

GAHC010129182017



2026:GAU-AS:2233

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)
(PRINCIPAL SEAT)

CRL.REV.P. No. 159/2017

Sri Nirmal Dutta,
Son of Late Manindra Ch. Dutta,
Resident of R. K. Road, P.S.- Nagaon,
District – Nagaon, Assam.

.....**Petitioner**

-Versus-

1. The State of Assam.

2. Sri Babul Ch. Dutta,
Son of Late Suresh Ch. Dutta,
Resident of Fouzdaripatty,
P.S. – Nagaon,
District – Nagaon, Assam.

.....**Respondents**

WITH

CRL.REV.P. No. 445/2017

Sri Babul Ch. Dutta,
Son of Late Suresh Ch. Dutta,
Resident of Founzdaripattay, Borokananda Road
P.S. – Nagaon, Sadar,
District – Nagaon, Assam.

.....Petitioner

-Versus-

1. The State of Assam.

2. Sri Nirmal Dutta,
Son of Late Manindra Ch. Dutta,
Proprietor of Tumpa Dresses, Moon Market, Civil
Road, PO-Nagaon, PS-Nagaon Sadar, Pin-782001,
District- Nagaon, Assam.

.....Respondents

:: BEFORE ::

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

- | | | |
|---|---|------------------------|
| 1. For the petitioner in Crl. Rev. P. No. 159/2017 | : | Mr. D. Bora, Advocate |
| 2. For the petitioner in Crl. Rev. P. No. 445/2017 | : | Mr. S. Nawaz, Advocate |
| 3. For the respondents in Crl. Rev. P. No. 159/2017 | : | Mr. S. Nawaz, Advocate |
| 4. For the respondents in Crl. Rev. P. No. 445/2017 | : | Mr. D. Bora, Advocate |

Date of Hearing :**04.09.2025**

Date of Judgment :**16.02.2026**

JUDGMENT & ORDER (CAV)

- 1.** Heard Mr. D. Bora, learned counsel for the petitioner in Criminal Revision Petition No. 159/2017 and learned counsel for the respondent in Criminal Revision Petition No. 445/2017. Also heard Mr. S. Nawaz, learned counsel for the respondents in Criminal Revision Petition No. 159/2017 and learned counsel for the petitioner in Criminal Revision Petition No. 445/2017.
- 2.** Since both these revision petitions have arisen out of the original judgment and order dated 14.12.2015 passed by the learned Trial Court, i.e., the Court of the learned Chief Judicial Magistrate, Nagaon, in C.R. Case No. 4047/2011, against which both the complainant as well as the accused have preferred appeals, hence, it is proposed to dispose of both the above-mentioned criminal revision petitions by this common judgment.
- 3.** Criminal Revision Petition No. 159/2017 has been filed by the petitioner, Sri Nirmal Dutta, impugning the judgment and order dated 11.04.2017 passed by the learned Sessions Judge, Nagaon, in Criminal Appeal No. 2/2016, whereby the judgment and order, dated 14.12.2015,

passed by the learned Chief Judicial Magistrate, Nagaon, in C.R. Case No. 4047/2011, by which the petitioner (accused) was convicted under Section 138 of the Negotiable Instruments Act, 1881, and was sentenced to undergo simple imprisonment for one year and to pay compensation of Rs. 6,50,000/- to the respondent No. 2, Sri Babul Ch. Dutta (complainant) was affirmed.

4. Whereas, Criminal Revision Petition No. 445/2017 was filed by the petitioner, Sri Babul Ch. Dutta (complainant), under Sections 397 and 401 of the Code of Criminal Procedure, 1973, seeking enhancement of the sentence imposed upon the accused as well as the compensation awarded to the complainant by the learned Chief Judicial Magistrate, Nagaon, by the judgment and order dated 14.12.2015, passed in C.R. Case No. 4047/2011, which was affirmed by the learned Sessions Judge, Nagaon, in Criminal Appeal No. 3/2016 by judgment and order dated 11.04.2017.
5. The facts relevant for consideration of the above-mentioned criminal revision petitions, in brief, are that the petitioner in Criminal Revision Petition No. 445/2017, namely Sri Babul Ch. Dutta, had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the respondent No. 2 (accused), Sri Nirmal Dutta. It was stated in the complaint, *inter alia*, that in the month

