

GAHC010239092018



2026:GAU-AS:5925

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

Case No. : CrI.A./84/2019

SRI DHIRAJ SARMA
S/O-LATE PADMA CHANDRA SARMA,
JATIA KAHILIPARA ROAD,
SUNDARBAN PATH, BYE LANE NO. 5, P.S.- DISPUR, GUWAHATI-6. DIST-
KAMRUP(M).

VERSUS

SRI KAKIL NAMASUDRA
S/O- LATE ADHIR NAMASUDRA,
PANIKHATI, RAILGATE, IN FRONT OF KALI MANDIR, P.O- PANIKHAITI,
P.S.- CHANDRAPUR, DIST- KAMRUP(M), ASSAM, PIN- 781004.

Advocate for the Petitioner : MR H K SARMA,

Advocate for the Respondent : MR R DAS, MR. S ROY,MR R DAS

BEFORE
HON'BLE MRS. JUSTICE MITALI THAKURIA

Advocates for the Appellant : Mr. H. K. Sarma.

Advocates for the Respondent : Mr. R. Das.

Date on which judgment is reserved : **19-03-2026**

Date of pronouncement of judgment : **29-04-2026**

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

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

Heard Mr. H. K. Sarma, learned counsel for the appellant and Mr. R. Das, learned counsel for the respondent.

2. This appeal has been filed under Section 378 CrPC against the final judgment and order dated 26.07.2018, passed by the learned JMFC, Kamrup (M), Guwahati in C.R. Case No.2036(c)/2017 under Sections 138/142 of N.I. Act whereby the accused/respondent was acquitted on the benefit of doubt.

3. It is the case of the appellant/complainant that the accused/respondent while discharging lawful liability issued a cheque of Rs.6,00,000/- in favour of the complainant/appellant on 05.04.2017 which was drawn with SBI Narengi Branch.

4. Later on he deposited the cheque in the account maintained with Industrial Cooperative Bank Ltd., Guwahati Branch but the said cheque was dishonoured vide its return memo dated 25.05.2017 on the ground of "insufficient fund".

5. Thereafter, the appellant/complainant through his engaged counsel had issued a demand notice on 30.05.2017 against the accused/respondent demanding Rs.6,00,000/- within a period of 15 (fifteen) days from the issuance

of the notice.

6. On enquiry made by the appellant, he also came to know that the notice was received by the respondent on 21.06.2017, but he failed to give any reply and for which, the appellant as a complainant had instituted a complaint under Section 138/142 of the N.I. Act.

7. After recording evidences etc., the learned Trial Court had passed the order and while passing the judgment, 3 (three) issues have been framed by the learned Trial Court which are as follows:

- (a) Whether the cheque was issued for the discharge of any legally enforceable debt or liability?
- (b) Whether the cheque was dishonoured for the reason "insufficient funds" and
- (c) Whether the accused/respondent received the demand notice issued by the complainant/appellant regarding dishonour of cheque?

8. After hearing the arguments, the learned Trial Court while passing the judgment had decided the issue No.(a) and (c) against the complainant/appellant, however, the issue No.(b) was decided in favour of the appellant and thereby acquitted the accused/respondent with the observation that the complainant could not prove the case and on the ground of benefit of doubt, the accused/appellant got the order of acquittal.

9. Mr. Sarma, learned counsel for the appellant submitted that the learned Trial Court had failed to appreciate the evidence on record and also failed to appreciate the facts about the existence of liability in favour of the complainant/appellant.

10. He further submitted that there is no dispute in regards to the signature put by the accused/respondent in the cheque in question and the cheque dated 05.04.2017, but inadvertently the demand notice which was issued to the respondent, the date was mentioned as 05.04.2014 which is an inadvertent mistake on the part of the appellant. The accused at the time of recording his evidence also admitted the signature in the cheque in question and he never denied about the signature.

11. In the demand notice, i.e., Ext.C, they demand Rs.6,00,000/- which was issued on 30.05.2017 but there was a simple typographical mistake in the demand notice as stated above, which is also clarified by the appellant/complainant. Further it is an admitted fact that the cheque number was not mentioned in the demand notice which is not so material as there was a demand of Rs.6,00,000/- which was issued by the respondent/accused.

12. Mr. Sarma, learned counsel further submitted that after coming to know about the defect or inadvertent mistake in the demand notice issued on 30.05.2017 the clarification is also made in the complaint in para-3 wherein it is specifically stated that due to bonafide mistake, the engaged counsel for the appellant had mentioned the date of cheque as 05.04.2014 instead of the actual date, i.e., 05.04.2017. But inspite of such clarification, the learned Trial Court did not consider the fact that the cheque in question dated 05.04.2017 was issued by the respondent/accused in discharge of his legally enforceable debt.

