# Smt. Rani Saha Vs Dipak K. Saha

**Court:** Gauhati High Court

**Date of Decision:** Aug. 25, 2006

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€" Section 200, 313, 395, 396, 397
Negotiable Instruments Act, 1881 (NI) â€" Section 138

**Citation:** (2007) 2 BC 344 : (2007) CriLJ 1221 : (2006) 4 GLT 303

**Hon'ble Judges:** R.B. Misra, J

**Bench:** Single Bench

## Judgement

@JUDGMENTTAG-ORDER

R.B. Misra, J.
Heard Mr. B. Das, learned senior counsel assisted by Mr. R.R. Dutta, learned Counsel for Smt. Rani Saha, petitioner-

revisionist. Also heard Mr. S. Kar Bhowmik, learned Counsel for Sri Dipak Kr. Saha, the respondent No. 1 and Mr. R.C. Debnath, learned P.P.

In charge appearing for the respondent State.

2. This criminal revision petition has been preferred u/s 397(1) Cr. P.C. (and not u/s 401. Cr. P.C.) against the judgment dated 18-2-2006 passed

by the learned Additional Sessions Judge in Criminal Appeal No. 58(4)/05 preferred against the judgment dated 27-9-2005 of the Additional

Chief Judicial Magistrate, West Tripura, Agartala (hereinafter called as ACJM) in CR. No. 3344/2001 affirming the conviction but modifying the

sentence to pay a sum of Rs. 70,000/- (a sum of Rs. 65,000/-to be paid to the complainant and rest amount of Rs. 5000/- be deposited to the

treasury) instead of sentencing the accused/ applicant/petitioner/revisionist by the learned ACJM to pay a fine of Rs. 1,00,000/-, in default to suffer

imprisonment for three months in reference to the offence u/s 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as N.I. Act).

3. Since the judgment dated 27-9-2005 of Ld. ACJM already passed in CR 3344/ 2001 has merged with the order dated 18-2-2006 of the

learned Additional Sessions Judge, therefore, the present revision u/s 397(1) Cr. P.C. is not maintainable against the order dated 27-9-2005. As

such, the present revision petition is being heard against the order dated 18-2-2006 only.

4. In order to adjudicate the present revision, it is necessary to give the background of the case that the applicant/accused/revisionist, Smt. Rani

Saha has a transport business owning a truck in her name. Out of family friendship, she took a loan of Rs. 60,000/- from Mr. Dipak Kumar Saha,

the opposite party-respondent and the said amount was to be paid in instalments of Rs. 10,000/- for which six post dated cheques bearing No.

077379 dated January, 2001, 077380 dated 28-2-2001, 899042 dated 30-3-2001, 899043 dated 30-4-2001, 899044 dated 30-5-2001 and

899045 dated 30-6-2001 were issued to be drawn on UCO Bank, Agartala payable from the account of Smt. Rani Saha. The above cheques

were deposited to the State Bank of India (the bank of Mr. Dipak Kumar Saha, where he maintained his accounts) and these were forwarded to

the UCO Bank. It appears that five cheques were dishonoured and returned to Sri Dipak Kumar Saha with remarks of UCO Bank that the

cheques were dishonoured due to insufficient fund in her account. However, at the request of Smt. Rani Saha, these cheques were again presented

to the State Bank of India for encashment subsequently in the month of July, 2001 but the Branch Manager, State Bank of India, CR. Road

Branch, Agartala returned these five cheques on 16-7-2001 mentioning that those cheques were dishonoured due to insufficient fund in the account

of the accused/applicant/revisionist (Smt. Rani Saha). Thereafter, Sri Dipak Kumar Saha, the complainant/respondent herein sent a notice (through

his Advocate) to the applicant by registered post with A.D. on 19-7-2001 intimating Smt, Rani Saha, about the dishonour of cheques requesting

her to pay the amount of the bounced cheques within fifteen days of receipt of notice. The letter/notice was received on 20-7-2001 as reflected

from the A.D. card, however, despite receipt of the legal notice, Smt. Rani Saha, did not make any payment, therefore, C.R. case No. 3344 of

2001 was filed on 3-9-2001.

