GAHC010039432026

2026:GAU-AS:15087

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

Case No. : Crl.Pet./285/2026

SRI PRANAB BARMAN
S/O - SRI SAMINDRA BARMAN, R/O- ROYAL AAWAS COMMERCIAL BLOCK, FLAT NO. C-101, URIAGAON, P/O P/S - ITACHALI, DISTRICT - NAGAON, ASSAM, PIN -782003.

VERSUS

SRI TILAK THAPA
S/O- LATE MANSINGH THAPA, R/O- K.C. GOGOI PATH, NEAR NIRANJAN SCHOOL, KHALIHAMARI, P/O P/S-DIBRUGARH, DISTRICT - DIBRUGARH, ASSAM, PIN - 786001.

Advocate for the petitioner : Mr. P. Mahanta

Advocate for the respondent : Mr. R. Sensua

Date on which judgment is reserved : **29.09.2026**

Date of pronouncement of judgment : **07.10.2026**

Whether the pronouncement is of the operative part of the judgment? : N/A

Whether the full judgment has been pronounced? : Yes

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

JUDGMENT & ORDER (CAV)

Heard Mr. P. Mahanta, learned counsel for the petitioner. Also heard Mr. R. Sensua, learned counsel for the respondent.

2. In this petition, under Section 528 of the BNSS, 2023, the petitioner has prayed for quashing C.R. (NI) Case No. 38/2025, pending before the Court of learned Judicial Magistrate First Class, Dibrugarh, and also challenged the order dated 30.05.2025, by which the learned Judicial Magistrate First Class, Dibrugarh ('trial Court', for short) has taken cognizance of C.R. (NI) Case No. 38/2025, by issuing notice to the petitioner and directing him to appear on 07.07.2025.

3. Mr. Mahanta, learned counsel for the petitioner submits that the petitioner is an accused in C.R. (NI) Case No. 38/2025, pending before the learned trial Court and the said case was instituted by the sole respondent, namely, Tilak Thapa. Mr. Mahanta also submits that there was a business relation between the petitioner and the respondent, and they have acquaintance with each other, and that on the request of the respondent, the petitioner had arranged an IMFL licence to be run on a contractual basis and the respondent had agreed to pay a sum of Rs. 10,00,000/- as advance to the concerned licensee, through the petitioner, and also promised to pay another sum of Rs. 5,00,000/- in instalments. Mr. Mahanta submits that initially, the respondent had issued a cheque, bearing No. 687319 of Rs. 6,00,000/- from his account No. 01830210001509, of K.B. Centre Point, a proprietorship firm, drawn in UCO Bank, Dibrugarh Branch and another cheque by his wife Amrita Thapa, for a

sum of Rs. 4,00,000/-, vide cheque No. 000002, from account No. 78630100001951, drawn in Bank of Baroda, Thana Chariali, Dibrugarh Branch to the petitioner, and thereafter, the respondent had issued another cheque, bearing No. 756683, drawn in State Bank of India, Thana Chariali, Dibrugarh Branch and another cheque issued by his wife Amrita Thapa for a sum of Rs. 1,70,000/-, vide cheque No. 000003, drawn from the account No. 78630100001951, drawn in Bank of Baroda, Thana Chariali, Dibrugarh and another two cheques for a sum of Rs. 1,00,000/- each, vide cheque Nos. 799259 and 799261, respectively from the account No. 73912250025273, drawn in Canara Bank, Aditya Hospital Branch, Dibrugarh, and the total sum of Rs. 15,00,000/- was paid by the respondent and his wife Amrita Thapa separately for finalizing the deal with the IMFL (Off) licence holder at Nagaon to run the wine shop on contractual basis.

