

GAHC010029412024



2026:GAU-AS:761

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

Case No. : Crl.Rev.P./396/2024

SRI MADHU RAM DEKA
S/O LATE HARORAM DEKA, R/O WIRELESS, BASISTHAPUR, BYE-LANE-1,
HOUSE NO. 20 (A), P.S.-HATIGAON, GUWAHATI, PIN-781006, DIST.-KAMRUP,
ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE P.P., ASSAM.

2:SRI PRANAB JYOTI DEKA
S/O LATE SARAT CHANDRA DEKA
R/O BIDYAPUR
WARD NO. 3
BYE-LANE NO. 8
P.O.-NALBARI
P.S.-NALBARI SADAR
PIN-781335
DIST.-NALBARI
ASSAM

Advocate for the Petitioner : MR S PARASHAR, MRS. T SARMA

Advocate for the Respondent : MR. FIRUZ KHAN (R-2), MR. ABHIJIT MENA (R-2),MR. U
CHAUDHURY (R-2),MR. T K DAS (R-2)

BEFORE
HONOURABLE MR. JUSTICE PRANJAL DAS

Date : 22-01-2026

JUDGMENT & ORDER (CAV)

1. Heard Mr. S. Parashar, the learned counsel for the petitioner. Also heard Mr. F. Khan, learned counsel for the respondent No. 2/complainant.
2. The respondent No. 2 as complainant has filed a complaint petition before the Court of the learned Chief Judicial Magistrate, Nalbari, under Section 138 of the Negotiable Instruments Act, 1881, (herein after NI Act), alleging commission of offence under said provision of NI Act, with regard to a cheque dated **14-06-2021**, bearing No. **045164** of amount **Rs.20,00,000/-**, issued by the petitioner/accused.
3. It is stated that the cheque upon being presented, was dishonoured, on the ground of “***drawer's signature differs***”. It is stated by the respondent No.2/complainant that after following the procedural formalities, the complainant/petitioner was initiated, giving rise to **N.I. Case No. 59 of 2021**, pending before the learned Additional CJM, Nalbari and at the stage of evidence. In the said proceeding, the complainant filed a petition, invoking the powers under Section 143-A of the NI Act, seeking interim compensation.
4. After hearing the parties, the said petition was allowed by the learned trial court, vide its order dated **26-09-2023**, directing the petitioner/accused to pay interim compensation in terms of Section 143-A of NI Act, to the extent of 20% of the cheque amount. The accused/petitioner, aggrieved by the order directing interim compensation, has come before this Court with this criminal revision, seeking interference with the said impugned order dated **26-09-2023**.
5. The main contentions of the petitioner/accused are that he denies the issuance of the cheque or the signature appearing thereof. It is also contended that the cheque was drawn on the Dispur branch of the South Indian Bank and

that the accused/petitioner does not have any account there. It is also contended and submitted that with regard to issuance of the said cheque, purportedly forging the signature of the accused/petitioner, he lodged an information before the Hatigaon Police Station on **18-07-2021**, which was registered into **Hatigaon Police Case No. 530 of 2021** under Section 420/468/471 IPC.

6. It is stated and submitted that the accused/petitioner and the respondent No.2/complainant had entered into an agreement dated **12.09.2018**, whereby the complainant as power of attorney holder of his mother was seeking to sell lands belonging to his mother and as per the agreement, the accused/petitioner assured him an amount of Rs.60,00,000/- and the sale of the lands at any amount above the same Rs.60 lakhs would be the commission and profit of the accused petitioner.

7. However, despite the elapse of about 2 years, the accused/petitioner could not gather such customers and accordingly, the complainant sought cancellation of the agreement. A copy of the deed of cancellation dated **07-11-2020** has been annexed with the petition and shown as executed between Pranab Jyoti Deka, the Respondent No. 2/complainant and Madhu Ram Deka, the accused/petitioner.

8. On the other hand, as per the respondent No. 2/complainant, when he insisted on the accused/petitioner to cancel the agreement due to his not finding customers - the accused/petitioner requested him to wait for a few more months, stating that negotiation is going on with some customers and in this background, the complainant agreed to extend the agreement till November, 2020.

