GAHC010084402025

2026:GAU-AS:16262

THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Crl.Rev.P. No. 148/2025

1. **Sri. Paramesh Chandra Saud**, S/o-Lt. Hansa Saud, R/o-Vill-Nij Pokowa, Tatipara, P.O./P.S.-Belsor, District-Nalbari, Assam.

……*Petitioner*

VERSUS

1. **Smti Oli Begum** (substituted in place of Md. Abdul Ali) W/o-Late Abdul Ali, R/o- Vill-Nij Pokowa, Tatipara, P.O./P.S.-Belsor, District-Nalbari, Assam
.
2. **The State of Assam**, represented by the Public Prosecutor, Assam.

……*Respondents*

For the Petitioner(s) : Mr. R.S. Chauhan, Advocate.

For the Respondent(s) : Ms. F. Begum, Advocate.
Mr. D.P. Goswami, Addl. P.P.

BEFORE
HON'BLE MR. JUSTICE ANJAN MONI KALITA

Date(s) of Hearing :- 20.08.2026

Date on which judgment is reserved :- 20.08.2026

Date of pronouncement of judgment :- 05.11.2026

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

Whether the full judgment has been pronounced? :- Yes

JUDGMENT & ORDER (CAV)

(A.M. Kalita, J)

Heard Mr. R.S. Chauhan, learned counsel for the petitioner. Also heard Ms. F. Begum, learned counsel for respondent No. 1; and Mr. D. P. Goswami, learned Additional Public Prosecutor, appearing for respondent No. 2, the State of Assam.

2. This criminal revision petition is directed against the Judgment and Order dated 18.01.2025, passed by the learned Sessions Judge, Nalbari, in Criminal Appeal No. 04/2024, whereby the Judgment and Order dated 10.01.2024, passed by the learned Chief Judicial Magistrate, Nalbari, in N.I. Case No. 179/2018, convicting the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, was affirmed, subject to modification of the sentence.

3. The case of the complainant is that the petitioner and the original complainant, Md. Abdul Ali, were friends and that, on 01.10.2017, the complainant advanced a loan of Rs. 2,60,000/- to the petitioner. The petitioner was stated to have issued the cheque No. 712717 dated 13.08.2018 for the said amount. The cheque, once deposited with the bank, was returned unpaid for insufficiency of funds. The appellate judgment records return memos dated

24.08.2018, 06.09.2018 and 17.09.2018. Upon the petitioner's failure to make payment following the demand notice, a complaint under Section 138 of the Negotiable Instruments Act, 1881 was instituted on 27.11.2018, giving rise to N.I. Case No. 179/2018 before the learned Chief Judicial Magistrate, Nalbari.

4. During the pendency of the complaint, the original complainant died on 20.07.2020. His wife, Smt. Oli Begum, was substituted as the complainant and deposed as PW-1. She stated that Rs. 1,60,000/- had been arranged from her husband's salary income and the remaining Rs. 1,00,000/- from a fund kept after the sale of their land and a total of Rs. 2,60,000/- was paid to the petitioner. She further stated that the loan was advanced in the presence of other persons and that the petitioner issued the cheque towards repayment of the aforesaid amount of Rs. 2,60,000/-.

5. The petitioner's defence was that he had borrowed only Rs. 1,00,000/- and he had repaid the principal amount along with interest. He had handed over a signed blank cheque as security, which the original complainant later allegedly misused by filling in the particulars. The petitioner examined himself as DW-1 and also relied on the evidence of *DW-2, Ajit Saud* and *DW-3, Baikuntha Baishya*, in support of the alleged repayment. It is stated that DW-2 remained outside the complainant's house while the petitioner went inside and that DW-2 was informed of the repayment by the petitioner after he came out. DW-3 claimed that he accompanied the petitioner and witnessed the repayment. The appellate Court considered the defence evidence and noted, amongst others, the absence of a receipt or other contemporaneous documentary evidence of repayment.