3.1. Mr. Mahanta submits that however, due to certain unavoidable reasons, the deal was not finalized, resulting the petitioner in an obligation to refund the said amount to the respondent and his wife, and though initially, efforts were made to settle the matter amicably, yet the same failed to yield any result, and taking the responsibility of the amount received from the respondent and his wife, the petitioner agreed to return the amount to the respondent as demanded by him and issued three cheques bearing Nos. 000123, 000124 and 000262 from his account No. 63490200000057, drawn on Bank of Baroda, Nagaon Branch to the respondent, without mentioning the name of the respondent or his wife. Mr. Mahanta also submits that although the petitioner had the responsibility of his liability to the respondent for an amount of Rs. 7,30,000/- out of the total liability of Rs. 15,00,000/-, the petitioner with a good faith to maintain a good relation with the respondent, had issued aforesaid

three account payee cheques each for Rs. 5,00,000/- in favour of the respondent, as demanded by him without mentioning the name of the person in whose favour those cheques were issued and the respondent in spite of the same, did not have any claim against the petitioner to the extent of Rs. 15,00,000/-, had accepted those cheques, for discharging the liability of the petitioner against the respondent as well as his wife. Mr. Mahanta also submits that thereafter, the respondent after entering his name had deposited the aforesaid cheques in his account maintained in the State Bank of India, Dibrugarh Branch for collection of the amount from the account of the petitioner, but the said cheques were dishonoured and had been returned to the respondent's bank along with three cheques return memo Nos. 000714/002001/20, 000714/002001/10 and 000714 /002001/30, dated 04.12.2024, with a remark 'Fund Insufficient'.

3.2. Mr. Mahanta submits that thereafter, the respondent, through his Advocate, had issued demand notice dated 17.12.2024, through Registered Post, demanding the payment of the cheques amount within 15 (fifteen) days from the date of receipt of the notice, and the petitioner failed to clear the said amount demanded by the respondent through his legal notice, and thereafter, the respondent had instituted N.I. Case No. 38/2025, under Section 138 of the N.I. Act, upon which the learned Judicial Magistrate First Class, Dibrugarh had taken cognizance against the petitioner, under Section 138 of the N.I. Act and issued notice to him and thereafter, the petitioner appeared before the learned trial Court and he was released on a PR bond of Rs. 10,000/-.

3.3. Mr. Mahanta also submits that the petitioner herein paid a sum of Rs. 50,000/- to the respondent through UPI on 09.10.2024, against a total liability of Rs. 7,30,000/-, but without adjusting the same against the total amount due

to him, the respondent had instituted the proceeding under the N.I. Act, which according to Mr. Mahanta is illegal. Mr. Mahanta further submits that the respondent had paid to the petitioner a sum of Rs. 6,00,000/- on 24.03.2023, vide cheque No. 687319 and another sum of Rs. 1,30,000/- on 08.08.2023, vide cheque No. 756683, and as such, he paid a total sum of Rs. 7,30,000/- against which, the petitioner had already paid Rs. 50,000/- on 09.10.2024, through UPI, but without adjusting the said amount, the respondent had instituted the proceeding for the entire amount of Rs. 15,00,000/-.

3.4. Mr. Mahanta also submits that out of Rs. 15,00,000/-, a sum of Rs. 7,70,000/- was the liability of the petitioner towards Amrita Thapa, wife of the respondent, which he received through different transactions, and against those liabilities, the institution of the case for Rs. 15,00,000/- is illegal and the petitioner ought not to have deposited three cheques of Rs. 5,00,000/- each, in his own account alone, and he cannot file the case having been dishonoured as the petitioner owed liability towards the wife of the respondent and under such circumstances, Mr. Mahanta submits that the CR case instituted by the respondent is not maintainable, and therefore, he has contended to quash and set aside the same.

3.5. Further contention of Mr. Mahanta is that on 18/02/2025, i.e., after 16 (sixteen) days of the institution of NI Case No. 38/2025, the petitioner had paid a sum of Rs. 5,00,000/- through RTGS, in favour of K.B. CENTRE, a firm of the respondent and another Rs. 1,50,000/- (Rupees One Lakh Fifty thousand) on 03/03/2025, through NEFT, and thereby total 7,00,000/- (Rupees seven lakhs) including Rs. 50,000/- paid earlier, has been paid in favour of the respondent's firm, out of the total liability of Rs. 7,30,000/- of the petitioner and thereafter, only Rs. 30,000/- is still stand as due from the petitioner towards the

respondent. Accordingly, this NI Case No. 38/2025, for recovery of total amount of Rs. 15,00,000/- is much beyond and exaggerated claim of the respondent which he is not legally bound to claim and the same is liable to be dismissed.