5. It appears that one cheque bearing No. 077379 dated January, 2001, amounting Rs. 10,000/- drawn on UCO Bank presented by the

complainant was duly honoured and complainant received first instalment and remaining cheques from dated 28-2-2001 to the last cheque (dated

30-6-2001) were submitted by the complainant within six months from the date of issuance of those cheques i. e. within the period of limitation

since on 16-7-2001, the complainant received information that those, five cheques were dishonoured by the Bank and the legal notice was sent to

the accused petitioner on 19-7-2001, that is after three days of getting information about dishonour of cheques and the accused petitioner received

legal notice on 20-7-2001. The complaint filed by Sri Dipak Kumar Saha was placed before the Chief Judicial Magistrate on 3-9-2001 and on

transfer, it came to the Judicial Magistrate, 1st Class, (Sri R. Paul) who took cognizance of the case u/s 138 of the NI Act against the accused/

applicant/revisionist and had examined the complaint u/s 200, Cr. P.C. However, by order dated 7-5-2002, learned Judicial Magistrate dismissed

the complaint case with a finding that the instant proceeding is not maintainable, against which a criminal Revision No. 31(3)/2002 was preferred

by the accused/revisionist and by order dated 31-7-2002 of the learned Additional Sessions Judge, the same was set aside with direction to

proceed with the trial of the case as per law. Consequent upon, the complaint case No. C. R. 3344/2001 was adjudicated by the Ld. ACJM who

examined four prosecution witnesses namely, Sri Dipak Kr. Saha, the complainant as P.W. 1, Sri Balaram Saha, Manager of the complainant as

P.W. 2, Sri Abinash Sarkar, Manager, UCO Bank, Agartala as P.W. 3 and Sri Dhirendra Majumder, Manager, SBI, C.R. Road Branch,

Agartala as P.W. 4. The prosecution also proved certain documents and five cheques were exhibited and also exhibited two prescribed forms of

Uco Bank dated 23-6-2001 and 13-7-2001 as Exbt. 4/1 series, dishonour slip issued by SBI, M. G. Bazar Branch, Agartala dated 16-7-2001

as Exbt. 5/1 series, legal notice dated, 19-7-2001 as Exbt. 6 and other documents as indicated in the decision of the learned ACJM, whereas, for

the defence Smt. Rani Saha did not examine any witness except her statement u/s 313, Cr.P.C. denying taking of loan and issuance of cheques

with assertion that the cheques were forcibly taken by the complainant from the accused applicant/petitioner/revisionist after detaining her husband

where the accused petitioner was put under compelling circumstances tq issue five cheques in question for releasing her husband from the custody

of the complainant.

6. The learned ACJM considered the following five points for determination.

1. That the accused person issued all the five cheques (Exbt. 2 series and 3) to the complainant to discharge legally enforceable debt or other

liability ?

2. Whether the complainant submitted the cheques within statutory period, that is, six months from the date of issuance of the cheques for

ericashment to his bank ?

3. Whether cheques in question were actually dishonoured due to insufficiency of funds ?

4. Whether the complainant issued statutory notice within fifteen days from the date of his knowledge of dishonour of the cheques by the

concerned bank ?

5. Whether the accused person failed to make the payment even after the receipt of the legal notice from the complainant ?

7. On analysis of the prosecution witnesses, exhibits, materials on records, evidences and statements, learned ACJM arrived at finding that the

cheques were issued by the accused petitioner in discharge of loan/debt and accordingly, the complainant deposited all the six cheques to the

Bank, out of which one cheque was honoured and encashed, but other five cheques duly presented were dishonoured by the Bank and after giving

a valid legal notice to the accused to pay the amount reflecting'' in the bounced cheques within a period of fifteen days from the date of receipt of

the notice and despite receipt of same on 20-7-2001, the accused did not make any payment of Rs. 50,000/-. Therefore, the prosecution was

said to have proved all the points and guilt against the accused for the offence u/s 138 of the N. I. Act.

8. It has been submitted on behalf of the applicant/petitioner/revisionist that initially six cheques were issued out of which one was honoured and

out of the remaining five cheques, only one cheque bearing No. 899045 dated 30-8-2001 was presented by the complainant and the rest of the

four cheques were not presented to the UCO Bank, however, in that reference, learned ACJM has clearly observed in para 9 of his judgment

dated 27-9-2005 that all those five cheques were presented by the complainant to the SBI and subsequently, those were referred to Uco Bank fot

payment but those cheques were dishonoured for lack of fund for which the legal notice dated 19-7-2001 was sent which was received by the

accused on 20-7-2001, so in all circumstances, the complaint case was maintainable.

