GAHC010162352026

2026:GAU-AS:15975

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

Case No. : Crl.Pet./1093/2026

SMT BIDISHA KASHYAP
W/O SRI SAUGAT KASHYAP
R/O HOUSE NO. 52, 2ND FLOOR, BYE LANE NO. 3, NARIKARBASTI, ZOO NARENGI ROAD, GUWAHATI, P.O. P.S. -GITANAGAR DISTRICT - KAMRUP (METRO), ASSAM PIN CODE-781024

VERSUS

SRI NABAJYOTI GOSWAMI
S/O LATE KRISHNA GOSWAMI R/O RAJGARH, BYLANE NO 8, HOUSE NO 236 GUWAHATI-3, DISTRICT- KAMRUP M, ASSAM PRESENTLY RESIDING AT ABHAYAPURI TOWN, NEAR MECHANICAL WORKSHOP, P.O. AND P.S. ABHAYAPURI, DIST. BONGAIGAON, ASSAM, PIN CODE- 783384
PHONE NO. 9435126300
REPRESENTED BY HIS ATTORNEY HOLDER SRI MUKUTA BAISHYA, S/O LATE SUREN BANIKYA, R/O ABHAYAPURI TOWN, WARD NO. 10, P.O. AND P.S. ABHAYAPURI, DIST. BONGAIGAON, ASSAM.

Advocate for the Petitioner : MR B BURAGOHAIN, MR. S BORAH,MD A A HUSSAIN

Advocate for the Respondent : MR. S K SAHARIAH, MR. C SHARMA

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 02-11-2026

Heard Mr. B. Buragohain, learned counsel for the petitioner and also heard

Mr. S.K. Saharia, learned counsel for the respondent.

2. In this petition, under Section 528 of the BNSS-2023, the petitioner, namely, Smti. Bidisha Kashyap, prayed for quashing and setting aside of the orders, dated 03/11/2025, and 22/05/2026, and also for quashing the complaint case, being N.I.C.R. Case No.07/2025, filed under Section 138 of NI Act against the petitioner, by the respondent herein, and pending before the Court of learned Additional Chief Judicial Magistrate, Bongaigaon.

3. Mr. Buragohain, learned counsel for the petitioner submits that the petitioner is an accused in a complaint N.I.C.R. Case No.07/2025, filed under Section 138 of NI Act, which was instituted by the respondent herein, alleging dishonour of cheque No. 12122913, dated 05.09.2024, for a sum of Rs. 1,00,000/- which was allegedly issued by the petitioner towards arrear rent, on behalf of her husband, namely, Saugat Kashyap, in view of a tenancy agreement, dated 01.10.2021, executed between him and the landlords, namely, Biswajit Goswami and Nabajyoti Goswami, in respect of a part house, measuring 1070 sq. ft., situated at By lane No. 8, Rajgarh Road, Guwahati-03. He also submits that the present petitioner is not the tenant, but she had issued the cheque on behalf of her husband for arrears of rent, without there being any other independent transaction or liability between the complainant and the accused.

3.1. Mr. Buragohain also submits that the entire cheque amount of Rs. 1,00,000/-was already paid to the respondent in four instalments as below:

1. Rs. 25,000/- paid by IMPS on 17.05.2025 to Nabajyoti Goswami,
2. Rs: 24,900/- paid by IMPS on 17.05.2025 to Nabajyoti Goswami,
3. Rs. 100/- paid by G-Pay on 17.05.2025 to Nabajyoti Goswami, and

4. Rs. 50,000/- paid by IMPS on 18.05.2025 to Nabajyoti Goswami.

3.2. Mr. Buragohain also submits that the payments were made specifically against cheque No. 12122913, and copies of the transaction statements are also annexed with the petition as Annexure 3. He further submits that Section 138 of NI Act, as already becoming non-existent, due to complete satisfaction of the cheque amount prior to taking cognizance and as such the further proceeding in this case would be an abuse of process of law.