of March, 2011, the accused approached the complainant seeking a loan of Rs. 5,00,000/- due to urgent financial necessity. Accordingly, the accused borrowed the said amount from the complainant after executing a hand note, promising to repay the same on or before 17.05.2011. It was further stated in the complaint that the accused again borrowed an additional sum of Rs. 1,00,000/- and, in discharge of the said liability, issued a cheque bearing No. 138910 dated 17.04.2011. Upon presentation of the said cheque for encashment, the same was dishonoured; however, on the request of the complainant, the accused subsequently paid the cheque amount of Rs. 1,00,000/- to the complainant, and the dishonoured cheque was taken back by the accused.

- 6.** Thereafter, after about two months, the complainant, Sri Babul Ch. Dutta, demanded repayment of the sum of Rs. 5,00,000/- which had been borrowed by the accused, Sri Nirmal Dutta. However, the accused refused to return the said amount. Consequently, the complainant, Sri Babul Ch. Dutta, lodged a First Information Report (FIR) against the accused, Sri Nirmal Dutta, at Nagaon Police Station.
- 7.** On the basis of the said FIR, Nagaon Police Station Case No. 1092/2011 was registered under Sections 406 and 420 of the Indian Penal Code. Subsequently, the matter was

amicably settled out of court, and the accused, Sri Nirmal Dutta, in discharge of his liability, issued a cheque bearing No. 138912 dated 11.09.2011, drawn on Indian Overseas Bank, Nagaon, in favour of the complainant, Sri Babul Ch. Dutta, for an amount of Rs. 5,00,000/-.

- 8.** Upon receipt of the aforesaid cheque, the complainant, Sri Babul Ch. Dutta, presented the same for encashment through his banker, Assam Gramin Vikash Bank, Khagarijan, Nagaon, where he maintained his account. However, the cheque was dishonoured on 13.09.2011 with the endorsement "Exceeds arrangement/Insufficient funds." During trial, the complainant examined three witnesses, including himself. Although the accused, Sri Nirmal Dutta, pleaded innocence during his examination under Section 313 of the Code of Criminal Procedure, 1973, he declined to adduce any evidence in his defence. Ultimately, by Judgment and Order dated 14.12.2015, the learned Chief Judicial Magistrate, Nagaon, convicted and sentenced the accused, Sri Nirmal Dutta, in the manner described hereinbefore in the paragraph No. 3 of this judgment.
- 9.** Being aggrieved by the judgment of the Trial Court, the accused, Sri Nirmal Dutta, preferred an appeal before the Court of the learned Sessions Judge, Nagaon, which was

registered as Criminal Appeal No. 2/2016. However, by judgment and order dated 11.04.2017, the said appeal was dismissed and the judgment of the trial court was affirmed. The complainant, Sri Babul Ch. Dutta, also preferred an appeal challenging the judgment and order dated 14.12.2015 passed by the Court of the learned Chief Judicial Magistrate, Nagaon, in C.R. Case No. 4047/2011, on the ground of inadequacy of the sentence imposed and the compensation awarded by the trial court. The said appeal was registered as Criminal Appeal No. 3/2016. However, by two separate judgments & orders, both dated 11.04.2017, the learned Sessions Judge, Nagaon, dismissed both the aforesaid appeals.

- 10.** Mr. D. Bora, learned counsel for the petitioner in Criminal Revision Petition No. 159/2017, has submitted that although several grounds have been taken in the revision petition seeking interference with the judgment of the first appellate court, however, he confined his submissions to with regard to the grounds nos. 3, 6, and 7 of the criminal revision petitions.
- 11.** The learned counsel for the petitioner in Criminal Revision Petition No. 159/2017 has submitted that both the trial court as well as the first appellate court erred in not considering the evidence of DW-1, which, according to

him, establishes that the present petitioner had borrowed only a sum of Rs. 1,00,000/- and not Rs. 5,00,000/- as contended by the complainant in the complaint petition. It is further submitted that the petitioner/accused had issued only four security cheques in total, and that the cheque alleged to have been dishonoured is one of such cheques issued by the accused in favour of the complainant.

