

GAHC010174702018



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

**Case No. : Crl.Rev.P./313/2018**

SIDHARTHA BORTHAKUR  
S/O LT. B.C. BORTHAKUR  
R/O HATIGARH DEWAL ROAD,  
P.O., P.S. JORHAT, DIST.JORHAT, ASSAM,  
PIN - 785001.

VERSUS

MONMI SIKHA PUZARI  
W/O SRI TRIDIP PUZARI  
R/O R.B. PATH,  
TARAJAN, P.O. JORHAT, P.S. JORHAT  
DIST.JORHAT, ASSAM  
PIN - 785001.

**Advocate for the Petitioner : MS. S B CHOUDHURY**

**Advocate for the Respondent : MR D TALUKDAR**

**BEFORE**  
**HONOURABLE MRS. JUSTICE MALASRI NANDI**

**JUDGEMENT AND ORDER(CAV)**

**Date : 28-07-2023**

Heard Ms. S.B. Choudhury, learned counsel for the petitioner.  
Also heard Mr. P. Choudhury, learned counsel for the respondent.

2. The petitioner has preferred this petition against the impugned judgment and order dated 15.11.2016 in connection with C.R. Case No. 112/2007 under Section 138 of Negotiable Instrument Act, 1988 (herein after referred as N.I. Act) passed by the learned Additional CJM, Jorhat, whereby the petitioner was convicted and sentenced to undergo simple imprisonment for a period of 6(six) months and to pay a fine of Rs.11,80,000/- which is twice the cheque amount of Rs.5,90,000/-, in default 6(six) months simple imprisonment. It is also directed that on realization of the amount i.e. Rs.11,80,000/-, the same was given to the complainant/opposite party as compensation.

3. The petitioner has also challenged the impugned judgment and order dated 22.06.2018 in Crl. Appeal No. 40/2016 passed by the learned Sessions Judge, Jorhat, whereby the conviction and sentence passed by the learned Additional CJM was upheld by dismissing the criminal appeal.

4. The case of the opposite party as complainant is that the complainant and the accused/petitioner are known to each other. During his financial crisis, the accused/petitioner approached before the complainant/opposite party and accordingly, the opposite party gave an amount of Rs.5,90,000/- to the accused/petitioner for a period of two months. On expiry of said period, the accused/petitioner handed over a cheque to the opposite/complainant bearing No. 324851 dated 15.08.2006 of Punjab and Sind Bank, Beltola Branch, Guwahati. The said cheque was deposited by the complainant in her account of SBI, Kotokipukhuri Branch, Jorhat for collection. However,

the opposite party was informed by the bank officials that the cheque was returned by Punjab and Sind Bank, Boltola with a remark 'insufficient fund' in the account of the accused/petitioner. Thereafter, the complainant/opposite party issued demand notice through concerned lawyer to the accused/petitioner on 01.02.2007 which was received by the accused/petitioner on 10.02.2007 but the petitioner failed to repay the amount to the complainant. Finding no other alternative, the complainant filed a complaint petition before the court as per provision of the N.I. Act.

5. During trial, the complainant examined 5(five) witnesses including herself. The complainant had also marked six exhibits to substantiate her claim. The plea of the accused was denial. In support of his case, the accused/petitioner also adduced evidence of three witnesses. The learned trial court as well as the appellate court, after hearing the arguments of both sides, convicted the accused/petitioner, as aforesaid.

6. The learned counsel for the accused/petitioner has submitted that under the facts and circumstances of the case as well as the evidence of the witnesses does not indicate issuance of any cheque in favour of the complainant/opposite party by the accused/petitioner. The FIR as well as the application proved by the accused/petitioner reflected that the cheque bearing No. 324851 had been lost and the complainant/opposite party misused the same and falsely implicated the accused/petitioner. It is also submitted that the complainant herself deposed that the ink in signature and the date and amount are

different on the cheque in question. Hence the impugned judgments are liable to be set aside.

7. It is also the submission of learned counsel for the accused/petitioner that the petitioner had never put the amount or name of any person on the said cheque which contained only his signature and date.

8. It is also contended that the complainant/opposite party as P.W.1 stated in her deposition that the ink used in signature and date on the cheque No. 324851 is different from the ink of name and amount put on the said cheque but in the deposition, P.W. 2, stated that the petitioner had put the amount and name on the said cheque in presence of the complainant/opposite party. So the evidence of the P.W.1 and P.W.2 do not corroborate and contrary to each other. In view of the matter, the impugned judgments dated 15.11.2016 in C.R. Case No. 112/06 as well as 26.06.2018 in CrI. Appeal No. 40/2016 are not sustainable in the eye of law.

