



A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2960 of 2025

(A petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.)

Brahmananda Pradhan *Petitioner(s)*
& *Anr.*

-versus-

State of Odisha & Anr. *Opposite Party(s)*

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. Jajati Keshari Khuntia, Adv.*

For Opposite Party(s) : *Mr. Sonak Mishra, ASC*
Mr. Banshidhar Baug, Sr. Adv.
along with associates

CORAM:

DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-17.02.2026

DATE OF JUDGMENT:-13.03.2026

Dr. Sanjeeb K Panigrahi, J.

1. The Petitioners, in the present petition, challenge the order dated 18.07.2025 passed by the learned SDJM, Bhubaneswar in ICC Case No.6557 of 2013, whereby the evidence-in-chief filed on their behalf was discarded and they were directed to adduce evidence in accordance with law.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:



- i. The opposite party No.2 and the petitioners were in a business relationship since the year 2010–2011.
- ii. During the course of such business transactions, the opposite party No. 2 allegedly stopped the supply of materials and informed the petitioners that he intended to take over an SEZ unit, namely M/s. Nav Minerals and Metals. Thereafter, the opposite party No. 2 did not inform the petitioners to resume supply and instead asked the petitioners to settle the outstanding amount and return the balance amount pursuant to such settlement.
- iii. In pursuance of the said settlement, the petitioner No. 1, being the Managing Director of the Company, issued an undated cheque drawn on Bank of Baroda as security and not for the purpose of encashment. However, it is alleged that in violation of the terms of the said settlement, a date was inserted in the cheque and the same was presented before the Bank on 26.08.2013 without the knowledge of the petitioners, whereafter the cheque was dishonoured.
- iv. Thereafter, the complainant approached the Nayapalli Police, where it is alleged that the petitioners were compelled to issue another cheque for an amount of Rs. 77,45,770/-. Accordingly, the petitioners instructed the Bank to stop payment in respect of the said cheque.
- v. Subsequently, the complainant filed the complaint case before the learned SDJM, Bhubaneswar against the petitioners vide



ICC No. 6557 of 2013 under Section 138 of the Negotiable Instruments Act, 1881.

- vi. Pursuant to the notice issued by the learned SDJM, Bhubaneswar, the petitioners entered appearance and contested the case. Thereafter, the petitioners filed their evidence-in-chief denying liability in respect of the alleged outstanding amount, stating inter alia that the accounts had not been finalized and were subject to audit by the tax authorities and payment of tax. It was further stated that the complainant had forcibly obtained the cheque and an undertaking from the petitioners.
- vii. During the pendency of the complaint case, the opposite party No. 2 filed a petition before the learned SDJM, Bhubaneswar praying that the affidavit evidence-in-chief filed by the accused persons be rejected and that they be directed to adduce their evidence-in-chief before the court. It was contended that Section 145(1) of the Negotiable Instruments Act, 1881, permits only the complainant and his witnesses to give evidence-in-chief by way of affidavit. Accordingly, it was prayed that the evidence-in-chief filed by the accused persons be ignored and that they be directed to adduce their defence evidence before the court.
- viii. Upon receipt of the said petition, the petitioners filed their objection contending that the prayer made by the opposite party No. 2 was devoid of merit and liable to be rejected. It



was further contended that, in view of the decision of the Supreme Court directing uniform practice in dealing with cases of dishonour of cheques and to achieve the objective of speedy summary trial under the amended provisions of the Negotiable Instruments Act, particularly Sections 143 to 147 thereof, the said provisions are required to be given effect to in letter and spirit.

- ix. After hearing the parties, the learned SDJM, Bhubaneswar allowed the petition filed by the complainant/opposite party No. 2 and directed the defence to adduce evidence in accordance with law.
- x. Being aggrieved by the said order, the petitioners have approached this Court by filing the present petition.

II. SUBMISSIONS ON BEHALF OF THE PETITIONERS:

3. Learned counsel for the petitioners made the following submissions:
 - i. The petitioners submitted that the learned SDJM, Bhubaneswar mechanically passed the impugned order without application of judicial mind and without considering the objection and citations filed by the petitioners. It was contended that the impugned order dated 18.07.2025 passed by the learned SDJM, Bhubaneswar in ICC Case No. 6557 of 2013 is therefore liable to be set aside.
 - ii. The petitioners further submitted that the learned SDJM, Bhubaneswar has miserably failed to appreciate the purport of Section 145(1) of the Negotiable Instruments Act, 1881. It was



further submitted that sub-section (2) of Section 145 of the Negotiable Instruments Act, 1881 clearly provides that the Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.

- iii. It was further submitted that the petitioner No. 1 is aged about 70 years and it is not possible for him to attend the court on every date and adduce evidence in person, for which reason an affidavit had been filed as evidence for consideration.
- iv. The petitioners further submitted that the learned SDJM, Bhubaneswar, while allowing the petition filed by the complainant/opposite party No. 2, has committed gross illegality resulting in miscarriage of justice by overlooking the provisions of the Negotiable Instruments Act, 1881 and without drawing proper inferences therefrom.
- v. The petitioners further submitted that the learned SDJM, Bhubaneswar miserably failed to appreciate that complaints under Section 138 of the Negotiable Instruments Act, 1881 are required to be registered and tried as summary cases in the first instance. It was contended that, by allowing the petition filed by the complainant/opposite party No. 2 and directing that the accused persons adduce their defence evidence-in-chief before the court, the learned SDJM, Bhubaneswar acted without proper application of mind. It was further submitted that the petitioners had already filed their affidavit evidence,



which ought to have been taken into consideration as evidence.