9. It is the further case of the complainant that subsequently the accused/petitioner brought 3 (three) customers and the complainant executed

two sale deeds on **07-11-2020** in the house of the accused/petitioner. But the complainant was not aware of the price fixed by the accused/petitioner. The complainant stated however, that the accused/petitioner assured him about his getting Rs.60 lakhs and the accused/petitioner collected two cheques from the purchasers of Rs. 24,00,000/- and handed them over to the complainant. Regarding the balance amount of Rs.36,00,000/-, the accused/petitioner issued two post-dated cheques in favour of the complainant vide **cheque No. 045163** dated **20-04-2021** for an amount of **Rs. 16 lakhs** and cheque No.**045164** dated **14-06-2021** for an amount of **Rs. 20 lakhs**. Both the cheques were drawn on the Dispur branch of the South Indian Bank Limited. Subsequently, upon presentation of the cheques, the same were dishonoured. Cheque No.**045163** dated **20.04.2021** for **Rs.16 lakhs** was dishonoured due to "**insufficiency of funds**" and for which the complainant instituted a separate proceeding. The other cheque of Rs. 20 lakhs bearing No.**045164** dated **14-06-2021**{*pertaining to the present proceeding*} was also dishonoured on the ground of the "**drawer signature being different**".

10. The complainant issued notice to the accused/petitioner seeking payment within 15 days and upon not receiving payment, instituted the complaint proceeding under section 138 of NI Act, as already narrated earlier.

11. The petitioner denies the issuance of the cheque and his signature and alleges forgery regarding the same for which he has instituted a police case, as mentioned earlier. Placing a copy of the deposition of **PW2 Sumadrajit Gogoi** in the trial of **NI Case No. 59 of 2021**, it is submitted that the said witness - who was the Branch Manager of Dispur branch of South Indian Bank - has stated that the account No.**0626053000001823** was in the name of Bhaswati Das and that the said account number is not related to MadhuRam Deka/the accused petitioner.

It is also stated in the deposition of the said PW2 that the cheque No.**045164** was returned on **15-06-2021**.

12. In support of his contentions, the learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in ***Jugesh Sehgal v. Shamsher Singh Gogi***, reported in ***(2009) 14 SCC 683***, wherein the necessary ingredients of an offence under section 138 of NI Act have been enumerated. The petitioner side has also relied upon a decision of Hon'ble Supreme Court in ***Rakesh Ranjan Shrivastava v. State of Jharkhand***, reported in ***(2024) 4 SCC 419***, wherein the Hon'ble Apex Court has summarized the principles regarding interim compensation under section **143-A** of NI Act.

13. Referring to these decisions, the learned counsel for the petitioner submits that the essential ingredients are prima facie not satisfied in the proceeding before the learned trial court and therefore, the learned trial court was not justified in granting interim compensation.

14. On the other hand, the learned counsel for the complainant/respondent no. 2 has argued that there is no infirmity whatsoever in the impugned order and that the cheques were issued in discharge of legally enforceable debts and in the backdrop of the agreement made between the complainant and the accused regarding sale of land. It is submitted that after the customers for land purchase were arranged by the accused/petitioner and sale transaction entered into with them, the accused petitioner issued the cheques towards the payment of Rs.36 lakhs, which was to be received by the complainant as part of the agreed amount of Rs. 60 lakhs. It is submitted that the complainant/respondent No.2 is facing hardships and therefore, the learned trial court was justified in granting the interim compensation. In support of its contentions, the learned counsel for the respondent relies upon the decision of the Hon'ble Supreme Court in ***Munna Devi***

v. State of Rajasthan, (2001) 9 SCC 631 - which pertains to the limited powers of the court in exercise of revisional jurisdiction in such matters.

15. I have perused the revision petition, the impugned order, the relevant portions of the case record, the submissions of the learned counsel on both the sides and the decisions cited at the Bar.

16. **Section 143-A** of the NI Act {*incorporated by amendment in 2018*} makes a provision for granting interim compensation to the complainant in a cheque-bounce proceeding. The said statutory provision may be reproduced herein below.

143A. Power to direct interim compensation --(1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant--*

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent. of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque..

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such

further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant..

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973 (2 of 1974)..

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section.

17. Rakesh Ranjan Shrivastava(supra),relied upon by the petitioner isa case on the subject and the relevant **para 27** may be reproduced herein below: –

***27.** Subject to what is held earlier, the main conclusions can be summarised as follows:*

27.1. The exercise of power under sub-section (1) of Section 143-A is discretionary. The provision is directory and not mandatory. The word "may" used in the provision cannot be construed as "shall".

27.2. While deciding the prayer made under Section 143-A, the court must record brief reasons indicating consideration of all relevant factors.