13. He further submitted that though it is claimed that there was wrong mention of date of cheque in the demand notice, but the accused/respondent could not substantiate their plea that another cheque was issued on 05.04.2014 by adducing any documentary or oral evidence.

14. Mr. Sarma, learned counsel further submitted that so far the lawful liability is concerned; the accused had admitted his business transactions with the complainant for 6-7 years and they also admitted the receipt of the demand notice sent by the complainant/appellant before the initiation of the complaint petition and admitting the receipt of demand notice, he even exhibited the same as Ext.3 at the time of trial.

15. Mr. Sarma, learned counsel accordingly prayed for remand of the matter for fresh disposal considering all this aspect by the learned Trial Court.

16. Mr. Sarma, learned counsel relied on a decision of the Hon'ble Supreme Court in the case of **Kalamani Tex and another Vs. P. Balasubramanian** reported in **(2021) 5 SCC 283** and submitted that presumption as to legally enforceable debt available against the accused even in case when he voluntarily signed and handed over a blank cheque leaf towards some payment and it is the duty of the Court to presume that the cheque was issued as consideration for a legally enforceable debt.

17. He further submitted that as per the N.I. Act Section 139 make is amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of debt or in discharge of a liability.

18. In that context also he relied on a decision of the Hon'ble Supreme Court in the case of **Bir Singh Vs. Mukesh Kumar** reported in **(2019) 4 SCC 197**.

19. Citing the above referred judgment, learned counsel, Mr. Sarma submitted that the judgment passed by the learned Trial Court is liable to be set aside and quashed and the matter may be remanded back for fresh disposal with a direction to pass the judgment and order by considering all facts of the case.

20. Mr. Das, learned counsel submitted that the learned Trial Court had passed the order after scrutinizing the evidences as well as the documents exhibited by both the parties and hence, there is no need of any interference in the judgment and order passed by the learned Trial Court, whereby the respondent got the order of acquittal.

21. He further submitted that 3/4 numbers of blank cheques were taken by the complainant and he took only Rs.1,00,000/- from the complainant/appellant which has already been returned by him and to that regard, the respondent also exhibited Exts. 1 and 2 the bank statement to prove that the money which has been taken by the present respondent had already been returned and there is no existing debt or liability for payment of any cheque amount.

22. Mr. Das, learned counsel further submitted that the Exhibit-C which is a demand notice wherein the date of the cheque was mentioned as 05.04.2014 instead of correct date of 05.04.2017 and without making any correction the said demand notice was produced before the Court and it was corrected at the time of trial and exhibited as Ext. C. There is no prior information to the Court or the respondent before correction of the said demand notice wherein the appellant demanded Rs.6,00,000/- to be the cheque amount dated 05.04.2014. Thus, the demand notice which was issued by the complainant/appellant was for the cheque dated 05.04.2014 and not for 05.04.2017 as claimed by the appellant/respondent.

23. It is admitted by the respondent that Rs.1,00,000/- was taken as loan from the complainant, which has already been returned back and as stated above, they have also exhibited Exts. 1 and 2 to substantiate their plea. Further, the respondent also exhibited the original demand notice which was issued to him for the cheque dated 05.04.2014. But as there is no existing liability for any

cheque dated 05.04.2014, the respondent did not find any reason to make any reply to the said demand notice. However, the respondent admitted the signature in the cheque in question as they had already issued 3/4 numbers blank cheques in favour of the complainant and without any existing liability to the cheque dated 05.04.2014, the demand notice was issued to the present respondent.

24. Mr. Das, learned counsel further submitted that the learned Trial Court while discussing the point No. 'C' i.e., whether the accused received the demand notice issued by the complainant regarding the dishonour of cheque has discussed that the demand notice which was issued to the present petitioner did not bear any cheque number whereby Rs.6,00,000/- was demanded and that apart the cheque date was also mentioned as 05.04.2014 wherein there was no existing liability for the present respondent and accordingly he submitted that the learned Trial Court had rightly decided the point No.'C' in negative against the complainant/appellant.

25. He further submitted that second or subsequent notice within the period of limitation is permissible so long it satisfy the requirement of proviso to Section 138 of the N.I. Act. To substantiate his plea, Mr. Das relied on the decision of the **MSR Leathers Vs. S. Palaniappan and Anr.**, reported in **2013 Legal Eagle SC 690.**

26. Mr. Das, learned counsel also relied on a decision of the Punjab and Haryana High Court passed in the case of **Chhabra Fabrics Private Limited Vs. Bhagwan Dass, proprietor of Dhibgra** in **Crl. A. No. 1772-SB/2002** wherein also it is held by the Court that there might be typographical error in the legal notice while typing out the cheque number, but such typographical error if any does not meet the compliance of mandatory provision of Section

138 of N.I. Act and the only course left for the complainant was to give a fresh legal notice to the accused. Accordingly, Mr. Das submitted that even if there was any typographical error, the complainant/appellant did not furnish any subsequent or the second legal notice afresh with correct mentioning of cheque number and date if any legal debt or liability was there to meet the requirement under Section 138 of N.I. Act.