- 12.** The learned counsel for the petitioner, in Criminal Revision Petition No. 159/2017, further submits that the trial court also erred in not considering the fact that the complainant failed to produce any documentary evidence to establish that he was financially capable of advancing a loan of Rs. 5,00,000/- to the accused. He submits that, in the absence of any evidence regarding the complainant's capacity to lend such a substantial amount, the trial court ought to have extended the benefit of doubt to the petitioner.
- 13.** The learned counsel for the petitioner in Criminal Revision Petition No. 159/2017 has further submitted that both the trial court as well as the first appellate court erred in not appreciating the fact that the complainant failed to examine the scribe of the hand note, which was allegedly executed by the accused. He submits that, in the absence of examination of the author of the said document, which was exhibited as Exhibit-1 (hand note), the same ought

not to have been relied upon by the trial court as well as the first appellate court. He, therefore, contends that, on this ground also, the judgment and order dated 11.04.2017 passed by the learned Sessions Judge, Nagaon, in Criminal Appeal No. 2/2016 is liable to be set aside.

- 14.** On the other hand, Mr. S. Nawaz, learned counsel for the respondent No. 2 in Criminal Revision Petition No. 159/2017 as well as the petitioner in Criminal Revision Petition No. 445/2017, has submitted that although the accused, Sri Nirmal Dutta, has preferred Criminal Revision Petition No. 159/2017 challenging the concurrent findings of guilt recorded by the trial court and affirmed by the first appellate court, he has failed to demonstrate any perversity, illegality, or jurisdictional error committed by either of the said courts. Learned counsel submits that the accused is, in effect, seeking re-appreciation of evidence, which is impermissible in the exercise of revisional jurisdiction by this Court. In support of his submissions, learned counsel has relied upon the judgment of the Supreme Court in the case of "***Bir Singh vs. Mukesh Kumar***", reported in **(2019) 4 SCC 197**, as well as the decision in "***Manju Ram Kalita vs. State of Assam***", reported in **(2009) 13 SCC 330**.

- 15.** He further submits that neither the trial court nor the first appellate court has committed any perversity that would justify interference by this court in the exercise of its revisional jurisdiction. Learned counsel submits that the petitioner has, *prima facie*, failed to establish any case of perversity on the part of the trial court or the first appellate court warranting any interference. He also submits that the fact that the Cheque No. 138912 dated 11.09.2011 (Exhibit-3) belongs to the accused Sri. Nirmal Dutta and that it bears his signature has been admitted by him in his deposition, during cross-examination, as DW-1, before the trial court.
- 16.** It is further submitted that Exhibit-7 (the dishonour memo) also establishes that Cheque No. 138912 dated 11.09.2011 (Exhibit-3) was dishonoured on the ground of “exceeding arrangements” (insufficient funds). Learned counsel submits that Section 146 of the Negotiable Instruments Act, 1881 clearly lays down that the court shall presume the fact of dishonour of cheque on production of bank’s slip having thereon the official mark denoting that the cheque has been dishonoured and that such a presumption can only be rebutted by the accused through evidence. He further submits that in the instant case, the fact that the cheque was dishonoured due to “exceeding arrangements”

was confirmed by the testimony of PW-2, a bank official. However, the said evidence could not be rebutted by the accused.

17. Learned counsel for the complainant has also submitted that even if assuming that the cheque No. 138912 dated 11.09.2011 (Exhibit 3) was issued by the accused Nirmal Dutta as a security cheque, the accused cannot escape his liability under Section 138 of NI Act, 1881, unless he is able to prove that it was not drawn for discharge of any debt or other liability, which the accused has failed to prove. In support of his submission, the learned counsel for the appellant has cited a ruling of the Apex Court in the case of **"ICDS Ltd. Vs. Bina Shabeer & Anr."** reported in **(2002) 6 SCC 426**.

18. The learned counsel for the respondent/complainant has also submitted that the petitioner/accused has also failed to prove that the Exhibit-3 cheque was blank when it was issued. Though the petitioner had prayed for forensic examination of the Exhibit-3, which was allowed by the trial court, however, later on he filed another application before the trial court declining such examination and as such learned counsel for the complainant submits that an adverse inference may be drawn against the petitioner/accused.

