complaint case no. 2766 of 2013 was instituted by M/s. Sri Ram Transport Finance Company Limited through its authorized representative Animesh Narayan on 11.11. 2013 before the learned Judicial Magistrate First Class at Ranchi. The said complaint was returned with a liberty to file a case before the Court of competent jurisdiction in light of the judgment passed by the Hon'ble Apex Court in the case of *"Dashrath Rup Singh Rathor vs. The State of Maharastra"* (2014) 9 SCC 129. Thereafter, the complainant filed fresh complaint no. 35 of 2015 on 06.02.2015 before the Court of learned Sub-Divisional Judicial Magistrate, Lohardaga having jurisdiction in the matte alongwith the original complaint case no. 2766 of 2013 by stating inter alia that the complainant is a limited company incorporated and registered under the companies Act, 1956 through authorized representative Ranjeet Kr. Mishra having its branch office situated at J.P. Complex, P.P. Compound, P.S.-Chutia, Dist.- Ranchi, Jharkhand. It is alleged that Sri Ranjeet Kr. Mishra, the constituent attorney of the complainant and well conversant with the facts and circumstances of the case and duly authorized to sign, verify, and instituted the present complaint case by the virtue of the power of

attorney by the resolution of Board of Directors. It is further alleged that the accused (present petitioner) once approached to the complainant company regarding sanction of loan for the purpose of procuring a vehicle vide Agreement No. RANCHO 907290003. It is further alleged that for the repayment of loan amount alongwith the interest, total Rs. 3,40,000/- (rupees three lakh forty thousand) only, the debtor Sabud Ansari (present petitioner) issued a cheque no. 719269 dated 30.07.2013 drawn on Union Bank of India, Lohardaga and handed over to the complainant, which was presented by the complainant for encashment with their banker, namely, Axis Bank Limited, HB Road, near Firayalal Chowk, Ranchi Branch, but the same was dishonored and returned back with endorsement dated 23.08.2013 with the remarks "**Account Closed".** Thereafter, the complainant sent a legal notice dated 21.09.2013 through the registered post calling upon the accused (present petitioner) to pay the complainant's due of Rs. 3,40,000/- (rupees three lakh forty thousand) only, towards due with interest of the aforesaid loan amount for which, the said cheque was issued and dishonored. It is alleged that despite of legal notice sent through the registered post, the accused did not make payment of legal debt due to the complainant despite expiry of statutory period of 15 days as prescribed under the provision of Negotiable Instrument Act, 1881. Therefore, the accused has committed an offence under Section 138 of the N.I. Act and, the complaint was filed by the complainant within 30 days of the approval of the cause of action, therefore the complaint is within limitation.

4. The above complaint was registered before the Court of learned Sub-Divisional Judicial Magistrate, Lohardaga on 06.02.2015. The learned Judicial Magistrate found the sufficient prima facie material to proceed further with the case constituting the offence under Section 138 of the N.I. Act, hence vide order dated 23.02.2015 issued summon against the proposed accused.

5. In obedience to the summon, the accused appeared and contested the case.

6. In the course of trial, PW-1 Subrato Kumar Biswas, representative of the Company was examined, who has proved prosecution case as well as contents of the complaint and also adduced following documentary evidence:-

   I. Exhibit 1- Cheque No. 719269 dated 30.07.2013

   II. Exhibit 2- Banker's memo that the cheque was returned back with endorsement that "Account Closed".

   III. Exhibit 3- A legal notice dated 21.09.2013

   IV. Exhibit 4- Receipt of registered letter dated 21.09.2013

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

8. The learned Trial Court after evaluating the evidence of oral and documentary evidence adduced by the complainant and the materials during cross examination recorded the findings of guilt of the petitioner for the offence under Section 138 of the N.I. Act and sentenced him to undergo S.I. for one and half years and also directed to pay a compensation amount of rupees six lakhs to the complainant without prejudice to his civil rights.

9. The convict (petitioner) challenged the judgment of the learned Trial Court by preferring a Criminal Appeal being Criminal Appeal No. 77 of 2015, which was also dismissed on merits by the learned Sessions Judge, Lohardaga upholding the conviction of the petitioner under Section 138 of the N.I. Act but modified the sentence in rigorous manner to the extent that the petitioner shall pay rupees six lakhs as compensation within 30 days from the date of passing of this order, *failing which the compensation amount to be realized from his movable and immovable property* and in default of payment of compensation in the above stipulated period, the petitioner shall be directed to undergo S.I. for one and half years.