9. The order dated 27-9-2005 of the learned ACJM passed in CR 3344 of 2001 was tested in criminal appeal No. 58(4)/05. The learned

Additional Sessions Judge noted that when the five cheques each amounting to Rs. 10,000/- presented by the complainant to the SBI, were

returned by the UCO Bank due to insufficiency of fund, then on the request of the applicant/revisionist, those five cheques were deposited by the

complainant in the month of July, 2001 and on such presentation of cheques to the SBI, those cheques were again dishonoured for insufficiency of

fund. Even after legal notice when payment was not made, a complaint case was filed. It has been noted by the Additional Sessions Judge that the

five cheques were presented to the SBI first time on 22-6-2001, but these were returned on 23-6-2001, having been dishonoured due to

insufficiency of fund. Those five cheques were deposited to the SBI for the second time in the month of July, 2001. when again these cheques were

dishonoured, when first time the complainant received information of dishonouring the cheques, though the cause of action arose, but on such

dishonour of cheques, the complainant instead of issuing legal notice as required u/s 138(b) refrained himself in taking any action at that instance,

however, the complainant has chosen to file a case u/s 138(b) when the second time cheques were dishonoured and for the purpose, legal, notice

was issued on 19-7-2001 asking for making payment within fifteen days of receipt of legal notice and when no payment was made, the

complainant filed a complaint case, therefore, the complaint case was in full compliance of the provisions of Section 138(b) of the NI Act.

10. On behalf of the complainant/opposite party, a judgment Sadanandan Bhadran Vs. Madhavan Sunil Kumar, of Hon"ble Supreme Court has

been referred which has already been considered by the first appellate Court in para 14 of its order dated 18-2-2006 as below:

Para 14. On each presentation of the cheque and its dishonour, a fresh right and not cause of action-accrues in his favour. He may, therefore,

without taking pre-emptory action in exercise of his such right under Clause (b) of Section 138, go on presenting the cheque so as to enable him to

exercise Such right at any point of time during the validity of the cheque.

11. On the basis of the evidence and materials available, the learned Additional Sessions Judge in its order dated 18-2-2006 has modified the

order of conviction and sentence passed by Ld. ACJM and directed to pay a sum of Rs. 70,000/- (Rs. 65000/-+ Rs. 5000/-) by the accused.

Against this order, the accused/applicant/revisionist has filed the present criminal revision. During course of hearing, it has been argued for the

applicant/revisionist that initially out of six cheques for repayment of loan, one cheque was honoured and first time the complainant presented five

cheques to the SBI which were dishonoured and at the request of the applicant/revisionist, those cheques were to be presented second time, but

the complainant for reasons best known presented only one cheque second time. As such, the cause of action, if any, could be confined to only

one cheque bearing No. 899045 dated 30-6-2001 presented second time which became dishonoured. Since four cheques were not presented, no

cause of action had arisen in respect of those four cheques and the case u/s 138(b) of NI Act is not maintainable. According to the

applicant/revisionist, when the cheques were dishonoured first time, the complainant did not choose to give a notice at that stage and to prefer case

and had allegedly not presented those five cheques, but presented only one cheque subsequently, then on the ground of alleged dishonour of five

cheques at subsequent stage, second time no cause of action is available to the complainant to initiate action u/s 138(b), N.I. Act.

12. Mr. S. Kar Bhowmik. learned Counsel for the opposite party has submitted that the aspect of maintainability and cause of action were tested

before the trial Court, when the instant case presentation before the Judicial Magistrate, 1st Class (Sri R. Paul), was dismissed against which Cr.

Revision No. 31 (3)/2002 preferred was also set aside by the learned Addl. Sessions Judge, whereby the Judicial Magistrate was directed to

proceed with the trial of the case as per law. This fact has been noted in paragraphs 2 and 3 of order dated 27-9-2005 of the learned ACJM and

such issue of maintainability cannot now be agitated again.

