



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.38 of 2026

(In the matter of an application under Section 442 of the
BNSS)

R.K. Mansion Private Limited, Bhubaneswar, Khordha, represented by its Managing Director Jameswar Nath Sharma ***Petitioner***

-versus-

Rajesh Kumar Dash ***Opposite Party***

For Petitioner : Mr. R.N. Mohanty, Advocate
For Opposite Parties : Mr. K.C. Kar, Advocate
Mr. R.K. Prusty, Advocate

CORAM: JUSTICE V. NARASINGH

DATE OF HEARING : 15.07.2026

DATE OF JUDGMENT : 22.07.2026

V. Narasingh,J. Heard learned counsel for the
Petitioner and learned counsel for the Opposite Party.

1. This Criminal Revision has been filed assailing
the judgment dated 01.12.2025 passed by the learned



2nd Additional District and Sessions Judge, Bhubaneswar, in Criminal Appeal No. 135 of 2024, whereby the learned Appellate court, while affirming the judgment of conviction dated 05.11.2024 passed by the learned J.M.F.C., Cog-II, Bhubaneswar in ICC Case No.135 of 2017 (T.R. Case No.77 of 2022) qua the Petitioner, sentencing him to undergo Simple Imprisonment (hereinafter referred to as "S.I.") for a period of two months and to pay compensation of an amount of Rs.4,00,000/- (Rupees Four lakhs only), which includes the interest on the cheque amount and cost of litigation as well as cost for the mental agony, to be awarded to the complainant under Section 357(3) of Cr.P.C., which shall be realized from the convict like criminal fine, for commission of the offence punishable under Section 138 of the N.I. Act and in default of payment of the compensation amount fixed, to undergo further S.I. for a period of two months.

2. **For convenience of reference, the parties shall be referred to as per their status before the**



trial court i.e., learned J.M.F.C., Cog-II, Bhubaneswar.

3. The case of the Complainant-Opposite Party, in brief is that, the accused-Petitioner had given a proposal to the Complainant to purchase one duplex house and being satisfied with the documents, the Complainant paid a part consideration of Rs.20,00,000/- (Rupees Twenty Lakhs only) out of total consideration of Rs.25,00,000/- (Rupees Twenty Five Lakhs) on 05.05.2015 for purchasing the duplex house. The accused-Petitioner expressed his inability to provide the duplex house which was supposed to be bought by the Complainant. The accused-Petitioner executed a written agreement with the Complainant on 23.08.2016 and thereby agreed to refund the part consideration amount of Rs.20,00,000/- with interest @10% per annum from the date of payment i.e. 05.05.2015.

Accordingly, the company of the accused-Petitioner, in order to discharge the liability, issued two



cheques in favour of the Complainant i.e., cheque No.031153 for Rs.2,60,000/- and cheque No.062959 for Rs.19,40,000/-, both dated 20.09.2016 drawn on ICICI Bank, Bhubaneswar Branch. As per the instruction of the accused-Petitioner, the Complainant deposited the said cheques with State Bank of India, Rail Vihar Branch, Bhubaneswar. The cheques were returned with the remarks "Funds Insufficient" on 21.09.2016 and when again presented on 18.11.2016, were also returned with the remarks "Funds Insufficient." Thereafter, Complainant-Opposite Party instituted a complaint under Section 138 of N.I. Act against the accused persons (O.P No.1 and 2) and cognizance of the offences was taken against the accused-Petitioner.

4. The defense plea was that the Complainant was working with the accused-Petitioner for a long time and taking advantage of the same, he unfairly procured the cheque(s) and used the same.



5. To substantiate his claim, the Complainant examined himself as P.W.1 and accused No.2 (Jameswar Nath Sharma- Petitioner) examined himself as D.W.1.

Several exhibits were marked at the behest of the Complainant as well as at the instance of the accused-Petitioner.