27. Mr. Das, learned counsel accordingly submitted that the learned Trial Court had rightly passed the order of acquittal and hence, there is no need of any interference by this Court at this stage.

28. Heard the submissions made by the learned counsel for both the parties and I have also perused the record and the judgment passed by the learned Trial Court.

29. It is seen that there is no dispute in regards to the cheque issued by the respondent and signature available in the cheque is also not disputed by the respondent. But the case of the respondent is that he had taken a loan of Rs.1,00,000/- which has already been repaid by him and to substantiate the fact, he exhibited the bank statement and the money receipt as Ext. 1 and 2 at the time of adducing evidence stating that 3/4 blank cheques were issued by him and there is no existing debt or liability for any subsequent cheque or amount which has been claimed by the present appellant.

30. On the other hand, it is the case of the appellant that the cheque amount of Rs.6,00,000/- was issued in favour of the appellant, which was accordingly dishonoured due to insufficiency of fund and after the dishonour of cheque, demand notice was accordingly issued wherein Rs.6,00,000/- was demanded and the same was duly received by the respondent.

31. Now the signature in the cheque in question as well as receipt of demand notice from the appellant is not disputed. But the only issue raised in this case is that while issuing the demand notice, the cheque number was not mentioned and demand was made for cheque dated 05.04.2014 wherein there was no existing liability. However, it is the case of the appellant that coming to know about the inadvertent typographical mistake they have corrected the demand notice at the time of filing the case, but that was not considered by the learned Trial Court.

32. There may be typographical error while typing the date of the cheque as 05.04.2014 instead of 05.04.2017, but it could have been corrected or could have been taken into consideration if the proper cheque number would have mentioned in the demand notice whereby Rs.6,00,000/- was demanded by the appellant.

33. Thus, it is seen that though an amount of Rs.6,00,000/- was demanded through the demand notice, but the demand notice could not considered as there was no mention of cheque number which is the most essential part of the demand notice and at the same time the date of the cheque is also mentioned as 05.04.2014 instead of correct date of cheque i.e., 05.04.2017. Thus, in that aspect it cannot be considered as a proper legal demand notice for the cheque amount of Rs.6,00,000/- dated 05.04.2017. It is also the case of the appellant that they have come to know about their typographical mistake, but without making any correction the case has already been instituted and also did not take any course for filing a fresh demand notice to the respondent demanding the cheque amount dated 05.04.2017. So for non-mentioning of any cheque number as well as incorrect date of cheque mentioned in the demand notice it cannot be considered as a legal demand notice as required under Section 138 of

N.I. Act which clearly states in proviso (b) that the holder of cheque should make a demand for payment of an amount to the drawer of the cheque and it is an admitted fact that the demand notice which was sent, did not bear the cheque number and the date of the cheque is also incorrect to understand the exact transaction against which such demand is made.

34. It is settled position of law that an accused has to rebut the presumption under Section 139 of the Act and his standard of proof for doing so is that of preponderance of probabilities. It is not a case that the accused had to adduce evidence in his favour, but accused can also rely the materials submitted by the complainant in order to raise such defence under Section 139 of the Act.

35. But here in the instant case, it is also seen that the accused/respondent not only relied on the materials submitted by the complainant but they also adduced evidence and exhibited the documents to substantiate their plea of defence and at the same time the demand notice which was received by him is also exhibited as Ext. 3 with incorrect date of cheque without any cheque number. Except the demand of Rs.6,00,000/- there is no mention about the cheque number and the date of cheque incorrectly mentioned. Thus, the demand notice does not fulfill the ingredients of proviso (b) of Section 138 of the Act.

36. In the case of **Suman Sethi Vs. Ajay K. Churiwal** reported in (2000) Cri. 1391 (SC) as relied by the learned Trial Court, the Hon'ble Apex Court have held that it is settled principle of law that notice has to be read as a whole. In the notice of demand, there has to be a cheque number and if no such demand is made, the notice would fall short of legal requirement.

37. Thus it is seen that there cannot be any reason for remand of the case for

fresh disposal as there is no scope for any correction of the demand notice at this stage, which has already been issued by the appellant demanding Rs.6,00,000/- for a cheque amount which was claimed to be issued in favour of the appellant during the course of business transactions.

38. In view of above, this Court is of the opinion that there is no reason for making any interference in the judgment and order dated 26.07.2018, passed by the learned JMFC, Kamrup (M), Guwahati in C.R. Case No.2036/2017 acquitting the respondent.

39. Accordingly, this criminal appeal stands dismissed.

40. Send back the Trial Court Record forthwith.

JUDGE

Comparing Assistant