

GAHC010086942024



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

Case No. : I.A.(Crl.)/468/2024

SATYA NATH KALITA
S/O LATE KANO RAM KALITA, R/O GANDHIBARI, P.O.- GANDHIBARI, P.S.-
TAMULPUR, DIST.- BAKSA, ASSAM- 781367.

VERSUS

NAILAMONI RAJBANGSHI
S/O BIREN RAJBANGSHI, R/O TEBITOLA, P.S.- TAMULPUR, DIST.- BAKSA,
P.O.- TAMULPUR, ASSAM- 781368.

Advocate for the Petitioner : MR B PATHAK

Advocate for the Respondent :

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 24-05-2024

Heard Mr. B. Pathak, learned counsel for the applicant/appellant Sri Satya Nath Kalita, who has filed this petition under Section 378 (4) of the Code of Criminal Procedure, 1973 seeking leave to file an appeal against the order of acquittal vide judgment dated 29.02.2024 passed by the Additional Chief

Judicial Magistrate, Baksa, Mushalpur in connection with NI Case No. 05/2022 under Section 138 of the Negotiable Instruments Act, 1881.

2. It is submitted on behalf of the applicant that the Trial Court has erred in understanding the concept of rebuttal presumption and the shifting of burden of proof. It is submitted that the law is clear that a presumption is available that a holder of a cheque has received the cheque for discharge of lawful liability. A moonshine defence is not enough to shift the burden of proof upon the complainant. The accused/respondent had merely stated that the said cheque was signed by him for the purpose of election nomination and handed over to the complainant. The complainant, later on, refused to return it saying the same is lost, on which he had lodged an FIR before the police of Basistha Police Station.

3. It is the submitted that the defence merely questioned the financial capacity of the complainant to lend a sum of Rs.5,00,000/- (Rupees Five Lacs) but merely the reason of not having filed any ITR returns does not in any manner establish the incapacity of the complainant to lend the amount.

4. I have considered the submissions relating to the judgment and order impugned by the applicant/appellant.

5. Petition for leave to file an appeal against acquittal is hereby allowed.

6. Registry to register the connected appeal in its usual course.

JUDGE

Comparing Assistant