GAHC010072042026

2026:GAU-AS:12817

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

Case No. : Crl.Rev.P./197/2026

SRI RABENDRA DAS
SON OF LATE AKAN CH. DAS, RESIDENT OF AMBARI HATI BARPETA, POBARPETA, DISTRICT-BARPETA, ASSAM PIN-781301.

VERSUS

SRI UDAY MAZUMDAR
SON OF LATE NARAYAN MAZUMDAR RESIDENT OF BAMUNBARI, DISTRICT-BARPETA, ASSAM, PIN-781312

Advocate for the Petitioner : MR. D K NATH, MS. B SHARMA,MS. M DAS

Advocate for the Respondent : MR. J DEKA,

-BEFOR E-

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

-ORDER-

03.09.2026

1. Heard Mr. D.K. Nath, learned counsel for the petitioner. Also heard Mr. J Deka, learned counsel for the sole respondent.

2. The present application is filed under sections 438 and 442 of the BNSS,

2023, to set aside the order dated 17.01.2026, passed by the learned Additional Chief Judicial Magistrate, Barpeta, in NI Case No. 47/2016, whereby the petitioner was prosecuted for an offense under section 138 of the NI Act.

3. By the judgment dated 31-05-2017, the learned Additional Chief Judicial Magistrate, Barpeta, convicted the petitioner under Section 138 of the NI Act and sentenced him to undergo simple imprisonment for three months and to pay a fine of Rs 6,50,000; in default, to undergo further simple imprisonment for one month. The fine amount was directed to be paid to the complainant as compensation under Section 357(1)(b) of the Cr.P.C.

4. The said conviction and sentence were unsuccessfully challenged by the petitioner. Finally, the petitioner underwent the substantive sentence for three months, as well as the default sentence of one month, and was released from District Jail, Barpeta, on 19-1-2024. However, the amount of Rs. 6,50,000/- awarded as compensation remained unpaid.

5. Proceedings for recovery of the amount were thereafter taken up by the learned Magistrate. The petitioner earlier approached this court by filing Criminal Petition No. 431/2024, challenging the recovery proceedings and contending, inter alia, that since he had already undergone the default sentence, no further recovery proceedings could be initiated against him.

6. A Co-ordinate Bench, under its order dated 30-04-2025, rejected the said contention. Relying upon judgment of the Hon'ble Apex Court in ***Kumaran Vs. In State of Kerala and Anr.,*** *reported in* ***(2017) 7 SCC 471,*** the Co-ordinate Bench held that the liability to pay compensation

does not stand extinguished merely because the petitioner has undergone the sentence imposed in default of payment.

7. The court accordingly held that compensation remained recoverable under Section 421 Cr.P.C and directed the petitioner to appear before the learned Magistrate and face the proceedings in accordance with law.

8. It is significant to record here that even prior thereto, the petitioner had approached this court in Criminal Revision Petition No. 130/2018, challenging the recovery proceedings/NBWA; the said proceeding was admitted subject to deposit of Rs. 2,00,000/- but the amount was not deposited, and the petitioner failed to appear before this Court, resulting in dismissal of the proceeding for default.

The subsequent application for restoration was also dismissed for non-prosecution/non-compliance. These proceedings form part of the background in which the recovery proceedings have continued.

9. Pursuant to the order dated 30-04-2025, passed by the Coordinate Bench, the petitioner appeared before the learned Magistrate on 25-07-2025. On being asked about payment of the compensation, the petitioner stated that he was not in a position to pay any amount towards the compensation awarded in favor of the complainant.

The learned Magistrate, taking note of the order of this Court dated 30-04-2025, directed the issuance of a warrant under Section 421 Cr.P.C, for recovery of the compensation and directed that the warrant be sent to the concerned Superintendent of Police for execution.

10. On 17-10-2025, as no report regarding the execution of the distress warrant had been received, the matter was adjourned to await the report and was fixed on 17-12-2025.

On 17-12-2025, the learned Magistrate, upon consideration of the proceedings, again directed the issuance of a warrant against the petitioner for recovery of the compensation and fixed the matter for appearance/report/necessary order.

11. Pursuant thereto, under the direction of the Court, the Police conducted an inquiry at the petitioner's residence and submitted a report dated 17-01-2026. The report records that the petitioner resides with his family members in a residential house standing upon ancestral land which, according to the inquiry, stood recorded in the name of his grandfather.

The Police further reported that no movable property belonging exclusively to the petitioner was found during the inspection. The report also records that the petitioner was posted as a Deputy Accounts Officer in the Finance Department, Government of Assam, and he asserted non-drawal of salary since March 2019.

12. On 17-1-2026, the parties appeared before the learned Magistrate, and the aforesaid police report was taken on record. After hearing both the parties, the learned Magistrate recorded that "**no effective order is passed today"** and fixed the matter on 06-04-2026 for further order.

13. It is this order, dated 17-01-2026, that is under challenge in the present revision petition under Section 438 read with Section 442 of the BNSS, 2023.

14. The learned counsel for the petitioner raises a similar ground to that raised in Criminal Petition No. 431/2024.

15. The learned counsel appearing for the respondent, at the outset, has raised a preliminary objection as to the maintainability, contending that the impugned order is purely interlocutory in nature and therefore, in view of the expressed prohibition contained in Section 438(2) of the BNSS, no revision would lie against the same.

16. The aforesaid objection is required to be considered in the backdrop of the entire history of the matter.

The substantive conviction and sentence have attained finality; the petitioner has already undergone both the substantive and default imprisonment; the question of continued recoverability of the compensation after such default imprisonment has already been considered and answered against the petitioner by a Co-ordinate Bench in Criminal Petition No. 431/2024; and the proceeding presently pending before the learned Magistrate is confined to the recovery of the outstanding compensation.

17. Therefore, the present revision petition cannot be utilized to reopen the issue already determined under the order dated 30.04.2025, in Crl. Pet. No. 431/2024, through a challenge to the subsequent interlocutory order passed during the recovery proceeding.

18. The impugned order dated 17-01-2026 does not decide that liability afresh, nor does it finally determine any right of the petitioner. It merely considers the Police report submitted in the course of continuing recovery

proceedings and records that no effective order is being passed on that date.

19. For the aforesaid reasons, the preliminary objection raised by the learned counsel for the respondent is upheld. The present criminal revision petition, being directed against an order passed on the interlocutory application, is not maintainable under Section 438(2) of the BNSS. Even otherwise, by the impugned order, no right of the parties has been determined.

20. Accordingly, the present revision petition stands dismissed.

21. It is clarified that this Court has not expressed any opinion on the legality of any alleged act of the Police in the course of the execution of the distress warrant, submitting the relevant report without any foundation, etc., and such issue, if otherwise maintainable and raised, is left open to be determined by the learned Magistrate.

JUDGE

Comparing Assistant