3.3. It is the further submission of Mr. Buragohain that thereafter, the petitioner has filed one petition, being petition No. 338/26, for recalling order of taking cognizance, dated 03.11.2025, under Section 147 NI Act and to drop the proceeding and also for discharging her. But, the same was dismissed vide impugned order, dated 22.05.2026, which according to him, is illegal and liable to be interfered with.

3.4. Mr. Buragohain also submits that being aggrieved the petitioner approached this Court on following grounds:-

A. The learned Magistrate has failed to consider the documentary evidence already available on record showing that the entire cheque amount had been paid before cognizance. The payment receipts specifically referred to Cheque No.12122913, and the same constituted material proof directly bearing upon the continuation of the prosecution. The impugned orders, therefore, suffer from non-consideration of relevant material.

B. There exists no surviving monetary liability, arising out of the cheque. Continuation of criminal prosecution despite complete discharge of liability, defeats the object of Chapter XVII of the

Negotiable Instruments Act.

C. The learned Magistrate has failed to exercise jurisdiction vested in him in accordance with the principles governing Section 147 of the Negotiable Instruments Act which encourages settlement and early resolution.

D. The proceeding has become oppressive and constitute abuse of the process of Court.

E. The complainant has already obtained complete satisfaction of the cheque amount, and continuation o prosecution would amount to continue harassment and abuse of the criminal process.

F. The impugned proceeding no longer advance the object of Section 138 of the Negotiable Instruments Act, but merely prolong litigation despite complete satisfaction of the cheque liability.

G. For that the learned Magistrate completely failed to consider the law laid down by the Hon'ble Supreme Court encouraging settlement and expeditious disposal of proceedings under the Negotiable Instruments Act.

H. The respondent/complainant accepted the entire cheque amount without any protest, and thereafter, permitted the criminal proceeding to continue without placing the true facts before the learned Court. Such conduct amounts to suppression of material facts and abuse of judicial process.

I. The present case is an exceptional one and continuation of the criminal proceedings, despite complete discharge of the cheque amount, before cognizance and despite absence of any surviving

liability, would result in manifest injustice.

J. The present case falls within the categories enumerated in **State of Haryana vs. Bhajan Lal,** reported in **1992 SCC (SUPP) 1 335,** where the continuation of criminal proceedings amounts to abuse of the process of law and warrants exercise of the inherent jurisdiction of this High Court.

K. The learned Magistrate proceeded on a purely technical approach, without considering the object and purpose of Section 147 of the Negotiable Instruments Act and the law laid down by the Hon'ble Supreme Court encouraging settlement of cheque dishonour disputes at the earliest possible stage.

L. The learned Trial Court itself has recorded in the impugned order that the bank authorities certified that personalized remarks entered during electronic transactions are not reflected in the bank statement and are visible only in the banking application used while initiating the transaction. Despite the learned Trial Court has failed to appreciate its legal consequence. The petitioner had produced the transaction initiation records and transaction success records containing the personalized remark "Against Cheque No.12122913." The said electronic records directly connected every payment with the cheque in question. Once the authenticity of the documents was not doubted, there remained no factual basis for assuming that the payments related to any transaction other than Cheque No.12122913.

M. The complaint nowhere alleges any other cheque transaction, loan,

advance, commercial dealing or legally enforceable debt between the petitioner and the complainant apart from the cheque, bearing No.12122913. The respondent has never pleaded, either in the complaint or in any subsequent proceeding that the payments received from the petitioner related to any other transaction. In the absence of any such plea, and in view of the contemporaneous electronic records, specifically mentioning Cheque No.12122913, the only reasonable inference is that the payments were made towards complete discharge of the cheque liability forming the subject matter of the complaint. Any contrary assumption would be speculative and unsupported by the pleadings or the evidence on record.