6. Upon consideration of the case, the learned Chief Judicial Magistrate, Nalbari, vide judgment and order dated 10.01.2024, convicted the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and imposed a fine of Rs. 5,20,000/-, with a direction to undergo simple imprisonment for one year, in default of payment. The petitioner challenged the conviction and sentence in Criminal Appeal No. 04/2024. By judgment and order dated 18.01.2025, the learned Sessions Judge, Nalbari, upheld the conviction but reduced the fine to Rs. 4,00,000/-, with a direction that the amount of Rs. 52,000/- already paid be adjusted against the fine and that the balance amount be paid within 60 days. The sentence of simple imprisonment for one year was maintained and the petitioner was directed to surrender before the learned Trial Court on 19.03.2025, in the event of failure to pay the amount as directed.

7. Being aggrieved by the concurrent findings of conviction, the petitioner has approached this Court by way of the present revision petition.

8. Mr. R.S. Chauhan, learned counsel for the petitioner, submits that the learned Courts below failed to properly appreciate the nature of the transaction between the parties and the defence raised by the petitioner. It is contended that the petitioner had borrowed only Rs. 1,00,000/- and had repaid the said amount along with interest. The cheque was allegedly issued as security and was not intended to discharge any legally enforceable debt corresponding to the amount claimed by the complainant. The conviction, therefore, is stated to be unsustainable in law.

9. Learned counsel for the petitioner further submits that the complainant's case regarding the advancement of the alleged loan amount required careful scrutiny, particularly in view of the contention that the complainant was engaged in money-lending activities and was charging interest at the rate of 10%. It is contended that the complainant's financial capacity and the existence of a legally enforceable liability were not adequately examined by the Courts below. The petitioner also challenges the application of the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act, 1881 contending that the defence evidence was sufficient to rebut such presumptions.

10. Learned counsel for the petitioner also raises a grievance concerning the examination of the petitioner under Section 313 of the Code of Criminal Procedure, 1973 and submits that the circumstances appearing against him were not properly put to him, thereby causing prejudice to his defence. It is further contended that the sentence imposed is excessive in the facts and circumstances of the case. On these grounds, learned counsel prays for setting aside the impugned judgment and order.

11. Ms. F. Begum, learned counsel for respondent No. 1, opposes the revision petition and submits that the Courts below have duly considered the case of the complainant as well as the defence of the petitioner. The cheque was issued towards a liability arising out of the loan transaction and the petitioner's signature on the cheque attracted the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act, 1881. The plea that the amount had already been repaid was not substantiated by reliable evidence. The

findings recorded by the Courts below are, therefore, stated to be based on proper appreciation of the material considered by them and do not call for interference in revisional jurisdiction.

12. I have considered the submissions advanced on behalf of the parties and examined the impugned judgment and order dated 10.01.2024 passed by the learned Chief Judicial Magistrate, Nalbari, the appellate judgment and order dated 18.01.2025 passed by the learned Sessions Judge, Nalbari and the grounds raised in the revision petition.

13. At the outset, it is necessary to bear in mind that the jurisdiction of this Court in a criminal revision is supervisory and is intended to ensure the legality, correctness and propriety of the findings and orders under challenge. Revisional jurisdiction is not ordinarily exercised as a second appellate jurisdiction for a fresh appreciation of the entire evidence merely because another view may be possible. Interference is warranted where the impugned decision discloses a material illegality, a manifest error of law, a material irregularity or a finding that cannot reasonably be sustained on the basis of the material considered by the Courts below. In the case of **State of Maharashtra Vs. Jagmohan Singh Kuldip Singh Anand,** reported in **(2004) 7 SCC 659**, held that the High Court, in exercise of its revisional jurisdiction, cannot embark upon an in-depth roving re-examination of the oral and other evidence and come to a conclusion contrary to the consistent one reached by two courts below. Similarly, in the case of **State of Kerela Vs. Puttumana Illath Jathavedan Namboodiri**, reported in **(1999) 2 SCC 452**, observed as follows:

"5. .....In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the Respondent by reappreciating the oral evidence. ...."

