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2026:GAU-AS:17152

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

Case No. : Crl.Pet./1343/2026

MOZBUL HOQUE CHOUDHURY
S/O SHRI AZAD ALI, R/O UDAY NAGAR, WARD NO 15 GOALPARA, UNDER PS GOALPARA, PO BALADMARI, DIST GOALPARA, ASSAM, PIN 783121

VERSUS

DELOWAR HUSSAIN
S/O HABIBAR RAHMAN, R/O VILL NIZ KURSHAKATI, PO AOLATOLI, UNDER PS LAKHIPUR, DIST GOALPARA, ASSAM, PIN 783129

Advocate for the Petitioner : P D CHOUDHURY, S K SARFRAJ KARIM,MR S J CHOUDHURY

Advocate for the Respondent : ,

BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

Date : 18.11.2026

Heard Mr. P. D. Choudhury, learned counsel for the petitioner.

2. By this application, filed under Section 528 of B.N.S.S., 2023, the petitioner has prayed for quashing of the order dated 26-09-2025, passed by the Court of Chief Judicial Magistrate, Goalpara, in C.R. (N.I.) Case No. 34 of 2025, by which

the amendment sought to be made in the complaint as well as in the evidence on affidavit was allowed to be done by the complainant.

3. The petitioner has also challenged the order dated 10-08-2026, passed by the Court of District and Session Judge, Goalpara in Criminal Revision No. 30 of 2025, by which the challenge to the said order dated 26-09-2025 was rejected.

4. The case of the petitioner is that, a complaint was lodged against him by the complainant for non-payment of the loan amount, amounting to 7 Lakh and that the case started on the basis of the said complaint and the Court of C.J.M. Goalpara, took cognizance of offence under Section 138 of the N.I. Act against the petitioner. It is the further case of the petitioner that an application was filed by the complainant on 26.09.2025, stating that certain minor typographical error had occurred in the complaint petition as well as, in the evidence in chief of the complainant. It is stated therein that the date when the accused had visited the house of the complainant asking for the money was typed wrongly as in the month of November 2019 instead of the month of November 2018. It was also stated that the same mistake had cropped up in evidence in chief of the complainant and an amendment is sought for in the said complaint and evidence in chief by the complainant.

5. It is thereafter stated by the petitioner that, the said application was considered by the court and by order dated 26-09-2025, it is held that a complainant can amend the complaint even after taking cognizance of the offence provided the amendment does not cause prejudice to the accused and is to cure only a curable defect or on technicality or procedural flexibility and the same should not obstruct justice and on that observation the said application

was allowed.

6. The learned court had directed for correction of the said typographical error and it is also held that the accused cannot say that it has caused prejudice to him by such correction.

7. The learned counsel for the petitioner has taken three grounds of challenge against the said order:

(i) The learned counsel submits that the said correction allowed by the court had caused prejudice to the petitioner as the genesis of the occurrence was changed by the complainant by giving a new date as to the accused's visit to the place of the complainant. He submits that only in cases to cure a curable defect and in case of a formal amendment which does not cause prejudice to the other party, an amendment can be allowed. He by placing reliance on a Supreme Court judgment rendered in "***S.R. Sukumar Vs. S. Sunath Raghuram***" reported in ***2015 9 SCC 609***; submits that the correction allowed in the present case is not according to the law laid down.

(ii) The second ground taken by the learned counsel for the petitioner is that in the application filed by the complainant the prayer was not made as to the effect that the complainant want correction of the said date in the complaint as well as in the evidence in chief and that, it was not prayed for in the said petition and even by looking at the contents of the petition the said prayer cannot be discerned.

(iii) The third ground that the learned counsel for the petitioner took that amendment although can be allowed in case of a complaint which should be

only to cure, curable defect and which should not cause any prejudice to the other party, but there is no provision as well as there is no law laid down to the effect that amendment can be allowed in evidence-in-chief submitted by the complainant.