- vi. The petitioners, in support of their arguments, relied on the decision of the Supreme Court in *Indian Bank Assn. v. Union of India*.¹
- vii. It was further submitted that, in view of the submissions made above and in order to secure the ends of justice, this is a fit case for exercise of the inherent powers of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. Per contra, learned counsel for the opposite parties made the following submissions:
 - i. The opposite parties submitted that Section 145(1) of the Negotiable Instruments Act, 1881, gives liberty to the complainant to give evidence-in-chief by way of affidavit. It was further submitted that sub-section (2) of Section 145 of the Negotiable Instruments Act, 1881, gives discretion to the Court to summon and examine a person who has filed affidavit evidence-in-chief, if either the prosecution or the accused files an application. According to the opposite parties, sub-section (2) of Section 145 of the Negotiable Instruments Act, 1881 does not provide that the accused can file his defence evidence by way of affidavit and the said provision has to be read along with sub-section (1) of Section 145 of the Negotiable

¹(2014) 5 SCC 590.



Instruments Act, 1881. By aid of Section 145(2) of the Negotiable Instruments Act, 1881, the accused can only file an application for recalling any witness.

- ii. In support of their submissions, the opposite parties placed reliance on the decision of the Supreme Court in *Mandvi Cooperative Bank Limited v. Nimesh B. Thakore*,² where the Supreme Court laid down that by aid of the said provision only the complainant and his witnesses can file affidavit evidence-in-chief and not the accused persons.
- iii. The opposite parties further submitted that the decision in *Mandvi Cooperative Bank Limited (supra)* was also taken note of by the Supreme Court in *Indian Bank Association (supra)*. It was contended that the said decisions do not provide that the accused can give evidence-in-chief by way of affidavit and only permit him to file an application under Section 145(2) of the Negotiable Instruments Act, 1881 for recalling a witness for cross-examination.

IV. FINDINGS OF THE LEARNED SDJM, BHUBANESWAR:

5. The learned SDJM, Bhubaneswar, after hearing the parties, considered Sections 145(1) and 145(2) of the Negotiable Instruments Act, 1881 and the decisions in *Mandvi Cooperative Bank Limited (supra)* and *Indian Bank Association (supra)*.

²(2010) 3 SCC 83.



6. The learned court held that Section 145(1) of the Negotiable Instruments Act, 1881 enables only the complainant to give evidence on affidavit and does not extend such liberty to the accused or other witnesses.
7. It was further held that Section 145(2) merely provides the procedure for summoning and examining a person who has given evidence on affidavit and is not an enabling provision permitting the accused to file affidavit evidence.
8. Relying on the decision in *Mandvi Cooperative Bank Limited (supra)* and holding that the said decision has not been overruled by *Indian Bank Association (supra)*, the learned court concluded that the accused cannot lead defence evidence by way of affidavit in a proceeding under Section 138 of the Negotiable Instruments Act, 1881.
9. Accordingly, the petition filed by the complainant was allowed and the evidence-in-chief filed by the defence in the form of an affidavit was discarded and the defence was directed to adduce evidence in accordance with law.

V. COURT'S REASONING AND ANALYSIS

10. Heard learned counsel for the parties and perused the materials available on record.
11. The issue for consideration in the instant matter is whether the learned SDJM, Bhubaneswar has erred in discarding the evidence affidavit filed by the present petitioners and directing them to adduce evidence in accordance with law in a proceeding under Section 138 of the Negotiable Instruments Act, 1881.



12. At the outset, this Court finds it apposite to advert to Section 145 of the Negotiable Instruments Act, 1881, which is relevant to the present matter in controversy. It reads as follows:

“145. Evidence on affidavit. —

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.”

13. A plain reading of the aforesaid provision makes it clear that sub-section (1) expressly enables the complainant to present his evidence by way of affidavit and permits such affidavit to be read in evidence in any enquiry, trial or other proceeding under the Code of Criminal Procedure. It is pertinent to note that the provision specifically uses the expression “complainant” in sub-section (1) and does not extend the same liberty to the accused. On the other hand, sub-section (2) provides that the Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person who has given evidence on affidavit as to the facts contained therein. The said provision is thus concerned with the summoning and examination of a person who has already given evidence on affidavit. The provision, however, on a plain reading, cannot be construed to confer any right upon the accused to adduce evidence-in-chief by way of affidavit as the Court cannot supply words to a statute which the legislature has deliberately omitted.



