GAHC010057092024

2026:GAU-AS:17225

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

Case No. : Crl.Rev.P./106/2024

JITUMANI DAS
S/O LATE KESHAB CH DAS
R/O GANDHINAGAR,
WARD NO. 5,
P.O., P.S. AND DIST. BARPETA, ASSAM

VERSUS

DHANJIT DAS
S/O LATE RADHA MOHAN DAS
R/O DAHATI
P.O., P.S. AND DIST. BARPETA, ASSAM

Advocate for the Petitioner : MR. M HUSSAIN, MS. D SAIKIA, AMICUS CURIAE,A. K. KANU,MR M AHMED
Advocate for the Respondent : MR. SARFRAZ NAWAZ, MR. SURAJIT DAS

BEFORE

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved	: 11.11.2026
Date of pronouncement of judgment	: 20.11.2026
Whether the pronouncement is of the operative part of the judgment ?	: N/A
Whether the full judgment has been pronounced?	: Yes

JUDGMENT & ORDER (CAV)

(Sanjeev Kumar Sharma, J)

None appears for the petitioner. Heard Mr. S. Nawaz learned counsel for the sole respondent.

2. By way of the instant criminal revision petition, the petitioner/ accused herein has challenged the impugned appellate judgment & order dated 18-12-2023 passed by the learned Additional Session Judge, FTC Barpeta in Crl. A. 28/2023 dismissing the same. The petitioner herein had preferred the said appeal against the judgment dated 14-07-2023, passed in N.I Case No. 217/2022 under Section 138 of the Negotiable Instruments Act, passed by the learned Judicial Magistrate First Class, Barpeta, convicting the petitioner accused under Section 138 N.I Act and sentencing him to undergo simple imprisonment for 6 months and further to pay compensation of Rs. 8,00,000/-, in default S.I for further period of 2 months.

3. The facts leading to the, the facts of the case may be briefly discussed:

1. The respondent/complainant Dhanjit Das (hereinafter referred to as the respondent) had a good relationship with the accused/petitioner (hereinafter referred to as the petitioner, Jitumani Das), as he was a customer in the grocery shop of the latter and also because they hailed from the same town. On

13.01.2021, at about 7:30 AM, the petitioner came to the residence of the respondent seeking a temporary loan of Rupees Six Lakhs (Rs. 6,00,000/-) only to sort out some urgent business problem. The respondent handed over a cheque bearing No. 309226, amounting to Rs. 5,50,000/-, on the same day, to the petitioner, apart from handing over Rs. 50,000/- in cash to the petitioner. The petitioner promised to repay the respondent within six months but failed to do so upon expiry of the said period. Then, on repeated requests by the respondent, the petitioner gave him a cheque bearing No. 000589, dated 07.08.2022, amounting to Rs. 6,00,000/-, drawn in favour of the respondent, from the petitioner's bank account bearing Account No. 726501000041 maintained with ICICI Bank, Barpeta, BB Road Branch. The respondent deposited the cheque in his bank account bearing Account No. 7101010052340 maintained with Assam Gramin Vikash Bank, Barpeta Branch, for collection of the cheque amount on 08.08.2022. However, the cheque was returned by the Punjab National Bank, with the reason stated as "Refer to Drawer".

2. It is further contended by the respondent that after obtaining the complainant's signature in the Cheque Return Register Book on 16.08.2022, he sent an advocate's notice to the petitioner on 22.08.2022, demanding payment of the outstanding amount within 15 days of receipt of the notice. The petitioner received the same on 23.08.2022 by signing the acknowledgement due (AD)

card. However, even after expiry of the stipulated period, the petitioner did not pay the amount due. As such, the respondent lodged the complaint under Section 138 of the Negotiable Instruments Act, 1881.

3. On the basis of the said complaint lodged by the respondent**,** the learned Trial Court took cognizance of the offence under Section 138 of the N.I. Act and issued process. Upon the appearance of the petitioner, the particulars of the offence under Section 138 of the N.I. Act were explained to the petitioner, to which he pleaded not guilty and claimed to be tried.

4. Upon conclusion of the trial, the respondent examined himself in support of his case and also examined the Bank Manager of the Assam Gramin Vikas Bank, Barpeta Branch. After conclusion of the respondent's evidence, the petitioner was examined under Section 313 Cr.P.C., and all incriminating evidence was put to him for his explanation. In the aforementioned examination, the petitioner denied the existence of any debt or liability as well as the issuance of the cheque. On conclusion of the trial, the learned Trial Court, finding the petitioner guilty of the offence under Section 138 of the N.I. Act, convicted him and awarded the sentence as mentioned hereinbefore.

5. Being aggrieved, the petitioner preferred an appeal as aforesaid, which also came to be dismissed by the impugned judgment and order. None has appeared

for the petitioner.

6. A perusal of the instant revision petition shows that the petitioner has taken a number of grounds assailing the impugned judgment and order. The first three grounds are general in nature and require no discussion, as no specific infirmity is pointed out therein. The fourth ground is that two complaint cases under Section 138 of the N.I. Act were filed before the learned CJM, Barpeta, being N.I. Case No. 216/2022 (Hemendas vs. Jitumani Das) and N.I. Case No. 217/2022 (Dhanji Das vs. Jitumani Das), and in both cases, the facts were the same, including the dates of borrowing, handing over of the cheques and depositing the cheques. Both the cases were tried by the same Magistrate, who failed to appreciate that a person would not hand over two cheques for discharging a liability when there were no funds in his account.