6. On going through the evidence on record including the recitals of the demand notices at Exhibits-4 and 5 and certified copy of the Agreement (Exhibit.7) between accused-Petitioner and the Complainant- Opposite Party, the learned Trial Court found the accused-Petitioner guilty for commission of offence under Section 138 of N.I. Act and imposed punishment for S.I. of two months and directed recovery of compensation of Rs.4,00,000/- (Rupees Four lakhs only).

7. Assailing the same, the accused-Petitioner preferred Criminal Appeal No.135 of 2024 in the Court



of learned 2nd Additional District & Sessions Judge, Bhubaneswar.

7-A. The Appellate Court considered the evidence on record and refused to interfere with the order of conviction and sentence as well as the compensation.

8. Being aggrieved, the present revision has been preferred.

9. Learned counsel for the Petitioner Mr. Mohanty, submits that the appreciation of the evidence by the Trial Court as affirmed by the Appellate Court is ex facie perverse so as to warrant interference by this Court.

10. It is his submission that the notice at Exhibit-4 is not in terms of the Proviso (b) to Section 138 of the N.I. Act. As such, the very institution of the proceeding is bad in law and the same having not been considered by the Trial Court as well as the Appellate Court, the matter merits interference of this Court in exercise of its revisional jurisdiction.



10-A. Admittedly, such a ground has not been taken either before the Trial Court nor the Appellate Court.

11. Per contra, learned counsel appearing for the Complainant-Opposite Party submits that such stand admittedly having not been raised before the Courts below, it is not open for the accused-Petitioner to canvass the same before this Court in this revision for the first time.

12. Before proceeding to consider the evidence on record for limited purpose of evaluating the submission of the learned counsel for the accused-Petitioner that the appreciation of the same is ex facie perverse, this Court feels it is prudent to answer the preliminary objection raised by the learned counsel for the Complainant-Opposite Party regarding infraction of proviso (b) to Section 138 of the N.I. Act being urged by the accused.

For convenience of reference Section 138 of the N.I. Act is quoted as under:



"XXX

XXX

XXX

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 extend 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.

xxx

xxx

xxx"

(Emphasized)

13. So far as the exercise of revisional jurisdiction by this Court is concerned, its contours are hedged by judicial pronouncements and the underlying principle is that the Court should be slow in re-appreciating the evidence unless consideration thereof by the Courts below suffer from patent perversity. Yet, the doors of this Court in exercising revisional jurisdiction ought not to be shut, when violation of basic ingredients of an offence are urged even at the stage of revision.

14. The grounds to be taken before the learned Courts below are within the domain of the counsel appearing and the client who reposed implicit trust in the ability of his counsel ought not to suffer merely



because such a ground was not urged before the Courts below.

14-A. In this context, reliance can be made to the judgment of the Apex Court in the case of ***Rafiq v. Munshilal***¹, wherein the Hon'ble Court has taken a view that a Party cannot be made to suffer because of the inaction of his Advocate.

"xxx xxx xxx

3. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted.

xxx xxx xxx''

15. Hence, assessing the rival contentions, this Court is persuaded to hold that it is open for the accused-Petitioner to assail the findings of the learned Trial Court inter alia, on the ground of infraction of proviso (b) to Section 138 of the N.I. Act.

16. To fortify his submission, regarding infraction of proviso (b) to Section 138 N.I. Act, the learned

¹ *Rafiq v. Munshilal*, (1981) 2 SCC 788



counsel for the accused-Petitioner has placed reliance on the judgment of the Apex court in the case of ***Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul***² as well as the judgment of the Kerala High Court in the case of ***A.C. Raj v. M. Rajan***³.

