

GAHC010235452017



2026:GAU-AS:9087

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

Case No. : Crl.Pet./346/2017

NANDU PRASAD
S/O- SRI BIPIN BIHARI PRASAD, R/O- HEMANTA BASU SARANI, WARD
NO.IV, OPPOSITE VIVEKANANDA PRIMARY SCHOOL, P.O- SILIGURI,
DISTRICT- DARJEELING, WEST BENGAL

VERSUS

THE STATE OF ASSAM and ANR.
ASSAM

2:M/S UMANG ENTERPRISES
A PROPRIETORSHIP CONCERN HAVING ITS OFFICE AT N H 37
BELTOLA
GUWAHATI-22
P.S- BASISTHA
DIST- KAMRUPM
ASSA

Advocate for the Petitioner : MR.N ANAND, MR.H ALI,MR.A K SINGH,MR.U K BARMAN

Advocate for the Respondent : MR. R C SANCHATI (R2), PP, ASSAM,MS S BHUMIJ (R2),MR. A SANCHETI (R2),MR S SANCHETI (R2)

Linked Case : Crl.Pet./347/2017

NANDU PRASAD
S/O-SRI BIPIN BIHARI PRASAD
R/O- HEMANTA BASU SARANI

WARD NO. IV
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PO-SILIGURI
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DIST. KAMRUP M
ASSAM

Advocate for : MR.H ALI
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM and ANR.

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocates for the petitioner : Mr. R. Konwar

Advocate for the respondents : Mr. R.C. Sanchati
Respondent No. 2

Date on which judgment is reserved : 12.05.2026

Date of pronouncement of judgment : 23.06.2026

Whether the pronouncement is of
the operative part of the judgment :

Whether the full judgment has been
pronounced : Yes

JUDGMENT AND ORDER (CAV)

Heard learned counsel Mr. R. Konwar for the petitioner, who has filed the applications under Section 482 of the Code of Criminal Procedure, 1973 (CrPC for short), with prayer for quashing and setting aside the orders dated 04.04.2017 passed in Criminal Revision Petitions No. 31/2017, and 32/2017 by the learned Additional Sessions Judge No. 3, (F.T.C. No.3), Kamrup (M), Guwahati and the order dated 20.02.2017 passed in connection with C.R. Case No. 3045^C/2010, and C.R. Case No. 3044^C/2010 by the learned Judicial Magistrate First Class, Kamrup (M), at Guwahati.

2. Heard learned Additional Public Prosecutor Ms. S.H. Bora for the respondent State and learned counsel Mr. R.C. Sancheti for the respondent No. 2, M/S Umang Enterprise.

3. The impugned order dated 20.02.2017 passed in connection with C.R. Case No. 3045^C/2010 by the learned Judicial Magistrate First Class (JMFC for short), Kamrup (M), at Guwahati, is reflected herein below verbatim:-

“Complainant is present.

Accused is absent with step.

Vide this order the Petition No. 5271/16 filed by the accused is going to be disposed of.

Vide the Petition the accused submitted that there is an another case pending between the same parties of the instant case and in the other case, bearing No. 3044/2010, the complainant has admitted that accused person, Nandu Prashad, used to put his signature in Hindi, but, in Exhibit 1 of the present case exhibited by the complainant the alleged signature appears in English and that contents of Exhibit 1 are also in English as well as cheque in question, i.e Exhibit 2 is filled up in English. Accordingly, prayer has been made for calling the complainant to admit or deny his cross examination in Case No 3044/2010, for proper adjudication of the case.

A copy of certified copy of cross examination of complainant deposited in CR Case No.

3044/2010 has also been annexed with the petition.

Vide the petition, the accused has prayed for calling the complainant to admit his cross-examination adduced in CR Case No.3044/10, submitting that in that case, the complainant had admitted that the accused used to put his signature in Hindi, however, upon perusal of CR Case No.3044/10, it appears that the complainant in C.R Case No./3044/2010 also admitted that he does not know whether the accused knows English or not. It appears further that accused himself during his cross examination as DW1 admitted that he had put his signature in Exhibit 2 and PW1 during his cross examination admitted that signature appearing in Exhibit 2 is of the accused and that signature in Exhibit 1 is not of accused. It appears to me that under the aforesaid position the accused has failed to show how the statement of complainant that accused used to put his signature in Hindi is relevant for the purpose of this case, as the complainant also claims that signature appearing in Exhibit 2, which is in Hindi belongs to the accused, whereas, signature appearing in Exhibit 1(which appears to be in English) is not of the accused and whereas, the complainant also stated that he is unaware whether accused knows English or not.