N. The learned Trial Court has failed to appreciate that the contemporaneous electronic transaction records produced by the petitioner specifically identified the purpose of each payment as being towards Cheque No.12122913. Once such documentary evidence was placed on record, the respondent was required to produce at least prima facie material to establish that the said payments were appropriated towards any other alleged liability. However, except for a mere oral submission, that the payments related to Cheque No.12122915, the respondent neither pleaded the existence of such cheque in the complaint or statutory notice nor produced any documentary evidence, account statement or ledger showing such appropriation

O. The complaint petition, statutory demand notice, affidavit and other pleadings on record proceed exclusively on the basis of Cheque

No.12122913, and are completely silent regarding any alleged Cheque No.12122915. In the absence of any pleading or supporting material regarding the existence of any other cheque or liability, the submission advanced by the respondent, during the proceedings before the learned Trial Court, was wholly dehors the record and could not have been relied upon to reject the petitioner's application under Section 147 of the Negotiable Instruments Act.

P. The learned Trial Court has failed to appreciate that the respondent, having admittedly received the entire cheque amount, cannot be permitted to continue the criminal proceedings, on the basis of an unsubstantiated claim regarding appropriation of the amount towards some other alleged liability.

3.5. In support of his submission Mr. Buragohain has referred following decision of Hon'ble Supreme Court:-

(i) **Sanjabij Tari vs. Kishore S. Borcar,** reported in **(2021) 6 SCC 321;**

4. Per contra, Mr. Saharia, learned counsel for the respondent has opposed the petition. He also submits that the payments allegedly made by the petitioner, relates to some other liability, and besides, the alleged receipt of payment is a matter of trial and cannot be decide in this petition. Therefore, Mr. Saharia has contended to dismiss the petition.

4.1. Mr. Saharia has also referred following decision of Hon'ble Supreme Court in support of his submission:-

(i) **Adalat Prasad vs. Rooplal Jindal and Others**, reported in **(2004) 7 SCC 338,**

5. Having heard the submission 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 decisions referred by learned counsel for both the parties. Also gone though the relevant provision of law.

6. It is to be noted here that 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, 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.

7. In the instant case, perusal of the record reveals that the petitioner has issued the cheque in question, No. 12213, on 05.09.2024 for a sum of Rs.1,00,000/, towards discharge of a legally enforceable debt to the respondent. The respondent had presented the cheque to his banker on 18.11.2024, for encashment. However, the cheque returned dishonored due to insufficient fund. Thereafter, the petitioner had issued demand Notice through his counsel on 26.11.2024, asking the petitioner to make payment within 15 days of receipt of Notice. The Notice was delivered to the petitioner on 11.12.2024, as per postal track consignment report. But inspite of receipt of Notice, the petitioner had failed to make payment of the cheque amount within the stipulated period of 15 days of receipt of Notice. And that being so, all these ingredients of the offence

under Section 138 N.I. Act, prima facie appear to be satisfied in the given factual scenerio, as discussed herein above. It also appears that as the petitioner had failed to make payment within stipulated period, the respondent has instituted the proceeding under N.I. Act on 22.01.2025.

8. Though Mr. Buragohain has taken a plea that in respect of the said Cheque No. 12122913, the petitioner had paid the entire amount i.e. a sum of Rs. 25,000/- paid by IMPS on 17.05.2025, another sum of Rs: 24,900/- by IMPS on 17.05.2025, and Rs. 100/- paid by G-Pay on 17.05.2025, and another sum of Rs. 50,000/- paid by IMPS on 18.05.2025, yet, the payments were made much after completion of the offence under Section 138 of the N.I. Act.

8.1. It is clarified in the case of **Rajneesh Agarwal vs. Amit J. Bhalla** reported in **(2001) 1 SCC 631,** that once the offence is committed any payment made subsequent thereto will not absolve the accused of the liability of the criminal offence, though the matter of awarding sentence, it may have some effect on the Court trying the offence.

8.2. It is also to be noted here that Mr. Saharia, learned counsel for the respondent denied receipt of the same in discharge of the liability of cheque No. 12122913, but in respect of other liability.