8. I have heard the counsel and I have gone through the records. As far as the first ground is concerned that the court had incorrectly allowed correction of the complaint by the complainant is concerned, this court finds that it is settled by the Hon'ble Apex Court that in cases of curable defect and for making formal changes which does not caused prejudice to the opposite party, the said amendment to the complaint petition can be allowed. In "***Bansal Milk Chilling Centre vs Rana Milk Food Private Ltd***." reported ***in 2025 SCC Online SC 1509***, the Hon'ble Supreme Court after taking into account, the case of S. R. Sukumar (supra) had held that amendment sought at a stage after the summons has been issued and after complainant's chief examination was complete but before cross-examination of the complainant, the same can be allowed, if it does not cause any prejudice to the opposite party. The observation made in the said judgment in reproduced below:-

> "*17. We have carefully perused the complaint and the application for amendment. The amendment was moved at a stage when after summons being issued to the Respondents, the chief examination of the complainant had concluded and when cross-examination was awaited. The amendment made is also only with regard to the products supplied. According to the complainant, while what was supplied was "milk", by an inadvertent error "Desi Ghee (milk products)" was mentioned. The error which occurred in the legal notice was carried in the complaint also.*

18. On the facts of the present case and considering the stage of the trial, we find that absolutely no prejudice would be caused to the Accused/Respondents. The actual facts will have to be thrashed out at the trial. As to what impact the amendment will have on the existence of debt or other liability is for the Trial Court to decide based on the evidence. It was a curable irregularity which the Trial Court rightly addressed by allowing the amendment. It could not be said that by allowing the amendment at a stage when the evidence of the complainant was incomplete, failure of justice would occasion."

9. In the facts of the said case, where the changes in the complaint was sought from milk, ghee products to only milk, the court held that the error in the complaint was a curable irregularity and the trial court had rightly allowed the amendment. In the instant case, it is seen that in the complaint the date of the petitioner's visit to the complainant house was sought to be changed from November, 2019 to November, 2018 and the same had not changed the nature of the case. The said alteration will not affect the existence of debt or liability under Section 138 of NI Act, which can be seen from the other facts narrated in the complaint. Since it is found that no prejudice be caused to the petitioner, amendment in the complaint petition can be allowed which is accordingly allowed by the Court. As such, allowing the said amendment accordingly in the considered opinion of this Court is not incorrect.

10. The second ground raised by the learned counsel that the prayer made in the petition seeking amendment was not properly made and that, even the contents of the application do not show the actual prayer is however not sustainable in the facts of this case. It is noticed in the application for amendment that the complainant stated that there is a minor typographical

error in the complaint petition. It is also stated that the date when the accused visited the house of the complainant was erroneously typed as November, 2019 and the same should be November, 2018 and that the error had cropped up. It is also stated that the amendment prayed for is formal and does not alter the nature of the offence and in the prayer portion it is prayed before the court to allow the petition and permit the amendment as prayed for. As such, from the reading of the petition and the prayer, it is clear that complainant had sought for amendment with regard to the date on which, the petitioner visited the complainant house. Accordingly, the second argument cannot be accepted.

11. As far as the third argument is concerned, that amendment/correction should not have been allowed in evidence on affidavit filed by the complainant, this court finds that evidence on affidavit is not merely statements or pleadings but the contents thereof are evidence and the same being sworn in by the party concerned cannot be allowed to be amended.

12. The party can however be permitted to file additional affidavit removing the alleged defect or the party can be allowed to file a fresh affidavit by giving time to file the same. An affidavit is statement of facts in writing made voluntarily before an authorized officer and an affidavit is different from a plaint. In "***Dwarka Nath Vs. Income Tax Officer***" reported in ***AIR 1966 SC 81***, the Supreme Court has held that if an affidavit is defective in any manner, the party should be allowed to file better affidavit. In the instant case, the court had allowed to make amendment in the affidavit giving evidence in the case. The complainant, for any mistake committed on evidence on affidavit could file additional affidavit or a fresh affidavit before the Court.

13. An existing sworn affidavit cannot be altered directly instead a fresh affidavit can be filed alongside on being allowed by the Court. As such, the directions given by the Court of Chief Judicial Magistrate, Goalpara, Assam, allowing the complainant to correct the error in the evidence on affidavit is interfered with. This Court is however, inclined to allow the complainant to file fresh affidavit or additional affidavit. As such, this application is party allowed and the case is remitted back to the Court of Chief Judicial Magistrate, Goalpara, Assam, to reconsider the said aspect and pass fresh order.

14. With these above observations, the petition is disposed of.

JUDGE

Comparing Assistant