13. In respect of maintainability of the case in reference to cause of action and initiation of case u/s 138(b) of the N.I. Act, law is well settled. The

Supreme Court in Sadanandan Bhadran Vs. Madhavan Sunil Kumar, has observed that in respect of dishonour of cheque, while adjudicating the

case u/s 138 of the N.I. Act, the cause of action arises and can arise only once, however, payee can present cheque any number of times during

the period of its validity and on each presentation and its dishonour a fresh right, and not cause of action, accrues in his favour. In S.V. Rajendra

Singh Vs. M/s Lahari Recording Co. Pvt. Ltd., learned single Judge of Karnataka High Court has indicated that the presentation of cheque may be

made number of times, once original cheque was dishonoured. However, action of filing of complaint can be taken only once and the limitation

thereof be counted from the date of last dishonour of cheque. In Nagdev Sons and Others and Ram Baboo Gupta Vs. State of Uttar Pradesh and

Others, has also indicated that in respect of dishonour of cheque, in adjudication of a case u/s 138 of N.I. Act. the cheques so dishonoured could

be subsequently presented and on being dishonoured again, notice for dishonour has to be given to the person who originally issued the cheques

and the period of limitation would start from the date of subsequent dishonour and not from the first dishonour. In Shri Ishar Alloy Steels Ltd. Vs.

Jayaswals NECO Ltd., the Hon''ble Supreme Court has held that the essential ingredient is that the presentation of cheque is within six months

from the date on which it is drawn and the presentation has to be made on drawee bank on which the cheque is drawn either directly or indirectly

through collecting bank of payee. On this point of view, according to the complainant/opposite party, the cheques were presented to the State

Bank of India as indirectly to be presented to the UCO Bank where money from the accounts of the applicant/revisionist was to be paid to him.

14. It is necessary to quote the relevant provisions of the Negotiable instruments Act, 1981. Section 138 of Chapter XVII reads thus:

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 one year, 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 drawn or within the period of its validity,

whichever is earlier.

(b) the payee or the holder in due course of the cheques, 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 fifteen days of the receipt of information by him from the bank regarding the return of

the cheque as unpaid.

15. Mr. R.R. Dutta, learned Counsel for the applicant/revisionist has submitted that an application was filed before the trial Court on 27-9-2005

i.e. on the date of pronouncement of the judgment to the fact that the second time the complainant respondent had presented to the Bank only one

cheque and the remaining four cheques were not presented to the Bank. However, according to him, that aspect was not taken into consideration

by the learned ACJM.

16. The dispute if any about the fact that only one cheque was presented second time and four other cheques were not presented to the Bank

could have been raised before the trial Court for adjudication if the applicant/accused/revisionist was serious about that aspect. However, the

concurrent findings of both the Courts below have revealed that second time five cheques were presented to the State Bank of India for payment

from the bank of the applicant/revisionist and in this respect, the observations recorded in the judgment of the lower Court shall be taken to be

correct and this Court cannot be a forum entertaining a dispute or controversy about the point taken or point argued. Therefore, it shall be

presumed that the accused applicant/revisionist had neither agitated this aspect as a point of controversy nor had persuaded the concerned Ld.

Court any more.

17. The Supreme Court in Roop Kumar Vs. Mohan Thedani, has indicated that if happenings in Court have not been correctly recorded in the

judgment, the proper remedy lies before the same Judge which has made the record and such matter cannot be raised in appeal or in revision. For

convenience, paragraph 11 is quoted below:

If a party thinks that the happenings in Court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still

fresh in the minds of the judges, to call the attention of the very Judges who have made the record. That is the only way to have the record

corrected. If no such step is taken, the matter must necessarily end there. It is not open to the appellant to contend before this Court to the

contrary.

The same view was taken by the Supreme Court in Central Bank of India Vs. Vrajlal Kapurchand Gandhi and Another, thus:

Statement of fact as to what transpired at the hearing recorded in the judgment of the Court, are conclusive of the facts so stated and no one can

contradict such statements by an affidavit or other evidence. If a party thinks that the happenings in Court have been wrongly recorded in a

judgment, it is incumbent upon the party, while the matter is still fresh in (he minds of the judges, to call the attention of the very judges who have

made the record. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. It is not open

to a party to contend before the Supreme Court to the contrary. The Supreme Court cannot launch into an enquiry as to what transpired in the

High Court. It is simply not done. Public policy and judicial decorum do not permit it. Matters of judicial record in that sense are unquestionable.

However, the Court can pass appropriate orders if a party moves it contending that the order has not correctly reflected happenings in Court.

