

GAHC010165322024



2026:GAU-AS:3029

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

Case No. : Crl.Rev.P./324/2024

ABDUL MATIN BARBHUIYA
S/O RAFIQR RAHMAN BARBHUIYA
R/O VILL- GOVINDAPUR PART-II
P.O. GOVINDAPUR (WEST), P.S. KATIGORAH, DIST. CACHAR, ASSAM
PIN-788003.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:ABDUR RAHIM
S/O LATE ABDUL MANIK @ MANIK ALI
R/O VILL- KHADIMAN
P.O. BADARPUR GHAT

P.S. BADARPUR
DIST. KARIMGANJ
ASSAM
PIN-788724

Advocate for the Petitioner : Mr. B.U Laskar

Advocate for the respondent(s) : Mr. B. Sarma, Addl. P.P.

Mr. M. Khan, R/No. 2

Date on which judgment was reserved : **NA**

Date of pronouncement of judgment : **26.02.2026**

Whether the pronouncement is of the : **NA**
operative part of the judgment?

Whether the full judgment has been : **Yes**
pronounced?

**BEFORE
HONOURABLE MR. JUSTICE RAJESH MAZUMDAR**

JUDGMENT & ORDER (ORAL)

Date : 26-02-2026

(Rajesh Mazumdar, J.)

Heard Mr. B.U Laskar, learned counsel for the petitioner and also heard Mr. B. Sarma, learned Addl. P.P appearing for the State respondents and Mr. M. Khan, learned counsel appearing for the respondent No. 2.

2. This criminal revision petition has been filed assailing the judgment & order dated 15.06.2024, passed by the Additional Sessions Judge (FTC), Karimganj, Assam in Criminal Appeal Case No. 24(1)/2018, dismissing the appeal and thereby affirming the judgment & order dated 21.04.2017, passed by the learned Addl. CJM, Karimganj in C.R Case No. 348/2011 through which the petitioner was convicted and sentenced to undergo simple imprisonment for 2 years and to pay fine of Rs. 12,00,000/- , in default, to undergo simple imprisonment for 6 months on his conviction under section 138 of N.I Act, 1881.

3. The grounds for preferring this criminal revision petition are as follows;

1. For that while passing the impugned Judgement and Order dated 15.06.2024, in Criminal Appeal Case No.24(1)/2018, the learned Appellate Court ought to have considered the contradictory statement in

cross-examination of witnesses more particularly the PW1. The PW1 made two opposite versions in his cross examination and he could not able to examine any witness in his support in respect of payment of loan. As such the impugned Judgement and Order dated 15.06.2024 passed in Criminal Appeal No.24(1)/2018 affirming the Judgement and Order dated 21.04.2017 passed in CR case No.348/2011 is liable to set aside and quashed.

II. For that the Learned Additional Sessions Judge (FTC), Karimganj, have smoothly ignored the procedural lapse of the learned Trial Court while conducting trial in CR case No.348/2011. The two Cross Cases were filed in two different Court on the same subject are to be tried together but the Learned trial court rejected the prayer petition No.1936 of the petitioner being taken the plea on the same ground. Hence, the Judgement and Order dated 15.06.2024 affirming the Judgement and Order dated 21.04.2017 is liable to be set aside.

III. For that both the learned Court bellow have failed to note that the complainant could not be able to prove his case beyond reasonable doubt on the count that why and in what circumstances he paid such huge amount of loan in favour of the present petitioner without taking any documentary proof. On that ground alone, the Judgement and Order dated 15.06.2024 and the Judgement and Order dated 15.06.2024, passed in Criminal Appeal No.24(1)/2018 and the Judgement and Order dated 21.04.2017 passed in CR case No.348/2011 is liable to set aside and quashed.

IV. For that the demand Notice sent by the complainant on 21.03.2011, through his engaged Counsel was returned on the same date as unserved vide Exhibit-6 is the admitted fact. Hence, the Judgement and Order dated 15.06.2024, passed in Criminal Appeal No.24(1)/2018 and the Judgement and Order dated 21.04.2017 passed in CR case No.348/2011 is liable to set aside and quashed.

V. For that the Learned Additional Sessions Judge, Karimganj erred in passing the impugned Order on the face of the Complaint filed by the complainant/respondent before the learned Additional CJM, Karimganj which has seriously prejudiced the petitioner and therefore the impugned order is liable to set aside and quashed.