9. In support of his submissions, learned counsel for the accused/petitioner has relied on a case law- 2013 vol.5 GLT 201 (Amulya Patowary vs. Amarendra Choudhury).

10. Per contra, the learned counsel for the complainant/opposite party submitted that the cheque was issued in the name of the complainant. As execution of the cheque by the accused/petitioner is admitted, hence, the presumption under Sections 118 and 139 of N.I.

Act will follow that it was executed for discharge of debt or liability and the accused/petitioner has failed to discharge his burden to rebut the said presumption. Under such backdrop, the courts below have rightly convicted the accused/petitioner.

11. After hearing the learned counsel for the parties and perusing the records, the following points arises for consideration of this Court-

Whether the trial court and the first appellate court have committed any glaring illegality in convicting the accused/petitioner and sentencing him to undergo simple imprisonment for six months and to pay a fine of Rs.11,80,000/- which is twice the cheque amount of Rs.5,90,000/-, in default 6(six) months simple imprisonment for the offense punishable under section 138 N.I. Act?

12. What exactly is the scope of revisional power of this Court under section 397/401 Cr.P.C. has been succinctly explained by the Hon'ble apex court in the case of ***Amit Kapoor vs. Ramesh Chander & Anr.*** reported in ***(2012) vol. 9 SCC 460***. It is made clear by the Hon'ble Apex Court that the object of Section 397, Cr.P.C. is to set right the patent defects or error of jurisdiction of law and there has to be a well-founded error. The said decision is relevant which is extracted as follows-

*"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 scrutinise 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."*

13. After going through the materials available in the record as well as the documents, it reveals that the issuance of cheque vide Ext.1 was admitted by the accused/petitioner in favour of the complainant/opposite party. As the execution of the cheque being proved, hence the presumption arises as provided under Sections 118 and 139 of N.I. Act that the cheque was made or drawn for consideration and it was executed for discharge of debt or liability. However, such presumption is rebuttable.

14. The case of the accused/petitioner is that the cheque was a blank cheque issued by the accused/petitioner and the same was lost. So it appears that the accused took the plea that the cheque in

question was not issued in discharge of any liability towards the accused/petitioner. But it was a blank cheque issued as security against the payment of advanced amount provided by the complainant. To rebut the presumption, the accused/petitioner has adduced some witnesses including himself. According to the accused/petitioner, he had lost a cheque bearing No. 324851 and hence, he filed an application before the Punjab and Sind Bank, Beltola Branch, wherein he had savings bank account and prayed for 'stop payment'. But it appears that the accused/petitioner did not take any initiative to lodge any criminal case to recover the alleged blank cheque. Though D.W.3(S.I. of Police, Dispur P.S.) was examined to substantiate the fact of lodging an FIR in connection with loss of alleged cheque, but according to D.W.3, no any such entry was recorded in the police station diary regarding lodging of any such FIR by the accused/petitioner.

15. On the other hand, the complainant/opposite party and her witnesses clearly established the fact that the accused took a loan of Rs.5,90,000/- from the complainant/opposite party and to discharge the liability, he issued the cheque vide Ext.1 in favour of the complainant/opposite party which was duly signed by him.

16. Taking all these into consideration, the trial court has come to the conclusion about the existence of debtor and creditor relationship between the complainant/opposite party and accused/petitioner in relation to the cheque vide Ext.1. The learned trial court has assessed the entire evidence on the touchstone of probabilities.

17. Even the first appellate court, being final court of facts, has also dealt with the matter in detail in the light of evidence of the parties, both oral and documentary. It is also forthcoming that the accused/petitioner and the complainant/opposite party knew each other very well and there is no enmity between the parties. Both the courts below have adopted right approach to the real state of affairs and no illegality or perversity is found in the judgment of the trial court or the appellate court in convicting the accused/petitioner.

18. Accordingly, no good grounds are made out to invoke revisional jurisdiction of this Court under Sections 397/401 Cr.P.C. In the result, the revision petition is dismissed and disposed of accordingly. The accused/petitioner is directed to surrender before the learned trial court to serve out the sentence and to pay the amount as directed by the learned trial court.

19. Send back the LCR.

**JUDGE**

**Comparing Assistant**