14. In the present case, the conviction of the petitioner arises out of proceedings under Section 138 of the Negotiable Instruments Act, 1881. The object of the provision is to preserve the credibility of

negotiable instruments and to ensure that cheques issued towards legally enforceable liabilities are honoured. At the same time, the existence of a legally enforceable debt or liability remains an essential requirement for attracting the penal consequences under the provision. The statutory presumptions under Sections 118 and 139 of the Act operate in the manner prescribed by law, subject to the accused's right to rebut them by raising a probable defence.

15. Section 138 of the Negotiable Instruments Act, 1881, applies where a cheque drawn for discharge, in whole or in part, of a legally enforceable debt or other liability is returned unpaid for a reason covered by the provision and the statutory requirements concerning demand and non-payment are satisfied. Sections 118 and 139 provide rebuttable presumptions, including the presumption of consideration and the presumption that the holder received the cheque in discharge, in whole or in part, of a debt or other liability. Once the foundational facts for invoking the presumptions are established, the drawer may rebut them by raising a probable defence on the standard of preponderance of probabilities.

16. In **Kalamani Tex vs. P. Balasubramanian, (2021) 5 SCC 283**, the Hon'ble Supreme Court explained that once the signature on a cheque is admitted or established, the presumptions under Sections 118 and 139 of the Negotiable Instruments Act, 1881, operate in favour of the holder of the cheque, subject to the applicable foundational requirements. The accused may rebut these presumptions by raising a probable defence on the standard of preponderance of probabilities. In the present case, the petitioner contends that he had borrowed only Rs. 1,00,000/-, had repaid the

amount along with interest and had issued the cheque as security. However, the impugned appellate judgment records that the defence of repayment was not found sufficient to rebut the statutory presumptions.

17. The legal position concerning cheques issued as security was considered by the Hon'ble Supreme Court in **Sripati Singh (since deceased) through his son Gaurav Singh vs. The State of Jharkhand & Anr., AIR 2021 SC 5732**. The Hon'ble Supreme Court held that a cheque issued as security may attract Section 138 of the Negotiable Instruments Act, 1881, where the underlying liability becomes due and remains unpaid. Thus, the mere issuance of a security cheque does not, by itself, exclude the applicability of the said provision. In the present case, the petitioner's plea that the cheque was issued as security must be considered along with his contention that the loan amount had already been repaid. As reflected in the impugned judgments, the defence of repayment was considered but was not found sufficient to rebut the statutory presumptions.

18. The principal defence of the petitioner is that the actual loan was only Rs. 1,00,000/-, that the said amount was repaid along with interest and that the cheque was not issued towards any subsisting liability. The impugned appellate judgment records consideration of this defence, including the evidence of the defence witnesses. In particular, the appellate court noted that DW-2 had not personally witnessed the alleged repayment. The absence of a receipt or other contemporaneous documentary evidence was also considered while assessing the plea of repayment. These aspects were relevant in determining whether the petitioner had raised a probable defence

sufficient to rebut the statutory presumptions. It is also seen that DW-3 had stated that the money had been repaid by the petitioner but as stated above, no evidence or document has been placed in defence. Further, the petitioner did not reply to the statutory notice received by him from the complainant. That also provides a negative inference about any such evidence of payment. It certainly gives rise to an inference that the complainant's version carries merit.

19. The petitioner has also questioned the complainant's capacity to advance the amount allegedly lent and has raised the contention that the complainant was engaged in money-lending activities. Such contentions may be relevant to the assessment of the existence of a legally enforceable liability, depending on the facts and the applicable law. However, the mere assertion that the complainant was charging interest or was engaged in money-lending does not, without more, automatically establish that the transaction was unlawful or that no enforceable liability existed. The question must be examined on the basis of the material available and the findings recorded by the Courts below.

20. The judgments under challenge reflect that the complainant's case regarding the advancement of the loan and the petitioner's defence of repayment was considered by the Courts below. The learned appellate Court, after examining the grounds raised in appeal, upheld the finding of conviction while modifying the fine imposed by the learned Trial Court. In the exercise of revisional jurisdiction, this Court is required to examine the legality, correctness and propriety of the findings and orders under challenge and to determine whether they suffer from any manifest error of law, material irregularity or

perversity. The revisional jurisdiction, however, does not ordinarily warrant a fresh appreciation of the evidence merely to substitute a different view for that taken by the Courts below. Accordingly, the question for consideration is whether the findings recorded in the impugned judgments disclose any such infirmity as would justify interference by this Court.