8.3. Thus, it becomes a disputed question of fact. And it requires a full flagged trial. Reference in this context can be made to the following decision of Hon'ble Supreme Court in the case of **CBI v. Arvind Khanna,** reported in **(2019) 10 SCC 686,** Hon'ble Supreme Court has held as under :-

> "**17. After perusing the impugned order and on hearing the submissions made by the learned Senior Counsel on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed**

under Section 482 Cr.P.C, the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant CBI, and the defence put forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

18. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance of by the competent court, is completely incorrect and uncalled for."

8.4. Further, in the case of **Mohd. Akram Siddiqui vs. State of Bihar** reported in **(2019) 13 SCC 350,** Hon'ble Supreme Court has held as under:-

"**5. Ordinarily and in the normal course, the High Court when approached for quashing of a criminal proceeding will not appreciate the defence of the accused; neither would it consider the veracity of the document(s) on which the accused relies. However an exception has been carved out by this Court in Yin Cheng Hsiung v. Essem Chemical Industries; State of Haryana v. BhajanLal and Harshendra Kumar D. v. Rebatilata Koley to the effect that in an appropriate case where the document relied upon is a public document or where veracity thereof is not disputed by the complainant, the same can be considered."**

9. In the instant case, the documents relied upon by the petitioner in respect of payment made by him is not a public document and besides, veracity of the same is disputed by the respondent. And as such, the decision in **BhajanLal(supra)** which the petitioner has relied upon, would not come into

his assistance.

10. Further, the decision of Hon'ble Supreme Court in the case of **Sanjabij Tari(supra)** also would not come into his assistance, since the receipt of payment against the discharge of liability in respect of cheque No. 122913, is disputed by the respondent.

11. In the case of **M/S Indian Oil Corporation vs. M/S Nepc India Ltd., & Ors** reported in **2006 (6) SCC 736,** Hon'ble Supreme Court has culled out the relevant principle for the purpose of quashing complaint as under:- :

> **(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.**
>
> **For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint.**
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> **(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.**

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out:

(a) purely a civil wrong; or
(b) purely a criminal offence; or
(c) a civil wrong as also a criminal offence.

A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

12. In the case of **Central Bureau of Investigation vs. Aryan Singh**

etc. reported in **2023 SCC OnLine SC 379,** Hon'ble Supreme Court has held that an application for quashing of the criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini trial.

13. Though Mr. Buragohain, learned counsel for the petitioner has laid much emphasis upon Section 147 NI Act, yet compounding of offence under Section 138 NI Act is not an one sided affair. Compounding requires the voluntary consent of the complainant which seems to be lacking in the instant case. Courts cannot force a complainant to agree to a settlement. Reference in this context can be made to a decision of Hon'ble Supreme Court in **Raj Reddy Kallem vs. The State of Haryana & Anr. Criminal Appeal No. 2210 of 2024** arising out of **SLP (Crl.) No. 629 of 2023.**

14. Thus, form the given facts and circumstances on the record and also from the submissions, so advanced by learned counsel for both the parties, this court is unable to derive its satisfaction that very exceptional circumstances or 'rarest of rare case' is demonstrated by the petitioner so as to invoke the extra ordinary jurisdiction of this court, under section 482 Cr.P.C., as held in the case of **BhajanLal (supra).**

15. Further, the petitioner has failed to demonstrate from the record as to how the impugned orders, dated 03/11/2025, and 22/05/2026, in N.I.C.R. Case No. 07/2025, so passed by the learned Additional Chief Judicial Magistrate, Bongaigaon, suffers from any illegality and impropriety. Having examined the same in the light of the given factual and legal matrix, and also in the light of the submissions of learned counsel for both the parties this Court finds that the same suffers from no infirmity or illegality requiring any interference of this

Court.

16. In the result, this Court finds no merit in this petition and accordingly, the same stands dismissed. The parties have to bear their own costs.

JUDGE

Comparing Assistant