

GAHC040013142024



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

Case No. : Crl.Rev.P./17/2024

Nilotpall Das and 2 Ors
Son of Gopal Chandra Das, C/o Director, Finsperity Limited, resident of House No.
68 L, Graham Road Tollygung, Kolkata 700040

2: Mrinmoy Das Age: Occupation :
Son of Shri Subhash Chandra Das
C/o Director Finsperity Limited
resident of House No. 68 L
Graham Road Tollygung
Kolkata 700040

3: Dalia Das Age: Occupation :
Wife of Nilotpall Das
C/o Director Finsperity Limited
resident of House No. 68 L
Graham Road Tollygung
Kolkata 700040

VERSUS

Khoda Gyati
proprietor of M/s Amar Construction, resident of House No. IMC 651, Vivek Vihar,
DN College Road, Itanagar, District Papumpare, Arunachal Pradesh.

Advocate for the Petitioner : Jyoti Zongluju, Tam Lomdak

Advocate for the Respondent : Habung Aape, Tasso Dodung, Jambey Tsering, Sumit Chhetri, Dakjum
Riba, Lod Asha, T Lampung

**BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG**

ORDER

Date : 24-09-2025

Heard Ms Jyoti Zongluju, learned counsel for the petitioners. I have also heard Mr. Habung Aape, learned counsel for the respondent.

2. The petitioner has invoked the revisional jurisdiction of this Court under Section 397 read with Section 401 CrPC and Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, assailing the judgment dated 15.07.2024 passed by the learned Judicial Magistrate First Class in C.R. Case No.29/2023, and affirmed by the Sessions Court, Yupia by judgment dated 03.09.2024.

3. By the impugned judgment, the learned JMFC convicted the petitioner for offence under Section 138 of the Negotiable Instruments Act, 1881, upon his admission, and directed him to pay the cheque amount of ₹65,00,000/- to the complainant and further directed payment of ₹5,00,000/- as interest, failing which the petitioner shall undergo simple imprisonment for six months.

4. It is not disputed that the cheque amount of ₹65,00,000/- was deposited by the petitioner and subsequently received by the complainant/respondent.

5. The petitioner is aggrieved by the direction to pay additional sum of ₹5,00,000/- as interest, contending that no such direction can be passed under Section 138 NI Act. Learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court in **Damodar S. Prabhu v. Sayed Babalal H., Criminal Appeal No. 963 of 2010**, to submit that the statutory scheme under Section 138 NI Act is primarily compensatory and does not envisage award of interest separately.

6. Per contra, the learned counsel for the respondent submits that while passing order, the learned trial Court had considered wrongful withholding of the huge amount of the complainant/respondent by the petitioner for considerably long period and thus considered for payment of compensation although it has been mentioned as interest. He has relied on the decision of the Hon'ble Supreme in **H. Pukhraj v. D. Parasmal, (2015) 17 SCC 368** and **R. Vijayan v. Baby, (2012) 1 SCC 260**, to argue that under such case, the courts are empowered not only to direct payment of compensation but also to award interest as an ancillary relief to achieve the object of Section 138 NI Act, namely, to compensate the complainant for wrongful withholding of money.

7. Having heard the rival submissions and on careful perusal of the judgments cited, it is evident that the Hon'ble Supreme Court in **R. Vijayan** (supra) has observed that compensation under Section 357(3) CrPC can extend to the cheque amount along with reasonable interest. Similarly, in **H. Pukhraj** (supra), the Supreme Court approved the award of interest over and above the cheque amount, holding that such direction was not contrary to law and was in consonance with the compensatory object of Section 138 NI Act.

8. The reliance of the petitioner on **Damodar S. Prabhu** (supra) is misplaced, as that case dealt with the guidelines for compounding of offences under Section 138 NI Act, and not with the award of compensation or interest by the trial court upon conviction.

9. In the present case, the learned Judicial Magistrate First Class, Yupia has awarded the principal cheque amount of ₹65,00,000/- along with an additional sum of ₹5,00,000/- by way of interest/compensation. This amount works out to less than 10% of the principal amount, which cannot be said to be excessive or disproportionate considering that the complainant was deprived of the sum of

₹65,00,000/- for a considerable period of time. The said direction, therefore, falls within the parameters laid down by the Supreme Court.

10. Consequently, this Court finds no illegality or perversity in the order of the Judicial Magistrate First Class as affirmed by the appellate court in awarding ₹5,00,000/- as additional compensation/ interest.

11. The revision petition, being devoid of merit, is accordingly dismissed. The petitioner shall deposit the sum of ₹5,00,000/- before the trial court within a period of 45 days from the date of receipt of this order, failing which the trial court shall enforce the sentence in accordance with law.

12. With the above, this revision petition stands disposed of.

JUDGE

Comparing Assistant