14. The scope and ambit of Section 145 of the Negotiable Instruments Act, 1881 were extensively considered by the Supreme Court in *Mandvi Cooperative Bank Limited (supra)*. It was observed as follows:

“46. On this issue, we are afraid that the High Court overreached itself and took a course that amounts to taking over the legislative functions. On a bare reading of Section 143 (sic Section 145) it is clear that the legislature provided for the complainant to give his evidence on affidavit and did not provide for the accused to similarly do so. But the High Court thought that not mentioning the accused along with the complainant in sub-section (1) of Section 145 was merely an omission by the legislature that it could fill up without difficulty. Even though the legislature in their wisdom did not deem it proper to incorporate the word “accused” with the word “complainant” in Section 145(1), it did not mean that the Magistrate could not allow the accused to give his evidence on affidavit by applying the same analogy unless there was a just and reasonable ground to refuse such permission.

47. There are two errors apparent in the reasoning of the High Court. First, if the legislature in their wisdom did not think “it proper to incorporate a word ‘accused’ with the word ‘complainant’ in Section 145(1)...”, it was not open to the High Court to fill up the self-perceived blank. Secondly, the High Court was in error in drawing an analogy between the evidences of the complainant and the accused in a case of dishonoured cheque. The case of the complainant in a complaint under Section 138 of the Act would be based largely on documentary evidence.

48. The accused, on the other hand, in a large number of cases, may not lead any evidence at all and let the prosecution stand or fall on its own evidence. In case the defence does lead any evidence, the nature of its evidence may not be necessarily documentary; in all likelihood the defence would lead other kinds of evidences to rebut the presumption that the issuance of the cheque was not in the



discharge of any debt or liability. This is the basic difference between the nature of the complainant's evidence and the evidence of the accused in a case of dishonoured cheque. It is, therefore, wrong to equate the defence evidence with the complainant's evidence and to extend the same option to the accused as well."

"52. In light of the above we have no hesitation in holding that the High Court was in error in taking the view, that on a request made by the accused the magistrate may allow him to tender his evidence on affidavit and consequently, we set aside the direction as contained in sub-paragraph (r) of paragraph 45 of the High Court judgment. The appeal arising from SLP (Crl.) No. 3915/2006 is allowed."

15. In the instant case, the petitioners have placed reliance on ***Indian Bank Association (supra)*** to contest the aforesaid position. However, a conjoint reading of the two decisions would reveal that the observations of the Supreme Court in ***Mandvi Cooperative Bank Limited (supra)*** have neither been set aside nor dissented from in ***Indian Bank Association (supra)***. In fact, in the said decision, reference was made to the aforesaid observations. It was observed as follows:

"14. The scope of Section 145 came up for consideration before this Court in Mandvi Coop. Bank Ltd. v. Nimesh B. Thakore [(2010) 3 SCC 83 : (2010) 1 SCC (Civ) 625 : (2010) 2 SCC (Cri) 1] , and the same was explained in that judgment stating that the legislature provided for the complainant to give his evidence on affidavit, but did not provide the same for the accused. The Court held that even though the legislature in their wisdom did not deem it proper to incorporate the word "accused" with the word "complainant" in Section 145(1), it does not mean that the Magistrate could not allow the accused to give his evidence on affidavit, unless there was just and reasonable ground to refuse such permission."



16. It is necessary to note that the decision in *Indian Bank Association (supra)* was rendered in the context of issuing procedural directions to ensure speedy disposal of cases under Section 138 of the Negotiable Instruments Act, 1881. While referring to *Mandvi Cooperative Bank Limited (supra)*, the Supreme Court did not examine the question whether an accused could adduce evidence-in-chief by way of affidavit nor did it record any view contrary to the principle laid down therein. The reference to *Mandvi Cooperative Bank Limited (supra)* in the said decision was only by way of reiteration of the interpretation placed upon Section 145 of the Negotiable Instruments Act, 1881. The said decision therefore cannot be read in a manner conferring any right upon the accused to present evidence-in-chief by way of affidavit.
17. In the instant case, the learned SDJM, Bhubaneswar, while dealing with the petition filed by the complainant, examined the scope of Section 145 of the Negotiable Instruments Act, 1881 and the decisions relied on by the parties. The learned SDJM, Bhubaneswar noted that sub-section (1) of Section 145 specifically enables the complainant to lead evidence on affidavit and that sub-section (2) merely provides the procedure for summoning and examining a person who has given evidence on affidavit. On that basis, and relying upon the decision in *Mandvi Cooperative Bank Limited (supra)*, the learned SDJM, Bhubaneswar held that the accused cannot adduce evidence-in-chief by way of affidavit.
18. Having considered the reasoning of the learned SDJM, Bhubaneswar and the statutory provision and judicial precedents in question, this Court finds that the view taken by the learned SDJM, Bhubaneswar is consistent with



the interpretation placed upon Section 145 of the Negotiable Instruments Act, 1881 by the Supreme Court in *Mandvi Cooperative Bank Limited (supra)*. There is no infirmity in the reasoning of the learned SDJM, Bhubaneswar so as to warrant interference in exercise of the inherent powers of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

VI. CONCLUSION:

19. In view of the foregoing discussion, this Court finds that no case is made out for interference with the impugned order in exercise of the inherent powers of this Court.
20. Accordingly, the present petition stands **dismissed**.
21. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 13th March, 2026