VI. For that in any view of the matter the Judgement and Order dated 15.06.2024, passed in Criminal Appeal No.24(1)/2018 and the Judgement and Order dated 21.04.2017 passed in CR case No.348/2011 being bad in law and fact may be set aside and quashed.

4. The learned counsel for the petitioner has submitted that the learned Trial Court has not appreciated the evidence of the parties in their true perspective and therefore both, the order of the Trial Court as well as the order passed by the Appellate Court deserve interference of this Court. The learned counsel for the petitioner has further submitted that in the absence of documentary proof, an erroneous assumption had been drawn by the learned Trial Court regarding the existence of a legally enforceable debt. He further submits that both the Trial and the appellate court failed to appreciate the fact that the statutory notice remained unserved upon the petitioner. He further submits that the learned Trial and the Learned Appellate Court again committed grave error when they failed to appreciate that when two cross-cases were filed in two different Courts on the same subject matter, they are required to be tried together. The learned counsel for the petitioner submits that therefore, this Court should exercise the power of revision in the present facts and circumstances.

5. The learned counsel appearing for respondent No. 2 has submitted that both, the Court of first instance and the Appellate Court have come to concurrent findings

that there is legally enforceable debt. He further submits that the plea of the petitioner for clubbing the two "cross-cases" had been considered and rejected and therefore, it is not a case of "non-consideration" and finally, he has submitted that it is also an admitted position that the notice has been sent to the known and declared address of the petitioner. The petitioner did not fulfill the demand of the notice even after he had received notice from the Trial Court regarding initiation of the complaint case.

6. The learned counsel for the petitioner has placed reliance on the judgment & order dated 25.07.2025 passed by the High Court of Kerala in the case of **P.C Hari -versus- State of Kerala & Another** (Criminal Revision Appeal No. 408/2024), where it was held that any debt arising out of illegal transaction cannot be considered as a legally enforceable debt. The learned counsel for the petitioner has thereafter placed reliance on the order dated 30.01.2026 in the case of **Suresh -versus- Sanjay**, wherein the High Court of Madhya Pradesh at Jabalpur had held that when two views are possible on the evidence led, the benefit of doubt is to be given to the accused i.e. the view which is more favourable to the accused should be adopted. In that case, the notice about dishonour of cheque and for payment of the amount in question had not been given to the accused at his correct address.

7. The learned counsel appearing for the petitioner has thereafter placed reliance on the judgment of **Rangappa -versus- Sri Mohan**, reported in **(2010) 11 SCC 441**, where at paragraph-28, the Hon'ble Apex Court has held as follows;

"28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden."

Keeping this in view, it is a settled position that when an accused has to rebut the presumption under [Section 139](#), the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own."

8. The learned counsel for the petitioner has also placed reliance in the case of **Nathi Lal & Others -versus- State of U.P & Another**, reported in **1990 (Supp) SCC 145**, where the Apex Court has held that the judgment are to be pronounced by the same Judge, one after the other, in the matter of cross-cases.

9. The learned counsel for the respondent No.2 has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Amit Kapoor -versus- Ramesh Chander & Another**, reported in **(2012) 9 SCC 460** wherein at paragraph-11 & 12, it has been held as follows;

"11. Before examining the merits of the present case, we must advert to the discussion as to the ambit and scope of the power which the courts including the High Court can exercise under Section 397 and [Section 482](#) of the Code.

12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well- founded error and it may not be appropriate for the court to scrutinize the orders, which upon

the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.”

10. The learned counsel for the respondent No. 2 has also placed reliance in the case of **C.C Alavi Haji -versus- Palapetty Muhammed & Another**, reported in **(2007) 6 SCC 555**, wherein at paragraph-14, 15, 16 & 17, the Apex Court has held as under;

“14. [Section 27](#) gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement “refused” or “not available in the house” or “house locked” or “shop closed” or “addressee not in station”, due service has to be presumed. [[Vide Jagdish Singh Vs. Natthu Singh](#) ; [State of M.P. Vs. Hiralal & Ors.](#) and [V.Raja Kumari Vs. P.Subbarama Naidu & Anr.](#)] It is, therefore, manifest that in view of the presumption available under [Section 27](#) of the Act, it is not necessary to aver in the complaint under [Section 138](#) of the Act that

service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved.