7. Since the above ground has been taken up for the first time in revision, the same cannot be entertained.

8. The next ground taken by the petitioner is that there are serious anomalies in the documents filed by the complainant. It is stated that the respondent, in the complaint and in his evidence-in-chief, stated that the alleged cheque, marked as Exhibit P2/PW-1**,** was deposited in the respondent's bank account on 08.08.2022 and was returned to him on 16.08.2022. However, as per the bank

return memo, marked as Exhibit P4/PW-1, the date of return is 10.08.2022, pertaining to cheque No. 000589, dated 10.08.2022. It is pertinent to mention herein that the alleged cheque, marked as Exhibit P2/PW-1**,** bears the date of issuance as 07.08.2022. Thus, the alleged cheque marked as Exhibit P2/PW-1 and the cheque referred to in Exhibit P4/PW-1 are different. Hence, Exhibit P2/PW-1 is doubtful. However, the learned Trial Court as well as the appellate Court ignored such a serious contradiction.

9. The next ground is that the respondent stated that he had deposited the alleged cheque through the deposit slip marked as Exhibit P3/PW-1. However, the said deposit slip, dated 08.08.2022, does not mention any cheque number. The respondent, in his cross-examination, admitted this fact. It is further contended that Exhibit P3/PW-1 was not proved and that the fact of depositing the cheque through the said deposit slip was also not established. Exhibit P3/PW-1 creates a shadow of doubt; however, the learned Trial Court as well as the appellate Court wholly ignored this aspect of the matter.

10. It is further contended that the Branch Manager of the concerned bank, who exhibited the Cheque Return Register, admitted that it was only a receipt register of returned cheques and did not contain any other authentic document relating to any particular cheque.

11. It is further stated that the respondent stated in his complaint that he had deposited the said cheque in his bank account maintained with Assam Gramin Vikash Bank, which had merged with Punjab National Bank, and that the cheque was returned with the remark "Refer to Drawer". He further stated that after obtaining the signature of the respondent on the Cheque Return Register Book on 16.08.2022, the said cheque was dishonoured. However, no witness from Punjab National Bank was examined.

12. The incriminating grounds are also general in nature. A perusal of the impugned judgment passed by the learned appellate Court would show that all the aforesaid grounds were discussed by the learned appellate Court and, in fact, by the learned Trial Court as well in the judgment under appeal.

13. Upon such consideration, the learned appellate Court, inter alia, held as follows:

> **2.** Moreover, PW-2 had produced the entire Ext. P-8 Cheque Return Register before the Court, which shows that on 10.08.2022, three cheques, including Ext. P-2, were returned unpaid by the bank. Since three cheques, including Ext. P-2, were returned unpaid by the payee bank on 10.08.2022, this fact establishes that the mention of the cheque date as 09.08.2022 in Ext. P-4 is merely a data-entry error on the part of the bank staff. Alternatively, it may

have happened that when the cheque was deposited on 08.08.2022, the corresponding data entry was made on 09.08.2022.

3. Further, the appellant has disputed Ext. P-3 deposit slip on the ground that it does not mention the cheque referred to in Ext. P-2. However, Ext. P-8 ipso facto reveals that Ext. P-2 cheque was presented to the bank. As such, even if we accept that Ext. P-3 does not contain the particulars of Ext. P-2 cheque, Ext. P-8 is sufficient to negate the claim of the appellant that Ext. P-2 cheque was not presented to the bank for payment. Since it has been established in evidence that the appellant had issued Ext. P-2 cheque in discharge of a legally enforceable liability towards the respondent, in such circumstances, such a petty clerical error by the bank staff or the omission on the part of the respondent to mention the cheque number in Ext. P-3 is, in my considered opinion, an insignificant discrepancy in the prosecution's case, which can be overlooked without attaching any importance to it.

4. The above facts establish that Ext. P-2 cheque was dishonoured on 10.08.2022 and that the respondent received information regarding its dishonour on 16.08.2022, i.e., the day he received it back from his banker [vide Ext. P-8(i)]. In view of the above, the statement made by the respondent in Ext. P-5 regarding his knowledge of the dishonour of the cheque on 16.08.2022

leaves no room to treat it as another contradictory document pertaining to Ext. P-2, cheque No. 000589, dated 07.08.2022.

14. In view of the above, I do not find any infirmity in the impugned judgment and, therefore, the same calls for no interference.

15. However, as already reflected in the order sheet, the petitioner has already paid an amount of Rs. 5,20,000/- out of the total compensation amount of Rs. 8,00,000/-. Therefore, the petitioner is directed to pay the remaining amount of Rs. 2,80,000/- to the respondent.

16. The petitioner is granted 30 (thirty) days' time from today to appear before the learned Trial Court to serve out his sentence.

17. Save for the above modification to the compensation amount, the revision stands dismissed. Send back the TCR.

JUDGE

Comparing Assistant