19. Learned counsel for the complainant further submits that Section 20, 87 and 139 of the Negotiable Instrument Act, 1881 makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque has been issued for payment of a debt or in discharge of a liability. He submits that it is in material that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. In support of his submission, the learned counsel for the complainant has cited following rulings –

a) "*Bir Singh Vs. Mukesh Kumar*" reported in **(2019) 4 SCC 197.**

b) "*M/s Kalamani Tex &Anr. Vs. P. Balasubramanyan*" reported in **(2021) 5 SCC 238.**

20. Learned counsel for the complainant has further submitted that as mandated under Section 139 of the Negotiable Instrument Act, 1881, once the issuance of cheque is proved, there is a presumption of law that the cheque was issued in discharge of a legally enforceable debt or liability. He submits that the petitioner has been unable to rebut the said presumption.

- 21.** The learned counsel for the complainant has further submitted that, even otherwise, the complainant has proved the promissory note (Exhibit-1) executed by the accused wherein, he admitted borrowing a sum of Rs. 5,00,000/- from the complainant with a promise to return the same on 17.05.2011. He submits that under Section 118 of the Negotiable Instrument Act, 1881, which is also applicable to a promissory note, the consideration and the endorsement made therein, shall be presumed to be true. He submits that the accused, during his cross-examination also admitted his signature on Exhibit-1. He submits that the accused has failed to rebut the presumption under Section 118 of the Negotiable Instrument Act, 1881, which is in favour of the complainant/respondent.
- 22.** The learned counsel for the respondent/accused has also submitted that though in his revision petition the petitioner/accused has raised the question of financial incapacity of the respondent/complainant to lend an amount of Rs. 5,00,000/-, however, such a plea was never raised by him before the trial court. Neither the accused had adduced any evidence during trial to show the financial incapability of the respondent/complainant to lend an amount of Rs. 5,00,000/-. He submits that since the question of financial incapacity of the complainant was

never raised by the accused during the trial, the necessity of proving the said fact by the complainant did not arise. In support of his submission, he has cited the ruling of the Apex Court in the case of **"M/s Kalamani Tex & Anr. Vs. P. Balasubramanian"** (*supra*).

- 23.** The learned counsel for the petitioner in Criminal Revision Petition No. 445/2017 has submitted that while assessing the compensation amount to be paid by the accused to the complainant, the trial court took into consideration the fact as to the interest which the complainant would have got, had he fix deposited the cheque amount of Rs. 5,00,000/- in a bank he would have received an interest @ of 9% to 9.25% on the principal amount. He submits that almost more than 10 years have been passed since the delivery of judgment by the trial court, hence, since the complainant had to wait for more than 14 years of the cheque amount becoming due to him, the ends of justice would be served only if the compensation amount is enhanced to double the cheque amount. He therefore, prays for dismissing the Criminal Revision Petition No. 159/2017 and allowing the Criminal Revision Petition No. 445/2017.
- 24.** I have considered the submissions made by the learned counsel for both side and have gone through the materials available on record. I have also gone through the rulings

cited by the learned counsel for both side in support of their respective submissions.

- 25.** The Revision Petition No. 159/2017 has been filed by the accused Nirmal Dutta against concurrent findings of the trial court as well as the first appellate court, wherein, he was found guilty of offence under Section 138 of the Negotiable Instrument Act, 1881. The trial court after considering the evidence adduced by the complainant came to the finding that the cheque bearing No. 138912 (Exhibit-3) was issued by the accused against his outstanding debt of Rs. 5,00,000/- towards the complainant. The trial court also came to the finding that the cheque was presented for encashment within the period of its validity. The dishonour of cheque by the bank for the reasons stated in Exhibit-7 (dishonour memo) was also taken into consideration by the trial court. The trial court also took into consideration the Exhibit-8 (demand notice) as well as Exhibit-10 (AD card bearing the signatures of the accused) to come to the conclusion that the demand notice issued by the complainant was duly served on the accused and thereafter, within the stipulated time of 15 days as prescribed in Section 138 of the Negotiable Instrument Act, 1881 the accused failed to make payment of the cheque amount to the complainant.