15. Insofar as the question of disclosure of necessary particulars with regard to the issue of notice in terms of proviso (b) of [Section 138](#) of the Act, in order to enable the Court to draw presumption or inference either under [Section 27](#) of the G.C. Act or [Section 114](#) of the Evidence Act, is concerned, there is no material difference between the two provisions. In our opinion, therefore, when the notice is sent by registered post by correctly addressing the drawer of the cheque, the mandatory requirement of issue of notice in terms of Clause (b) of proviso to [Section 138](#) of the Act stands complied with. It is needless to emphasise that the complaint must contain basic facts regarding the mode and manner of the issuance of notice to the drawer of the cheque. It is well settled that at the time of taking cognizance of the complaint under [Section 138](#) of the Act, the Court is required to be prima facie satisfied that a case under the said Section is made out and the aforementioned mandatory statutory procedural requirements have been complied with. It is then for the drawer to rebut the presumption about the service of notice and show that he had no knowledge that the notice was brought to his address or that the address mentioned on the cover was incorrect or that the letter was never tendered or that the report of the postman was incorrect. In our opinion, this interpretation of the provision would effectuate the object and purpose for which proviso to [Section 138](#) was enacted, namely, to avoid unnecessary hardship to an honest drawer of a cheque and to provide him an opportunity to make amends.

16. As noticed above, the entire purpose of requiring a notice is to give an opportunity to the drawer to pay the cheque amount within 15 days of service of notice and thereby free himself from the penal consequences of [Section 138](#). In [Vinod Shivappa](#) (supra), this Court observed:

“One can also conceive of cases where a well-intentioned drawer

may have inadvertently missed to make necessary arrangements for reasons beyond his control, even though he genuinely intended to honour the cheque drawn by him. The law treats such lapses induced by inadvertence or negligence to be pardonable, provided the drawer after notice makes amends and pays the amount within the prescribed period. It is for this reason that Clause (c) of proviso to [Section 138](#) provides that the section shall not apply unless the drawer of the cheque fails to make the payment within 15 days of the receipt of the said notice. To repeat, the proviso is meant to protect honest drawers whose cheques may have been dishonoured for the fault of others, or who may have genuinely wanted to fulfil their promise but on account of inadvertence or negligence failed to make necessary arrangements for the payment of the cheque. The proviso is not meant to protect unscrupulous drawers who never intended to honour the cheques issued by them, it being a part of their modus operandi to cheat unsuspecting persons.”

17. It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under [Section 138](#) of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under [Section 138](#) of the Act, cannot obviously contend that there was no proper service of notice as required under [Section 138](#), by ignoring statutory presumption to the contrary under [Section 27](#) of the G.C. Act and [Section 114](#) of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very

object of the legislation. As observed in Bhaskaran's case (supra), if the "giving of notice" in the context of Clause (b) of the proviso was the same as the "receipt of notice" a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of [Section 138](#) of the Act."

11. The learned counsel for the respondent No. 2 has also placed reliance on the judgment of the Apex Court in the case of **Basalingappa -versus- Mudibasappa**, reported in **(2019) 5 SCC 418**, wherein at paragraph-25, the Apex Court has held as follows;

"25. We have noticed the ratio laid down by this Court in the above cases on section 118(a) and 139, we now summarise the principles enumerated by this Court in the following manner.

25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

25.2 The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

25.4. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

25.5. It is not necessary for the accused to come in the witness box to

support his defence.

12. Having heard the learned counsel appearing for the parties and having gone through the materials available, this Court notices that there have been concurrent findings by the learned Trial Court and the learned Appellate Court. This criminal revision petition has been filed to challenge the findings of the said Courts of competence. Therefore, it was incumbent upon the petitioner to have placed before this Court the specific instances where there has been either a non-appreciation of the findings, a patent defect, an error of jurisdiction or of law, where there is non-compliance of the provision of law, that there is a finding on record based on no evidence, where materials of evidence has been ignored or judicial jurisdiction was exercised in arbitrary manner or perversely. By the present petition, it appears that the petitioner has tried to find fault with the manner in which the evidence has been appreciated.

13. In such circumstances, this Court is of the view that the exercise of power under section 438 r/w section 442 of BNSS, 2023 are not called for in the present case.

14. Accordingly, this criminal revision petition stands dismissed.

JUDGE

Comparing Assistant