Submission on behalf of the Petitioner:-

10. Learned counsel for the petitioner has challenged the legality, propriety and correctness of the impugned judgment passed by the learned Trial Court as well as the learned Appellate Court on following prominent point raised during argument:-

i) As per complainant, the purported cheque for satisfying the loan amount was issued by present petitioner on 30.07.2013, the said cheque was dishonored and return memo with endorsement and the banker of the complainant was received to him on 23.08.2013. The complainant sent a registered legal notice calling him upon to pay the cheque amount dated 21.09.2013 but the complaint was filed on 11.11.2013 before the wrong forum in the Court of learned Judicial Magistrate, Ranchi with specific pleading that the complaint case is filed within limitation period. The bare reading of aforesaid dates mentioned and admitted by the complainant clearly depicts that the

complaint was hopelessly time barred. There was not prayer by the complainant to condone the delay in instituting the complaint case as per provision under Section 138 r/w Section 142 (Proviso) of the N.I. Act.

ii) Since the complaint itself was time barred, therefore the learned Trial court has no jurisdiction to entertain the same, rather bound to dismiss the complaint *in limine*, even without raising any objection by the defence. Therefore, the taking of cognizance of the offence and all other collateral/incidental proceedings followed by the learned Trial Court were *void ab initio* and as such, this revision is fit to be allowed on this ground alone.

iii) The first complaint case being case no. 2766/2013 was instituted by authorized representative, namely, Animesh Narayan of M/s. Sri Ram Transport Finance Company Limited and in para-2 of the said complaint petition, it was specifically pleaded that Animesh Narayan has been appointed as authorised attorney of the complainant company is well conversant with the facts and circumstances of the present case and is duly authorized to sign, verify, and institute the present complaint case by virtue of the power of attorney by the resolution dated 01.02.2013 passed by the of Board of Directors. Similarly, the second complaint case being case no. 35 of 2015 was instituted after return of the first complaint from the Court of learned Judicial Magistrate, Ranchi and filed before the Court of learned SDJM, Lohardaga, wherein, Mr. Ranjeet Kr. Mishra is alleged to be authorized representative of the said company by resolution passed by of Board of Directors, but neither date of resolution has been

mentioned nor any copy of resolution was filed along with the complaint petition. Not only this, at the time of examination of witness, an unauthorized person, namely, Subrato Kumar Biswas was examined as CW-1, who had no personal knowledge about the transaction of this case. This sole witness examined by the complainant has admitted in his cross-examination that the cheque was not given by the accused in his presence. He has also not filed hire purchase agreement. He can't tell the amount of loan sanctioned in favor of the accused. He has also no knowledge as to how many installments were paid by the accused. He was never posted at Lohardaga branch of the said company. The cheque return memo was also not received by him. The authorized attorney Mr. Ranjeet Kr. Mishra has simply filed an affidavit but was never subjected to cross-examination by the defence.

iv) The complainant has simply placed reliance upon the documentary evidence exhibited as Ext.1, 2, 3 & 4, but there is no iota of evidence at all showing the exact debt and liability against the accused. There is no whisper as to what amount of loan was taken by the petitioner, which type of vehicle was purchased, what was installment amount, how many installments were paid and how Rs. 3,40,000/- with interest was lying due on the date of institution of the complaint. There is no categorization about the principal amount and the interest component separately. Without bringing on record all the relevant documents, which was in exclusive possession of the complainant, like, loan agreement, amount of loan, terms and conditions of hire-purchase agreement, the time fixed for repayment of loan and how

many installments were paid, it cannot be presumed that there was exact dues of Rs. 3,40,000/- with interest as liability of the petitioner to be discharged, without proving the aforesaid facts, no presumption under Sections 118, 138 & 139 of the N.I. Act can be raised against the accused.

v) The learned Trial Court has also failed to bring on record the original receipts of payment of installments by petitioner filed on 22.06.2015 for proper appreciation of the case.

vi) It is a case of loan for purchasing of a vehicle under hire-purchase agreement and not a secured debt. Therefore, direction of the learned Appellate Court that the amount of compensation shall be recovered from movable or immovable property of the petitioner is also illegal and without jurisdiction.

vii) The impugned signed cheque in blank was taken at the time of granting loan as security, which has been converted and used by the complainant filling the date, amount and name of payee as issued for discharging the dues and arrears of loan amount with interest without knowledge of the petitioner.

In view of above premises, it is argued that the impugned judgment passed by the learned Trial Court as well as the learned Appellate Court suffers from serious illegality and void *ab initio* by entertaining a time barred complaint and based upon inadmissible evidence. As such, impugned judgment and orders are fit to be set aside. This revision has merits and fit to be allowed.