The trial court also took into consideration the promissory note (Exhibit-1) of Rs. 5,00,000/- executed by the accused to come to the finding that the cheque (Exhibit-3) was issued by the accused in discharge of his existing debt of Rs. 5,00,000/-. After considering the evidence on record the trial court came to the finding that all the essential ingredients of Section 138 of Negotiable Instrument Act, 1881 have been proved by the complainant.

- 26.** The contention of the accused that he borrowed Rs. 1,00,000/- from the complainant has been admitted by the complainant, he has also admitted the receipt of the said amount of Rs. 1,00,000/-. However, the accused has failed to rebut the evidence of the complainant to the effect that apart from Rs. 1,00,000/-, he also took an amount of Rs. 5,00,000/- as loan from the complainant which was also proved by the complainant by exhibiting the promissory note, i.e., Exhibit-1. The trial court as well as the first appellate court also took into consideration the statutory presumption under Section 139 of the Negotiable Instrument Act, 1881 and the fact that the accused failed to rebut such presumption.
- 27.** The accused never raised the plea of the incapacity of the complainant to lend an amount of Rs. 5,00,000/- as loan to him, neither the accused adduced any evidence in this

regard. Under such circumstances, raising such a plea before this court, without discharging the onus of rebutting the statutory presumption under Section 118 and Section 139 of the Negotiable Instrument Act, 1881 before the trial court or the first appellate court, will not be of any help to the accused at the stage.

- 28.** The plea of the accused that the scribe of Exhibit-1 was not examined as a witness will also not come in aid of the accused in as much as the statutory presumption under Section 118 of the Negotiable Instrument Act, 1881 comes to aid of the complainant regarding genuineness of the said promissory note. The accused has failed to rebut the said presumption by adducing evidence to that effect.
- 29.** Thus, we have seen that the trial court as well as the first appellate court have come to concurrent findings of facts regarding existence of ingredients of offence under Section 138 of the Negotiable Instrument Act, 1881 on the basis of evidence on record. The accused/petitioner has failed to show that the finding arrived at by the aforesaid two courts are totally perverse. While exercising revisional jurisdiction, this court is not sitting as regular court of appeal. Under such circumstances, this court, in exercise of its revisional jurisdiction cannot embark upon the fruitless task of determining the issues raised by the accused by

reappreciating the evidence [See "*Manju Ram Kalita Vs. State of Assam*" (supra)].

- 30.** As regards prayer of the complainant, in Criminal Revision Petition No. 445/2017 is concerned, though he has waited for a long period for getting the compensation awarded by the trial court, however, the fact remains that the first appellate court in the impugned judgment, dated 11.04.2017, passed in Criminal Appeal No. 03/2016, has held that the trial court after taking into consideration all relevant aspects has sentenced the accused in the manner described in the foregoing paragraphs of this judgment, which this court agrees to. Merely because of the fact that of long pendency of instant revision petitions, which may be considered as circumstances which arose after the rendering of judgments by the trial court as well as first appellate court, same cannot be taken into consideration for enhancing the sentence imposed on the accused. More so, when in exercise of its revisional jurisdiction this court is concerned only about the correctness, legality and propriety of the impugned judgments, it cannot take into consideration circumstances which arose subsequent to rendering of the impugned judgments.
- 31.** For the discussions made and reasons stated in the foregoing paragraphs, this court does not find any ground

to interfere in the impugned judgments passed by the first appellate court in Criminal Appeal No. 2/2016 as well as Criminal Appeal No. 3/2016.

- 32.** Accordingly, the Revision Petition No. 159/2017 as well as Revision Petition No. 445/2017 are found devoid of any merit and accordingly dismissed.
- 33.** The accused Nirmal Dutta is directed to appear before the trial court within 1 month from the date of this judgment to serve out the sentence imposed by the trial court.
- 34.** The Revision Petition No. 159/2017 as well as Revision Petition No. 445/2017 are accordingly disposed of.
- 35.** The Registry shall send a copy of this judgment immediately to the trial court.

JUDGE

Comparing Assistant