21. The petitioner's challenge to the statutory presumptions must also be considered in the context of the burden of proof applicable to proceedings under Section 138 of the Act. The presumptions under Sections 118 and 139 do not make the accused's right of defence illusory; rather, they prescribe the evidentiary burden that arises once the relevant foundational facts are established. The accused may rebut the presumptions by relying upon the complainant's evidence, the circumstances of the transaction or other material available in the case. Nevertheless, a bare denial of the liability or an unsupported assertion of repayment would not, by itself, be sufficient to displace the presumptions.

22. In the present case, the impugned appellate judgment records that the petitioner's plea that the amount had been repaid was considered but was not accepted as sufficient to rebut the statutory presumptions. The appellate Court also took note of the limitation in the evidence of DW-2, who had not personally witnessed the alleged repayment. The court also did not find the evidence of DW-3 trustworthy and relevant, who is also a relative of the petitioner and not an independent witness. The petitioner's contention that the cheque was issued as security does not, in itself, establish that no liability subsisted on the date of its presentation. On the material

reflected in the impugned judgments, no sufficient ground has been demonstrated to hold that the Courts below applied the statutory presumptions in a manner contrary to the principles laid down by the Hon'ble Supreme Court.

23. The petitioner has contended that he was deprived of a fair trial owing to an alleged defect in the examination conducted under Section 313 of the Code of Criminal Procedure, 1973. The impugned appellate judgment records the petitioner's explanation that he had borrowed Rs. 1,00,000/-, repaid the loan and issued the cheque as security, which was allegedly misused by the original complainant. The appellate Court also considered the petitioner's statement while examining the statutory presumptions under Section 139 of the Negotiable Instruments Act, 1881.

24. It is also relevant that the appellate court below did not leave the sentence imposed by the Trial Court untouched. While affirming the conviction, it reduced the fine from Rs. 5,20,000/- to Rs. 4,00,000/- and directed adjustment of the amount of Rs. 52,000/- already paid. The balance was directed to be paid within the period stipulated by the appellate court, with the default sentence maintained. The petitioner has not demonstrated, on the basis of the material available for consideration in this revision, that the modified sentence suffers from any material illegality warranting further interference by this Court.

25. As discussed above, the revisional jurisdiction of this Court cannot be invoked merely to substitute a different assessment of the defence for the assessment made by the Courts below. The impugned appellate judgment records consideration of the plea that the loan

amount was smaller than alleged, that repayment had taken place and that the cheque was issued as security. The appellate Court did not find the defence sufficient to displace the statutory presumptions.

26. Having considered the grounds raised by the petitioner, this Court finds that the principal contentions concerning the amount borrowed, repayment of the loan, the character of the cheque as a security cheque and the applicability of the statutory presumptions have been addressed in the impugned appellate judgment. The legal principles governing the presumptions under Sections 118 and 139 of the Negotiable Instruments Act, 1881 as well as the applicability of Section 138 to a cheque issued as security, do not support the proposition that the petitioner's defence must necessarily result in acquittal.

27. In view of the aforesaid discussion, this Court finds no sufficient ground to interfere with the judgment and order dated 18.01.2025 passed by the learned Sessions Judge, Nalbari, in Criminal Appeal No. 04/2024, affirming the conviction of the petitioner under Section 138 of the Negotiable Instruments Act, 1881 and modifying the sentence imposed by the learned Chief Judicial Magistrate, Nalbari, in N.I. Case No. 179/2018.

28. The judgment and order dated 18.01.2025 passed by the learned Sessions Judge, Nalbari, in Criminal Appeal No. 04/2024, affirming the conviction and modifying the sentence, calls for no interference by this Court.

29. Accordingly, the criminal revision petition stands dismissed.

30. Send a copy of this judgment to the learned courts below for information and necessary action.

JUDGE

Miriam Degu
(SPA)