3.6. Mr. Mahanta further submits that in view of the decision of Hon'ble Supreme Court in the case of **Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel and Anr., in Criminal Appeal No. 1497 of 2022**, the CR case instituted by the respondent is not maintainable.

4. Per contra, Mr. Sensua, learned counsel for the respondent submits that this petition is misconceived and admittedly, the petitioner has owed legally enforceable debt towards the respondent. He also submits that in order to discharge the same, the petitioner had issued three cheques for a sum of Rs. 5,00,000/- each and the respondent had deposited the same in his bank account for encashment. However, the cheques were returned dishonoured with a remark 'Fund Insufficient'. Mr. Sensua also submits that thereafter, the respondent had issued a legal notice to the petitioner demanding the amount within 15 days from the date of receipt of the notice, but the petitioner failed to deposit the amount, and thereafter, the respondent had instituted the proceeding under Section 138 of the N.I. Act and the learned trial Court has rightly taken cognizance of the same. Mr. Sensua also submits that the plea of the petitioner that he paid a sum of Rs. 50,000/ through UPI, the same was prior to the issuance of the cheques by the petitioner and not for discharging the liability for which the cheques were issued and that there is no merit in this petition, and therefore, he has contended to dismiss the same.

5. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the petition and the documents placed on

record, and also gone through the decision referred by Mr. Mahanta, learned counsel for the petitioner.

6. It appears that there was a business transaction between the petitioner and the respondent, and the respondent had paid a sum of Rs. 15,00,000/- to the petitioner for operating one IMFL (Off) shop at Nagaon, but the same could not be materialized, for which the petitioner herein owing to discharge his liability towards the respondent, had issued three cheques bearing Nos. 000123, 000124 and 000262 from his account No. 63490200000057, drawn on Bank of Baroda, Nagaon Branch. However, on presentation of the same to the respondent's bank for encashment, the same were returned with a remark 'Fund Insufficient'. It also appears that a legal notice was issued to the petitioner through the counsel for the respondent demanding the cheque amount within 15 days from the date of receipt of notice, but within the stipulated period, the petitioner herein failed to return the amount and only thereafter, the respondent had instituted the proceeding under the N.I. Act before the learned trial Court, upon which the learned trial Court took cognizance of the offence and issued notice to the petitioner.

7. These are undisputed facts. The liability of Rs. 15,00,000/- of the petitioner is admitted, the issuance of three cheques is admitted and the dishonour of the three cheque is also admitted. It is well settled in the case of **K. Bhaskaran v. Sankaran Vaidhyan Balan**, reported in **(1999) 7 SCC 510**, Hon'ble Supreme Court has held that in order to establish a case under Section 138 of the Act N.I. Act, the following ingredients are to be established:

(i) drawing of the cheque,

(ii) presentation of the cheque to the bank,

(iii) returning the cheque unpaid by the drawee bank,

(iv) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount,

(v) failure of the drawer to make payment within 15 days of the receipt of the notice.

8. In the instant case, all these ingredients prima facie appear to be satisfied in the given facts and circumstances, as discussed herein above.

9. Though the petitioner has taken a stand that he has returned a sum of Rs. 7,30,000/- and also a sum of Rs. 50,000/- through UPI, but the same appears to be made prior to the issuance of the cheques by him to the respondent. Notably, the cheques were issued on 02.12.2024. Whereas, as per Annexure 3, the amount of Rs.50,000/ was paid to the Firm of the respondent No.2 on 09.10.2024, much prior to issuance of the cheques in question.