The above view was also reiterated by the Supreme Court in Commissioner of Endowments and Others Vs. Vittal Rao and Others, .

18. This criminal revision petition has not been preferred u/s 401, but referred only u/s 397, Cr. P.C. where power of the High Court is limited in a

particular area and the High Court in exercise of its jurisdiction u/s 397, Cr. P.C. cannot exercise its revisional power as a second appellate power.

Therefore, this Court in exercise of its jurisdiction u/s 397, Cr. P.C. cannot entertain and adjudicate a fresh controversy in the name of question of

law. Raising fresh disputed facts and evidence before this Court by way of criminal revision cannot be attributable to a question of law. As such,

the disputed fact that five cheques were not presented directly or indirectly to UCO Bank or only one cheque was submitted cannot be a point for

adjudication before this Court, moreso, this cannot be the real cause to test the penal action u/s 138(b) of the N. I. Act in view of the settled

position of law that the complainant can present the dishonoured cheques as many times during the validity of its period.

19. In respect of the scope of Section 397, Cr. P.C. to exercise the revisional power by the High Court, the Hon''ble Supreme Court in State of

Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand and Others, has held that:

The Revisional Court is empowered to exercise all the powers conferred on the Appellate Court by virtue of the provisions contained in Section

401, Cr. P.C. Section 401, Cr P.C. is provision enabling the, High Court to exercise all powers of Appellate Court. If necessary, in aid of power

or superintendence or supervision as a part of power of revision conferred on the High Court or the Sessions Court. Section 397, Cr. P.C. confers

power on the High Court or Sessions Court, as the case may be, for the purpose of satisfying itself or himself as to the correctness, legality or

propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceeding of such inferior Court. It is for the above

purpose, if necessary, the High or Sessions Court can exercise all appellate powers. Section 401, Cr. P.C. conferring powers of Appellate Court

on the Revisional Court is with the above limited purpose. The provisionsl contained in Section 395 to 401, Cr, P.C. read together, do not indicate

that the revisional power of the High Court can be exercised as a second appellate power.

20. Mr. S. Kar Bhowmik, learned, Counsel for the complainant-opposite party has submitted at this stage that the accused/ applicant/revisionist

even after the judgment of Id. ACJM passed on 27-9-2005, subsequently, even after its affirmation by learned Additional Sessions Judge vide his

order dated 18-2-2006, did not make any endeavour for making payment of the debt covered under dishonoured/bounced cheques and as such,

bona fide is lacking on the part of the revisionist, therefore, no sympathy be shown to the accused/applicant/revisionist regarding imposition of

penalty in view of the decision in Suganthi Suresh Kumar Vs. Jagdeeshan, following its earlier decision in Hari Kishan Vs. Sukhbir Singh and

Others, Hon''ble Supreme Court held that awarding flea-bite sentence (imprisonment till rising of Court and fine of Rs. 5,000/-) by the High Court

in reference to adjudication of a case u/s 138 N.I. Act for dishonouring cheque over Rs. 4.50 lakhs was treated to be not justified when such

amount of Rs. 4.50 lakhs was not paid by the accused to the complainant during the pendency of the case before lower Court or the High Court

and it was also indicated that filing of civil suit by the complainant subsequently attachment of properties of accused is no ground to impose a lesser

sentence.

21. In the facts and circumstances of the case and after hearing the learned Counsel for the parties. I find that learned Additional Sessions Judge

vide its order dated 18-2-2006 passed in Criminal Appeal No. 58(4)/05 has rightly affirmed the judgment dated 27-9-2005 of the ACJM. I do

not find any material and scope creating doubt about the legality, propriety and correctness of the verdict of Id. Addl. Sessions Judge regarding

holding accused/applicant/revisionist guilty of offence and the impugned order cannot be said to suffer from procedural irregularity. Therefore, in

the facts and circumstances of the case and keeping in view the fact that the applicant/revisionist is a female and her financial position as indipated

by her learned Counsel is not sound, therefore, the sentence passed by learned Additional Sessions Judge against the appellant/accused/revisionist

is affirmed and direction is being made to pay a sum of Rs. 70,000/- to the claimant, in default of making such payment, she is to suffer simple

imprisonment of three months as awarded by the trial Court., In view of the above observation, the present Criminal Revision Petition stands

disposed of.

Send down the lower Court records.