The law relating to import of notice mentioned in proviso (b) to Section 138 N.I. Act has been succinctly stated in paragraphs 8, 8.1 and 8.2 of the judgment ***Kaveri Plastics (supra)***², which are extracted hereunder:

8. From the aforestated reiterative pronouncements and the principles propounded by the courts, the position of law that emerges is that the notice demanding the payment of the amount covered by the dishonoured cheque is one of the main ingredients of the offence under section 138 of the Negotiable Instruments Act. In the event of the main ingredient not being satisfied on account of discrepancy in the amount of cheque and one mentioned in the notice, all proceedings under section 138 of the Negotiable Instruments Act would fall flat as bad in law. The notice to be issued under

² *Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul*, 2025 SCC Online SC 2019

³ *A.C. Raj v. M. Rajan*, 1996 SCC OnLine Ker 284



proviso (b) to section 138 of the Act, must mention the same amount for which the cheque was issued. It is mandatory that the demand in the statutory notice has to be the very amount of the cheque. After mentioning the exact cheque amount, the sender of the service may claim in the notice amounts such as legal charges, notice charges, interest and such other additional amounts, provided the cheque amount is specified to be demanded for payment.

8.1. A failure in above regard, namely when the cheque amount is not mentioned in the proviso (b) notice or the amount different than the actual cheque amount is mentioned, in the notice, such notice would stand invalid in eye of law. The notice in terms of proviso (b) being a provision in penal statute and a condition for the offence, it has to be precise while mentioning of the amount of the cheque which is dishonoured. Even if the cheque details are mentioned in the notice but corresponding amount of cheque is not correctly mentioned, it would not bring in law the validity for such notice. Here the principle of reading of notice as a whole is inapplicable and irrelevant. Any elasticity cannot be adopted in the interpretation. It has to be given technical interpretation.

8.2. The condition of notice under proviso (b) is required to be complied with meticulously. Even typographical error can be no defence. The error even if typographical, would be fatal to the legality of notice, given the need for strict mandatory compliance. And in the facts



of the present case, the explanation that mentioning of wrong amount in the cheque was in the nature of typographical or inadvertent error could hardly be accepted, for the so-called mistake occurred and recurred in both the notices dated June 8, 2012 and September 14, 2012.

xxx

xxx

xxx"

17. The judgment in the case of **A.C. Raj (supra)**³ is also to the same effect and the accused-Petitioner relies on paragraph-11 thereof, which is extracted hereunder:

"xxx

xxx

xxx

11. There is another reason also which justifies the acquittal. Ext. P3 is the office copy of the notice contemplated by proviso (b) to section 138. There, payment was demanded not only of the amount covered by the cheque, but also interest thereon without specifying the rate of interest. The learned counsel for the respondent would urge that such a notice is an insufficient notice or a notice which cannot be treated as legal under proviso (b) to section 138. In support of this contention, reliance was placed on the decision reported in 1996 (2) KLT 886 (Gopa Devi Ozha v. Sujit Paul). The decision was rendered by the High Court of Calcutta. There, the amount covered by the cheque was Rs. 5,79,000/- and the amount claimed under the notice was Rs. 6,50,000/-. In considering the legality and sufficiency of



that notice, that court held that the words "the said amount" in proviso (b) to section 138 and identical words in proviso (c) to that section would necessarily indicate that the notice must be one demanding the amount covered by the cheque and nothing more or nothing less. According to that court, a notice claiming a higher amount or a lesser amount makes the notice insufficient and vague, and such a notice will be illegal. I do not see any reason to disagree with the learned Judge who rendered the above said decision.

xxx

xxx

xxx"

18. Learned counsel for the Complainant submits that the above said judgments are of no assistance, in so far as the present lis is concerned.

19. To appreciate the grounds urged by the learned counsel for the accused-Petitioner, it is apt to refer to Exhibit-4, the notice which was issued on behalf of the Complainant dated 30.11.2016, the same is culled out hereunder for ready reference

"xxx

xxx

xxx

Ref:15

Date:30/11/2016

For and on behalf of:

Rajesh Kumar Dash

xxx

xxx

To

1. R.K.Mansion Private Ltd.,



xxx

xxx

2. Jameswar Nath Sharma

xxx

xxx

Managing Director of R.K. Mansion Private Ltd.