10. This Court has gone through the decision of **Dashrathbhai Trikambhai Patel (supra)** referred to by Mr. Mahanta, learned counsel for the petitioner. And this Court afraid, the ratio laid down in the said case would not come into his assistance, inasmuch as alleged part-payment was made not after the cheques were drawn, but before the cheques in question were drawn. There is no material to demonstrate that the amount of Rs. 50,000/ was paid to discharge the legally enforceable debt. In absence of such material, it is difficult to accept the contention that the same was paid towards discharge of the legally enforceable debt.

10.1. Relevant paragraphs are extracted herein below for ready reference:-

> "**28. A Division Bench of the Kerala High Court has held in Joseph Sartho v. Gopinathan reported in 12 (2008) 3 KLJ 784, that since the representation in the cheque was for a sum higher than the amount that was due on the date that it was presented for encashment, the drawer of the**

cheque cannot be convicted for the offence under Section 138 of the Act. The High Court of Delhi addressed the same issue in Alliance Infrastructure Project Ltd. v. Vinay Mittal reported in ILR (2010) III Delhi 459 14, The High Court observed that when part payment is made after the cheque is drawn, the payee has the option of either taking a new cheque for the reduced amount or by making an endorsement on the cheque acknowledging that a part payment was made according to the provisions of Section 56 of the Act. It was also held that the notice of demand which requires the drawer of the cheque to make payment of the whole amount represented in the cheque despite receiving part repayment against the sum, before the issue of notice, cannot be valid under Section 138(b) of the Act. A similar view was taken by the High Court of Gujarat in Shree Corporation v. Anilbhai Puranbhai Bansal14.

29. Under Section 56 read with Section 15 of the Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance amount. If the endorsed cheque when presented for encashment of the balance amount is dishonoured, then the drawee can take recourse to the provisions of Section 138. Thus, when a part- payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque under Section 56 of the Act. The cheque cannot be presented for encashment without recording the part payment. If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment."

10.2. Though the petitioner has contended that on 18/02/2025, i.e., after 16 (sixteen) days of the institution of NI Case No. 38/2025, he had paid a sum of Rs. 5,00,000/- through RTGS, and another Rs. 1,50,000/- (Rupees One Lakh Fifty thousand) on 03/03/2025, through NEFT, and thereby total 7,00,000/- (Rupees seven lakhs) including Rs. 50,000/- paid earlier, has been paid in favour of the respondent's firm, out of the total liability of Rs. 7,30,000/- of the petitioner and thereafter, only Rs. 30,000/- is still stand as due of the petitioner towards the respondent, yet it his defence case and it is well settled in the case of **Rajeev Kourav v. Baisahab,** reported in **(2020) 3 SCC 317,** that the High Court cannot examine or rely on the defence material or evidence of the accused, while deciding a petition under Section 482 Cr.P.C., for quashing criminal proceedings. The Court can look into such defence evidence only in very exceptional circumstances. The task at the quashing stage is limited to examining whether the allegations in the FIR/complaint, taken at face value, disclose a prima facie offence. If they do, the proceedings cannot be quashed, and the accused must face trial, where the defence can be properly raised and tested.

10.3. This proposition has been repeatedly reaffirmed in later decisions, such as **Central Bureau of Investigation vs. Aryan Singh etc., Criminal Appeal Nos. 1025-1026_OF 2023(@ SLP (CRL.) Nos. 12794-12795 OF 2022) and in Naresh Aneja vs. State of UP and others,** reported in **2025 INSC 1**, wherein it has been emphasised that the High Court cannot conduct a "mini-trial," appreciate evidence, or evaluate disputed defence material at the Section 482 stage.

10.4. It is also well settled in the case of **M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Ors.**, reported in **AIR 2021 SC**

1918, that Courts shall not exercise the power under Section 482 of the CrPC when the facts before it are hazy and not clear and the facts are disputed.

10.5. In the instant case, the facts before this Court are not clear and are disputed and hazy, and therefore, this Court is of the view that this is not a fit case, where the power under Section 528 of the BNSS, 2023 can be exercised.

11. In the result, this Court finds no merit in this petition and accordingly, the same stands dismissed.

12. Interim order passed earlier, if any, stands vacated.

JUDGE

Comparing Assistant