

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Acquittal Appeal (S.J.) No. 91 of 2024

(Against the judgment of acquittal dated 22.06.2024 passed in Complaint Case No. 1413 of 2021 corresponding T.R. No. 1133 of 2024 by Smt. Veena Kumari, Judicial Magistrate. 1st Class, Garhwa)

Ajay Lal, aged about 43 years, Son of Late Kedar Lal, Resident of Sanghat Muhalla, P.O. & P.S.- Garhwa, Dist. - Garhwa --- --- **Appellant**

Versus

1. The State of Jharkhand
2. Gopal Prasad @ Gopal Prasad Soni, S/o – Late Kedar Saw, aged about 56 years, R/o Agarwal Mohalla, P.S., P.O. & Dist. – Garhwa

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For the Appellant : Mr. Pankaj Srivastava, Advocate
Mr. Ravi, Advocate
For the State : Mr. Anup Pawan Topno, A.P.P.
For the Resp. No. 2 : Md. Imran Baig, Advocate

PRESENT

HON'BLE MR. JUSTICE RAJESH KUMAR

J U D G M E N T

29.04.2026

1. Heard learned counsel for the appellant; learned A.P.P. representing the State and the learned counsel for the respondent no.2.
2. The present appeal has been preferred against the judgment of acquittal dated 22.06.2024 passed in Complaint Case No. 1413 of 2021 corresponding T.R. No. 1133 of 2024 by the learned Judicial Magistrate. 1st Class, Garhwa, whereby the respondent no. 2 has been acquitted of the charge under Sections 138 of the Negotiable Instrument Act, 1881 (In short N.I. Act).
3. Learned counsel for the appellant at the very outset has relied upon the judgment of the Hon'ble Supreme Court in the case of *Yogendra Pratap Singh Vrs. Savitri Pandey & Anr.* reported in

(2014) 10 SCC 713 wherein the Apex Court has formulated two questions, which read as under:

- i. *Can cognizance of an offence punishable under Section 138 of the Negotiable Instruments Act 1881 be taken on the basis of a complaint filed before the expiry of the period of 15 days stipulated in the notice required to be served upon the drawer of the cheque in terms of Section 138(c) of the Act aforementioned? And,*
- ii. *If answer to question no.1 is in the negative, can the complainant be permitted to present the complaint again notwithstanding the fact that the period of one month stipulated under Section 142(b) for the filing of such a complaint has expired?*

The said questions have been answered in para 41 of the judgment, which reads as under:

41. Section 142 of the NI Act prescribes the mode and so also the time within which a complaint for an offence under Section 138 of the NI Act can be filed. A complaint made under Section 138 by the payee or the holder in due course of the cheque has to be in writing and needs to be made within one month from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. The period of one month under Section 142(b) begins from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. However, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within the prescribed period of one month, a complaint may be taken by the Court after the prescribed period. Now, since our answer to question (i) is in the negative, we observe that the payee or the holder in due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the NI Act. This direction shall be deemed to be applicable to all such pending cases where the complaint does not proceed further in view of our answer to question (i). As we have already held that a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if

the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso. satisfying the Court of sufficient cause. Question (ii) is answered accordingly.

4. Referring to the above proviso, it has been submitted that the appellant may be permitted to withdraw the present acquittal appeal with a liberty to approach the Court below under proviso of Section 142(b) of the N.I. Act.
5. Learned counsel for the State and the Respondent no.2 have opposed the prayer.
6. Considering the legal provision and the ratio laid down by the Apex Court in the case of ***Yogendra Pratap Singh*** (supra), the present acquittal appeal is disposed of as withdrawn with a liberty to the appellant to invoke the proviso of Section 142(b) of the N.I. Act, if the facts and circumstances of the case so permit.
7. The present acquittal appeal stands disposed of.

(Rajesh Kumar, J.)

Dated 29th April 2026
A. Mohanty
Jharkhand High Court

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