Submission on behalf of the Opp. Parties:-

11. Per contra, learned counsel for the opposite party no. 2 assisted with the learned A.P.P. controverted the aforesaid points of arguments raised on behalf of the petitioner and has submitted that there are concurrent findings of the learned Trial Court as well as learned Appellate Court on the point of limitation. The learned Appellate Court has recorded specific finding that an application for condonation of delay alongwith complaint was filed by the complainant before the Court of learned Judicial Magistrate, Ranchi and delay was condoned due to vacation in Court on account of intervening Deewali & Chhat Puja. The complaint, after returning from the Court of learned Judicial Magistrate, Ranchi, was filed within a month before the competent Court of Lohardaga. Therefore, the plea of limitation taken by the petitioner has already been decided by the learned Trial Court as well as the learned Appellate Court. Therefore, there is no substance in the aforesaid point of argument. There is no substance in the argument of learned counsel for the petitioner that the complaint was not filed by authorized representative of the company, rather, there is specific pleading in the complaint itself, which has not been rebutted by the petitioner. There is no requirement of law to file the resolution passed by the company for authorizing a person to institute a case and prosecute on behalf of the company. CW-1 is also an employee of the company, hence, he was competent to be examined as a witness. The factum of sanction of loan in favor of the petitioner has not been denied and signature on the impugned cheque has also not been denied. Therefore, proving the

original agreement and its terms and conditions by the complainant does not hold much water to affect the prosecution case. The cheque was never issued as a security, rather, it bears signature of the petitioner, which was issued for the amount of Rs. 3,40,000/- (rupees three lakh forty thousand only) for discharging outstanding arrears of loan amount. The learned Trial Court as well as the learned Appellate Court have wisely and aptly considered the oral as well as documentary evidence available on record and rightly held the petitioner guilty for the offence under Section 138 of the N.I. Act. The order passed for realization of compensation amount through sale of movable or immovable property of the petitioner is also not illegal, rather, permissible under law. There is no scope in this revision to take a different view from the learned Trial Court as well as the learned Appellate Court and this revision is fit to be dismissed being devoid of merits.

Analysis, discussion and reasons:-

12. I have gone through the impugned judgment and orders passed by the learned Trial Court as well as learned Appellate Court in the light of contentions raised on behalf of both the parties.

13. The following points emerges for consideration of this revision, as to:-

(i) Whether the complaint instituted by the complainant was time barred and whether the delay was condoned by the learned Trial Court?

(ii) Whether the impugned cheque was issued for discharging in full or part, any legally enforceable debt or liability of the petitioner?

(iii) Whether the impugned judgment of conviction and sentence of the petitioner suffers from material illegality or infirmity and otherwise not correct and proper and fit to be set aside?

14. Before embarking upon adjudication on above points, it is desirable to extract the relevant provisions of the Negotiable Instrument Act, which is quoted hereunder:-

> ***"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.

Section 142 Cognizance of offences.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.]

(2) The offence under Section 138 shall be inquired into and tried only by a Court within whose local jurisdiction,-

(a) If the cheque is presented delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.- For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.

15. The Hon'ble Apex Court in the case of **C. C. Alavi Haji vs. Palapetty Muhammed and Anr. (2007) 6 SCC 555**, observed that

when the notice was sent by the registered post by correctly addressing drawer of the cheque, mandatory requirement of issue of notice in terms of section 138 proviso (b) of N.I. 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 N.I. Act, the court is required to be *prima facie* satisfied that a case under the said section is made out and afore-noted 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. This interpretation of the provision would effectuate the object and purpose for which the proviso to section 138 was enacted, namely, to avoid unnecessary hardship to an honest drawer of a cheque to provide him opportunity to make amends.

Any drawer who claims that he had not received the notice sent by the post, can within 15 days of receipt of summons from the court in respect of complaint under section 138 of Act, make payment of the cheque amount and submit to the court that he had made payment within 15 days of receipt of summons (by receiving a copy of the complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of the receipt of the summons from the court along with the copy of the complaint

under section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under section 138 of the Act, by ignoring statutory presumption to the contrary under section 27 of the General Clauses Act and Section 114 of the Evidence Act.

Further exploring the nature and object of section 138 of proviso (b) (c) regarding requirement of giving notice to drawer of cheque prior to prosecution under section 138, it was observed that object of such requirement is to avert unnecessary prosecution of an honest drawer and give an opportunity to him to make amends and thus avoid unnecessary hardship to him. The prosecution under section 138 of NI Act has been made subject to certain conditions which are stipulated in the provisos appended to section 138. Therefore, the observance of stipulating in proviso (b) to section 138 and its aftermath in proviso(c) to the said section being a pre-condition for invoking of offence under section 138 of the Act giving notice to the drawer before filing the complaint under section 138 of the Act is a mandatory requirement. The requirement of giving notice is a clear departure from the rule of criminal law, where there is no stipulation of giving a notice before filing a complaint. The entire purpose of requiring a notice to give an opportunity to the drawer to pay the cheque amount within 15 days of service of notice and thereby free himself from the penal consequences of section 138.

