

GAHC010018362025



2026:GAU-AS:2969

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./218/2025

SRI SUKOMAL BORAH
S/O LATE AMAL CH. BORAH, R/O 4TH FLOOR NIHARIKA APARTMENT
BOLO BORA PATH, HAPPY VILLA, BARUWARI, UZANBAZAR, GUWAHATI-
781003, ASSAM DIST.- KAMRUP(M), ASSAM.

VERSUS

MR. SONU SHARMA
S/O SHYAM SUNDAR SHARMA R/O DUDHNOI MAIN ROAD, NH-31,P.O AND
P.S- DUDHNOI, DIST- GOALPARA, ASSAM, PIN- 783122 ALSO AT, HOUSE
NO. 15, 3RD FLOOR, FLAT NO. 8, NEAR DIGAMBAR JAIN MANDIR,
REHABARI, TINIALI, P.O - ULUBARI, P.S- PALTANBAZAR, ASSAM, PIN-
781008.

Advocate for the Petitioner : ANKUR JYOTI SARMA, G KAUSHIK,R A LAHKAR,MR R
SENSUA

Advocate for the Respondent : MS. B CHOUDHURY, Amicus Curiae,

BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

26.02.2026

Heard Mr. S. Sensua, learned counsel for the petitioner. Also heard Ms. B.

Choudhury, learned Amicus Curiae appearing for the respondent.

2. By this application filed under Section 438 of the BNSS, 2023, the petitioner has challenged the Order dated 10.09.2024 passed in C.R. Case No. 7330/2022 passed by the Learned Judicial Magistrate First Class, Kamrup(M), Guwahati.

3. By the said order, the learned Court rejected the application filed by the petitioner wherein he had prayed that 20% of the cheque amount should be given as interim compensation to the complainant by the accused person. The learned Court by the said order had held that the provision under Section 143(A) of the N.I. Act being discretionary and more so due to the fact that complainant has not established his case for payment of cheque amount to him and there being no non-compliance or deliberate attempt on the part of the accused person to delay the proceedings which according to the learned Court has been going fairly, rejected the petition for the said 20% interim compensation.

4. Mr. S. Sensua, learned counsel for the petitioner submits that he filed an application seeking 20% of the cheque amount as interim compensation to the tune of Rs. 40,000/- (Rupees Forty Thousand) to be paid by the accused person to him but the Court after taking cognizance of the offence in the instant matter had rejected the same on the ground that complainant could not make out a case as to whether the accused is liable to make payment of the cheque amount

to him. The learned counsel had further submitted that the finding given by the Court in the impugned Order dated 10.09.2024 is incorrect as the liability of the accused person to pay the cheque amount is mentioned in details both in the complaint and in the application filed by him. He further submits that number of witnesses are yet to be examined and the case is being delayed for non-appearance of those witnesses and as such, he claim 20% of the cheque amount.

5. Ms. B. Choudhury, learned Amicus Curiae for the respondent submits that 143(A) of the N.I. Act is discretionary power and the Court will have to prima facie evaluate the merit of the case made out by the complainant and the merit of the defense pleaded by the accused in reply to the application filed under Section 143(A) of the N.I. Act by the complainant. She also submits that presumption under Section 139 of the N.I. Act be itself cannot be a ground for interim compensation, the reason being that the presumption is rebuttable. To substantiate her argument, she submitted a decision of the Hon'ble Apex Court passed in *Rakesh Ranjan Shrivastava vs. The State of Jharkhand & Anr.* passed in *Criminal Appeal No. 741 of 2024*. The said decision of the Supreme Court is also relied by the petitioner.

6. I have heard the parties and have gone through the records.

7. It is noticed that the petitioner had filed the complaint mentioning inter-alia

that the accused person for discharging his financial liability of Rs. 3,20,000/- (Rupees Three Lakh Twenty Thousand) issued a cheque amount to Rs. 2,00,000/- (Rupees Two Lakh) to the complainant which on deposition was dishonored and the complaint case was filed. The petitioner thereafter, made an application for getting 20% of the cheque amount from the accused person under Section 143(A) of the N.I. Act to which the accused person objected by filing a written objection. In the said objection, the accused person had not refused his liability to pay the cheque amount to the complainant rather it was stated in the objection petition that the complainant has failed to established any prima facie ground for interim compensation. Further the Court while taking cognizance on 20.03.2023 had gone into the merits of the case and upon finding that the accused person owes the money to the complainant, had issued a cheque to the complainant. However, in the said impugned Order dated 10.09.2024, the learned Court had given a finding that the complainant had not mentioned how and for what the accused was liable to make payment of the cheque amount to him. The Trial Court had also concluded that there is no delay in the proceedings and the accused has not conducted in a manner that delay has been caused in the proceedings.

8. Be that as it may, since the accused person has not denied his liability to pay the cheque amount to the complainant, this Court finds it fit to direct the Trial

Court to re-consider any application filed by the complainant under Section 143(A) of the N.I. Act and re-consider the issue.

9. Further, the Assam State Legal Service Authority is directed to pay the necessary remuneration to Ms. B. Choudhury, who was appointed as Amicus Curiae in the instant case.

10. Petition is disposed of.

JUDGE

Comparing Assistant