Further, record shows that, the complainant in this case was examined by the defence at length and at no point of time the present point has been raised to the complainant by the defence, even after getting ample opportunities for the same. Record shows complainant in this case was cross examined only on 19/1/2016, whereas, cross examination of complainant in CR case No 3044/2010 was done on 23/5/2013 itself, thereby making it clear that complainant was cross examined in this case much after cross examination of complainant in CR. Case No 3044/2010 and thus position also becomes very much clear that accused got ample opportunities to bring on record the cross examination of complainant of CR case No 3044/2010 in this case during cross examination of complainant in the present case. Record further shows, the defence had also adduced evidence in the instant case and that time also he got opportunities to bring on record any fact relating to the present issue, if same appears to him as very much vital for the present case, but, he omitted to do the same,

In view of aforesaid position, it appears to me that the defence had got ample opportunities to bring into the present record any fact relating to cross examination deposed by complainant in CR Case No 3044/2010, either during cross-examination of the complainant in the present case or even at the time of adducing evidence by himself. Accordingly, I am of the considered opinion that the defence had failed to avail the opportunities he got.

This case is a long pending one, pending since 2010.

Considering all above, I find that accused failed to show any satisfactory reason for calling the complainant either under Section 294 or 311 of Cr.P.C and further I find that allowing the prayer of the accused will cause nothing, but, will delay the present proceedings.

Hence. I deem it fit not to allow the prayer of the accused and accordingly, petition filed on behalf of accused stands rejected.

Let the defence be given the last ever opportunity to bring his other witnesses.

Fix 6/3/17 for further defence evidence.”

4. Now, the impugned order dated 04.04.2017 passed in Criminal Revision Petition No. 31/2017 by the learned Additional Sessions Judge No. 3, (F.T.C. No. 3), Kamrup (M), Guwahati, is reflected herein below:-

“Case record is received on transfer for disposal.

Perused the petition filed by the petitioner Nandu Prasad under section 397 Cr.P.C. against the order passed by learned Judicial Magistrate 1st Class Kamrup (M) Guwahati on 20-02-2017 in connection with C. R. Case No. 3045/2010.

Heard learned counsel appearing for the petitioner.

The revision petition is filed in time.

Learned counsel for the petitioner has submitted that the petitioner is the accused of C. R. Case No. 3045/2010 which is pending in the Court of Judicial Magistrate, 1st Class Kamrup (M) Guwahati. The accused/petitioner filed an application with a prayer to call the complainant either to admit or deny his cross-examination given in another case being C.R. 3044/2010 pending in the same Court. But learned trial Magistrate rejected the same. So, the accused has filed the revision against the impugned order.

Perused the certified copies of the impugned order and other relevant papers enclosed with the petition.

First of all the case was registered in the year 2010 and being an old pending case it requires to be disposed of early.

In the petition filed in the trial Court the accused has submitted that while the complainant deposed in C. R. Case No. 3044/2010 has admitted that the accused used to put his signature in Hindi; but in Ext. 1 the signature of the accused appears in English. The revision petitioner has not enclosed the certified copy of cross-examination of the complainant given in CR. Case No. 3044/2010. But furnished the certified copy of cross-examination given in C. R. case No. 3045/2010. On perusal the certified copy of cross- examination of the complainant given in C. R. Case No. 3045/2010 it appears that the plea of the defence was that the complainant used

to keep the blank cheque as security from accused at the time of supplying coal and the cheque-in-question was blank. The complainant denied the same. From the cross-examination of the defence it appears that the defence does not challenge the signature of the accused in the cheque in-question. As the plea of the defence is different; so, question of denying or admitting the cross-examination given in other case does not arise.

In view of the above discussion and observation I find no infirmity in the impugned order.

Hence the revision is not admitted.”

5. The petitioner has prayed for to set aside and quash the impugned order dated 20.02.2017 passed in connection with C.R. Case No. 3045^C/2010 and direct the learned Trial Court to call/ask the PW-1 to admit or deny his cross-examination in CR Case No. 3044^C/2010.