While construing the said provision, the object of legislation has to be borne in mind. The chapter XVIII of the N.I. Act originally containing sections 138 to 142 was inserted in the Act to create an atmosphere of faith and reliance on banking system by discouraging

people from not honouring their commitments by way of payment through cheques. Section 138 of the Act was enacted to punish those unscrupulous persons who purported to discharge their liability by issuing cheque without really intending to do so. To make this provision contained in the said chapter more effective, some more sections were inserted in the chapter and some amendments in the existing provisions were made. These amendments do indicate the anxiety of the legislature to make the provision more result oriented.

16. In the case of **"Subodh S. Salaskar vs. Jayprakash M. Shah and Anr."** (2008) 13 SCC 689 relied upon by the opposite party No.2, the cheque presented to bank on 10.01.2001 were returned to Respondent No. 1 by the bank alleging that no such account in the name of appellant was in operation. A legal notice dated 17.01.2001 under section 138 of proviso (b) of the N.I. Act was sent by speed post. The complaint petition alleging commission of an offence under section 138 of N.I. Act, however was filed on 20.04.2001. An application to amend the complaint petition for adding offence under section 420 of Indian Penal Code was allowed by an order dated 14.08.2001. The appellant's application dated 16.12.2003 for discharge on the premise that the complaint petition was barred by limitation was dismissed. The revision application filed by the appellant before the learned Additional Sessions Judge as well as criminal writ petition was dismissed.

Allowing the appeal, the Hon'ble Supreme Court held in the facts and circumstances of the case, the High Court was not correct in taking the view that the court as per proviso to under section 142(1)(b)

of N.I. Act, had jurisdiction to allow the amendment of the complaint petition at a letter such. *Ex facie*, the amendment application was barred by limitation no application for condonation for delay was filed. The matter might have been different if the Magistrate could have exercised its jurisdiction under section 5 of the Limitation Act, 1963 or section 473 of Cr.P.C. The provisions of said acts are not applicable. In any event no such application for condonation of delay was filed.

Considering the factual aspects of the case, it was observed that condition precedent for taking cognizance as prescribed under section 138 of proviso (c) and 142(1)(b) are not satisfied.

17. In the instant case, admittedly the cheque was issued on 30.07.2013 and when presented, retuned from the bank on 23.08.2013 and notice was issued on 21.09.2013, there is no evidence that when it was served / received by the accused petitioner for the purpose of computation of limitation period under Section 142(1)(b) of the N.I. Act. Admittedly, the complaint case was lodged on 11.11.2013 before the Court of learned Judicial Magistrate, Ranchi.

In the aforementioned factual aspect, the principle laid down by the Hon'ble Apext Court in the case of **Subodh S. Salaskar (supra)** squarely applies.

Admittedly, the notice was sent through postal registered letter. As per provision of Section 27 of the General Clauses Act, it will be deemed that the notice has been received or served upon the petitioner (accused) within 30 days from the date of transmission of the letter, i.e., 21.10.2013, thereafter, 15 days will be included for providing

time for the repayment to the drawer of the cheque, i.e., 05.11.2013, but the complaint has been filed on 11.11.2013. Thus, it is apparently time barred.

18. On the point of limitation, the learned Trial Court has observed at para-14 of the its judgment as under:-

> *"14. Now the last question is whether the present case was initiated by the complainant within 30 days from the date of refusal of the accused for making payment of the cheque amount or not ? In this case original complaint petition vide Complaint Case No. 2766/2013 filed by the complainant before the court of Sri Sekhar Kumar, the then Ld. J.M., Ranchi clearly speaks that said complaint petition was filed on 11.11.2013, i.e., within the stipulated period. Even said fact has also not been challenged by the accused. Accordingly, I find and hold that present case was initiated by the complainant within the stipulated period from the date of refusal of the accused for making payment of the cheque amount. And delay if any that has* ***impliedly been condoned*** *by the court by passing the order of cognizance."*