NOTICE

Dear Sir,

Under the instruction of my above named client I serve this notice as here under.

1. That, my client' had entered into an oral agreement with you to purchase one duplex house situated at Mouza-Kurundi, Khata No.1. Plot No.964 in the name and style of R. K. Villa Duplex.

2. That on 05.05.2015 my client had paid a part consideration amount of Rs.20,00,000/- (Rupees twenty lakhs) only out of total consideration of Rs.25,00,000/- (Rupees twenty five lakhs) only.

3. That you expressed your inability to provide the duplex house and promised to refund the part consideration amount of Rs.20,00,000/- (Rupees twenty lakhs) only with interest @ 10% per annum from the date of payment i.e. 05.05.2015 for one year as total amount of Rs.22,00,000/-(Rupees twenty two lakhs) only and executed an agreement to that effect on 23.08.2016.

4. That, in order to discharge your liability you had issued two numbers of cheques bearing No.031153 amounting to Rs.2,60,000/-(Rupees two lakhs sixty thousand) only dtd.20.09.2016 and another cheque bearing No. 062959 amounting to Rs.19,40,000/-(Rupees nineteen lakhs forty thousand)only both are drawn on ICICI Bank, Bhubaneswar branch Unit-III, Opposite Sriya Talkies, Off- Janpath, Bhubaneswar.



5. That, as per your instruction of my client deposited the said two nos cheques with his banker, State Bank of India, Rail Vihar Branch, Bhubaneswar on 20.09.2016 which was returned with remarks "Funds Insufficient" on dd.21.09.2016. My client again deposited the said two nos cheques with his banker as per your instruction on 18.11.2016 which was returned with remarks "Funds Insufficient" in return Memo on dtd.19.11.2016.

6. That, my client demand you to make payment of Rs.22,00,000/-(Rupees twenty two lakhs) only within a period of 15 days of receipt of this demand notice, failing which my client shall be constrained to initiate both criminal and civil action against you for realization of the said amount with interest.

xxx

xxx

xxx"

(Emphasised)

20. It is stated by the learned counsel for the Petitioner referring to the said notice in the context of the cheque in question i.e., No.031153 amounting to Rs.2,60,000/- drawn on ICICI Bank Bhubaneswar, Branch-3, Branch Unit-III, Opposite Sriya Talkies, of Janpath, Bhubaneswar, that notice the amount demanded is admittedly Rs.22,00,000/- and placing reliance on the judgment of the Apex Court in the case of **Kaveri Plastics (supra)**² as well as the judgment of the Kerala High Court in the case of **A.C. Raj**



(supra)³, it is vehemently urged that the notice does not reflect the exact amount of the cheque, which was dishonoured as such there is patent infraction of proviso (b) to Section 138 of N.I. Act.

21. On a bare perusal of the notice, it is seen that the said notice related to the two cheques, one which is the subject matter of the present revision and the other being for an amount of Rs.19,40,000/-, in respect of which CRLREV No.1116 of 2026 has been preferred.

22. The cheque amount mentioned in the notice which has been referred by the Apex Court in the case of **Kaveri Plastics (supra)**² was to the tune of Rs.1 crore and the complaint asked for payment of Rs.2 crores and in the said context the Apex Court laid down the law as extracted hereinabove in Paragraphs.8 to 8.2 and in the judgment of the Kerala High Court in **A.C. Raj (supra)**³ relied upon by the learned counsel, it is seen that the notice was issued *“not only of the amount covered by the cheque, but*



also interest thereon without specifying the rate of interest" and in that context, the Court considered proviso (b) to Section 138 of the N.I. Act and the import of the words "the said amount".

22-A. The High Court of Kerala in the aforementioned judgement held that the said notice was "insufficient and vague" and was not in consonance with the notice as envisaged under Proviso (b) to Section 138 of the N.I. Act and dismissed the complaint.