27.3. The broad parameters for exercising the discretion under Section 143-A are as follows:

27.3.1. The court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.

27.3.2. A direction to pay interim compensation can be issued, only if the

complainant makes out a prima facie case.

27.3.3. If the defence of the accused is found to be prima facie plausible, the court may exercise discretion in refusing to grant interim compensation.

27.3.4. If the court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc.

27.3.5. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive.

18. Thus, I find that with regard to this statutory provision, the aforesaid decision of the Hon'ble Apex Court lays down the broad parameters for exercising powers there under. The most important consideration is that the court has to be satisfied about a ***prima facie*** case before granting interim compensation. The court to make such ***prima facie*** determination has to see the merits of the case put forth by the complainant and the merits of the defence put forth by the accused. It is also stated that if the defence of the accused is ***prima facie*** found to be plausible, the court may exercise discretion in refusing interim compensation.

19. In **Jugesh Sehgal (supra)**, the Hon'ble Apex Court has enunciated the principles which are cumulatively required to be satisfied to make out an offence of dishonour of cheque under section 138 of NI Act. The relevant **para 13** may be reproduced herein below-

13. *It is manifest that to constitute an offence under Section 138 of the Act, the following ingredients are required to be fulfilled:*

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;

(ii) the cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;

(iii) that 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;

(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank;

(v) the payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act.

20. In ***Munna Devi (supra)***, the Hon'ble Apex Court has stated in **para 3**, which may be reproduced herein below-

3. We find substance in the submission made on behalf of the appellant. The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged. This Court in Kanti Bhadra Shah v. State of W.B. [(2000) 1 SCC 722: 2000 SCC (Cri) 303] has held that there is no legal requirement for the trial court to write a reasoned or lengthy order for framing the charges.

21. On the touchstone of the statutory provisions and the case laws as referred to above – the facts of the present case have to be seen to decide the correctness or otherwise of the impugned order granting interim compensation.

22. On the subject of offence u/s 138 NI Act, the law is now crystallized that once the accused acknowledges his signature of the cheque, the burden shifts to him to rebut the statutory presumptions provided under the cheque bouncing law. Thus, the accused in such a situation has to rebut the presumption that the cheque was issued in the charge of a legally enforceable debt.

23. Coming back to the instant case, what I find is that the accused/petitioner denies that he issued the cheque; he denies that the signature belongs to him; he also denies that he even has an account in the dispute branch of the South Indian Bank. Upon perusing copy of the cheque in question of amount **Rs. 20 lakhs** and bearing No.**045164** – I find that the account number mentioned there is **0626053000001823**. The said cheque has been executed as **Exhibit 1** by the

complainant side. In this context, the testimony of **PW2** during the trial becomes important. As mentioned earlier, the said **PW2** is the Branch Manager of Dispur Branch of South Indian Bank. From his testimony, it is revealed that account No.**0626053000001823** belongs to one Bhaswati Das and the said account does not relate to the accused petitioner Madhu Ram Das. **PW2** has also mentioned about cheque No.**045164** being returned on **15-06-2021**.

24. The contention of the accused/petitioner that he does not have an account in Dispur branch of South Indian Bank and that the cheque bearing No.**045164** was not issued by him nor signed by him – find some support from the testimony of the branch manager as PW2 during the trial. Further, as already narrated the earlier part of the judgment, alleging forgery of his signature in issuance of the cheque, the complaint filed by the accused petitioner before Hatigaon police station has been registered as **Hatigaon P.S. Case No. 530/2021** under **Section 420/468/471 of IPC**.

25. Upon considering the matter in its entirety, I am of the considered view that there are disputed questions which will necessitate proper adjudication through evidence and only then, it would be possible to answer the question as to whether the accused petitioner incurred criminal liability under section 138 of the NI Act. So, in such a situation and keeping in mind the principles laid down in **Rakesh Ranjan Shrivastava (supra) – I come to the considered opinion** that it may not be prudent to grant interim compensation at this stage, invoking the powers under section **143-A** of NI Act. This is despite the projected financial difficulties of the respondent no. 2/complainant.

26. Consequently, the impugned order dated **26.09.2023** passed by the learned Additional CJM, Nalbari in **NI Case No. 59/2021 – directing interim compensation of 20% of the cheque amount-** is hereby **set aside and quashed**.

27. As the cheque bounce proceeding pertains to 2021; therefore, within the constraint of the docket load – the learned trial court is requested to make an endeavour to expeditiously complete the trial.

28. The criminal revision stands **allowed** and **disposed of**.

JUDGE

Comparing Assistant