19. The learned Appellate Court in Cr. Appeal No. 77 of 2015, on the point of limitation, has observed as under:-

> *"9. The complaint case which was presented before the court of Ranchi is the part of the record and it will be apparent that the complaint case no. 2766/13 was presented before the court of Ranchi within time on 11.11.2013. It will be apparent from the record that complaint case no. 2766/13 was filed at the Ranchi Court along with delay condonation petition. It is stated that due to Deepawali, Chitragupta Puja, Chhat and annual vacation, the civil court was closed hence the period has to be deducted in computing the limitation. It is stated that by condoning the delay, the cognizance order was passed by the learned judicial magistrate."*

20. From perusal of aforesaid observation made by the learned Trial Court as well as the learned Appellate Court, it is crystal clear that no specific order of condonation of delay has been brought on record by the complainant passed in Complaint Case No. 2766 of 2013, which was returned from Ranchi to be presented before the Court situated at district Lohardaga or in Complaint Case No. 35 of 2015. In both complaint petitions, it is specifically pleaded that the case is filed within prescribed time. It also appears that when fresh complaint petition being Complaint Case No. 35 of 2015 was filed on 06.02.2015 before the Court of learned S.D.J.M., Lohargada, the summoning order was passed on 23.02.2015 without adverting to take note of limitation. The learned Appellate Court has also not mentioned about any order of the learned Trial Court by which the delay was condoned. The finding of the learned Trial Court about impliedly condonation of delay only on the basis of taking cognizance or by passing summoning order and even on the ground that no challenge was made by the accused, is not tenable under law in view of provision of Section 3 of the Limitation Act, which provides as under:-

> ***Section 3. Bar of limitation.—***
>
> *(1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.*

21. Further, in view of proviso appended under Section 142 of the N.I. Act, sufficient cause has to be shown by the complainant

satisfying the cause of delay. Therefore, implied condonation of delay is creation of conjecture and has no legal substance.

Similarly, the reasons recorded by the learned Appellate Court, as quoted above also, does not satisfy the requirement of law. Therefore, mere filing of an application for condonation of delay cannot be considered amounting to condonation of delay by itself unless any speaking order is passed by the concerned Trial Court.

22. In view of the above discussion and reasons, it is quite obvious that the complaint lodged by the complainant in this case was time barred and delay was not condoned in accordance with law. Therefore, the learned Trial Court had no jurisdiction to proceed further in the matter and bound to dismiss the same.

23. So far point no. (ii) ***whether the impugned cheque was issued for discharging in full or part, any legally enforceable debt or liability of the petitioner*** is concerned, it has been held by Hon'ble the Bombay High Court in the case of "**Tukaram vs. Dileep & Ors.**" reported in **2024 SCC OnLine Bom 1711** at para-10 that it is further fairly settled position that fundamental burden is on complainant to prove existence of legally enforceable debt and only if it is so proved, only then presumption available under law, i.e., under Sections 118 & 139 of the N.I. Act, automatically comes into play. The Hon'ble Apex Court in the case of *Krishna Janardhan Bhat v. Dattatraya Hegde*, (2008) 4 SCC 54 has also clarified that existence of legally enforceable debt is not a matter of presumption. It merely raises a presumption in favour of the holder of the cheque that the same has been issued for discharge of any liability of debt. Only when accused

fails to rebut the presumption, offence under Section 138 can be said to be brought home.

24. From perusal of the impugned judgments, it appears that the learned Trial Court as well as the learned Appellate Court have not considered the foundational facts regarding debt and liability against the petitioner. The sole witness examined in this case, who was not authorized by the company, has expressed complete ignorance from any transaction of loan, what was the terms and conditions of the hire-purchase agreement, he has also not brought on record any copy of agreement and what amount was taken as loan and how many installments were prescribed for re-payment of the said amount, has also not been proved by him. Therefore, the evidence of CW-1, who was never posted at concerned branch, is completely hearsay having no evidentiary value. The defence documents were not marked exhibited. Therefore, the very initial burden to be discharged by the complainant in invoking the presumption under Sections 118 and 139 of the N.I. Act is absolutely lacking in this case.

25. In view of aforesaid discussion and reasons, it is crystal clear that the impugned judgment of conviction and sentence of the petitioner is not only time barred claim but also suffers from serious error of law and infirmity and is based upon no legal evidence. Therefore, the impugned judgment passed by the learned Trial Court as well as the learned Appellate Court is, hereby, set aside.

26. This Criminal Revision is, accordingly, a**llowed.**

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

28. Petitioner is on bail. As such, he is discharged from the liability of bail bond and sureties are also discharged.

29. Let a copy of this judgment alongwith the trial court records be sent back immediately to the concerned Court for informant and needful.

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand at Ranchi
Dated: 08/10/2026
Rahul/AFR
Uploaded on: 09/10/2026