23. On a bare perusal of the notice issued in the case at hand at Exhibit-4, the same does not suffer from any infirmity and there is no embargo in law for issuing one notice for two cheques which have been dishonoured and on a bare perusal of the notice in question (Exhibit-4), it is seen that the amount claimed is the amount for which the **cheque(s)** have been issued. As such, the aforesaid judgements relied upon by the Petitioner are clearly distinguishable on facts and are of no assistance to the Petitioner.



23-A. Reference in this regard is made to the judgment of **Fayaz Ahmad Rather v. Tariq Ahmad Wani**⁴, wherein the High Court of Jammu and Kashmir and Ladakh held thus;

“XXX XXX XXX

14. The issue as to whether a single complaint would be maintainable in respect of more than three cheques has been dealt with by various High Courts of this Country and it has been the consistent view of the Courts that a single complaint in respect of dishonour of more than three cheques is maintainable if a consolidated notice of demand is served upon the accused....

XXX XXX XXX”

24. On going through the judgements passed by the Trial Court as well as the Appellate Court, it is seen that the Trial Court based its judgment on the following counts;

"XXX XXX XXX

4. Points for Determination:

From the facts and circumstances of the case, the following points for determination comes to light:

I. Whether the cheques bearing No. 062959 of ICICI Bank, Bhubaneswar Branch, Unit No.-III, Opp. Sriya Talkies, Off Janpath, Bhubaneswar-751001, amounting to Rs. 19,40,000/-, is issued by the accused persons to the complainant and

⁴ *Fayaz Ahmad Rather v. Tariq Ahmad Wani*, 2025 SCC OnLine J&K 176



the said cheque was issued by the accused persons (as the same persons in one) towards discharge in part of any legally enforceable debt or other liability from the complainant?

II. Whether the complainant presented the said cheque in his bank within three months from the date on which it was drawn or within the period of its validity?

III. Whether the said cheque was dishonoured by the bank on any ground which attracts implementation of Section 138 of the Act?

IV. Whether the complainant has made demand for payment of the dishonoured cheque amount from the accused persons by sending a demand notice in writing to the accused persons within thirty days of the receipt of information from the bank regarding the return of the cheque as unpaid/dishonoured?

V. Whether the accused persons have failed to make the payment of the said cheque demanded amount of money to the complainant within fifteen days of the receipt of the said pleader's notice from the complainant?

VI. Whether the complaint petition is maintainable?

xxx

xxx

xxx"

25. The Appellate Court on scrutiny of such judgment has noted that the Accused No.2 examined as D.W.1 in the original complaint case has admitted Exhibit-1, the cheque in question and also the signature. It also took cognizance of the fact that no



steps have been taken to substantiate the defence plea that the cheque was forged and misused.

26. It also referred to Exhibit-7, i.e., the agreement between the parties, which has been admitted in the case at hand by Accused No. 2 in his individual capacity as well, without any objection.

It was also noted that the accused was impleaded in his individual capacity as well as the company has been cited as co-accused.

26-A. The Appellate Court has affirmed the finding in this regard by the Trial Court that there is no infraction regarding impletion of proper parties.

27. On scrutiny of the materials and evidence on record, this Court finds that the Complainant had filed the original complaint against the company so also the Managing Director, Jameswar Nath Sharma in his individual capacity.

It is apt to note that this revision has been preferred by the Petitioner as managing director though the appeal was filed by the Petitioner in his



capacity as managing Director as well as in his individual capacity, as such, the individual liability fixed so far as of the accused Jameswar Nath Sharma is concerned has not been assailed and attained finality.

28. On a conspectus of the materials on record this Court finds that, there is no infirmity in the appreciation of evidence by the Trial Court as affirmed by the Appellate Court, in the light of the provisions as contained Section 138 of the N.I. Act so as to warrant interference of this Court in exercise of its revisional jurisdiction.

29. Accordingly, the CRLREV stands rejected.

(V. NARASINGH)
Judge

Orissa High Court, Cuttack
Dated the 22nd July, 2026/ Soumya
22.07.2026/Uploaded