6. The same petitioner Nandu Prasad has filed an application under Section 482 of the CrPC, challenging the order dated 04.04.2017 passed in Criminal Revision Petition No. 32/2017 by the learned Additional Sessions Judge No. 3 (F.T.C. No. 3), Kamrup (M) , Guwahati as well as the order dated 20.02.2017 passed in CR Case No. 3044^C/2010 by the learned JMFC, Kamrup (M), Guwahati.

7. The order dated 20.02.2017 passed by the learned JMFC, Kamrup (M), in connection with CR Case No. 3044/2010 is reflected herein below verbatim :-

“Both the parties are absent with steps.

Vide this order the Petition No. 5116/16 filed by the accused is going to be disposed of.

Vide the Petition the accused submitted that there is another one case pending between the same parties of the instant case and in the other case, bearing No. 3045/2010, the complainant has exhibited one document as Exhibit 1 and admitted that signature in Exhibit 1 of that case is not of the accused. Accused claims that though Exhibit 1 of CR 3045/2010 is not a part of this case, but, the said document is very much important for the defence of the accused and for proper adjudication of this case. Accordingly, prayer has been made for calling the complainant to admit his statement made in cross-examination of CR 3045/2010 in the present case for proper adjudication of this case.

A copy of certified copy of cross examination of complainant deposed in CR Case No 3044/2010, has also been annexed with the petition.

Already heard learned counsel for both the parties on the petition.

Perused the instant case record as well as case record of C.R Case No.3045/10 at length.

The accused vide the petition has stated that the document marked as Exhibit 1 in CR Case No.3045/10, is very much vital for this case, but, he has failed to state any single reason why and on what manner the said the document marked document is relevant for the purpose of this case. It appears that in both the cases the parties are same and the complainant of the present case as complainant of CR Case No 3045/2010 had furnished the copy of said document (Exhibit 1) as Annexure I on the very date of filing the complainant petition itself, i.e on 19-8-2010 and under such circumstances it can be presumed that as accused of that case, the accused of the present case is having accordingly knowledge regarding existence of that document much prior to filing of the instant petition. Further, record shows the complainant of this case has been examined by the defence at length long back, i.e, on 23rd May, 2013 itself and at no point of time during cross examination of PW1, the defence has raised the present issue regarding the Exhibit 1 of CR Case No.3044/10, which he had knowledge on the basis of the other case pending between the parties. The accused also never claimed that now only at this stage of this case he came to know regarding the aforesaid document. Record further shows, the defence had also adduced evidence in the instant case and that time also he got opportunities to bring on record any fact relating of Exhibit 1 of C.R Case No 3045/2010, if same appears to him as very much vital for the present case, but, he omitted to do the same.

In view of aforesaid position, it appears to me that the defence had got ample opportunities to bring into the present record an fact relating to Exhibit 1 of CR Case No 3045/2010, either during cross-examination of the complainant or even at the time of adducing evidence by himself. Accordingly, I am of the considered opinion that the defence had failed to avail the opportunities he got.

Now this case is pending at the stage of argument and this is also a very old pending case, pending since 2010.

Considering all above, I find that accused failed to show any satisfactory reason for calling the complainant either under Section 294 or 311 of Cr.PC and further I find that allowing the prayer of the accused will cause nothing, but, will delay the present

proceedings. Hence, I deem it fit not to allow the prayer of the accused and accordingly, petition filed on behalf of accused stands rejected.

Fix 06-3-17 for argument.”

8. Now, the impugned order dated 04.04.2017 passed by the learned Additional Sessions Judge No. 3, Kamrup (M) in CR No. 32/2017 is reflected herein below:-

“Case record is received on transfer for disposal.

Perused the petition filed by the petitioner Nandu Prasad under section 397 Cr.P.C. against the order passed by learned Judicial Magistrate 1st Class Kamrup (M) Guwahati on 20-02-2017 in connection with C. R. Case No. 3044/2010.

Heard learned counsel appearing for the petitioner.

The revision petition is filed in time.

Learned counsel for the petitioner has submitted that the petitioner is the accused of C.R. Case No. 3044/2010 which is pending in the Court of Judicial Magistrate, 1st Class Kamrup (M) Guwahati. The accused/petitioner filed an application with a prayer to call the complainant either to admit or deny his cross-examination given in another case being C.R. 3045/2010 pending in the same Court. But learned trial Magistrate rejected the same. So, the accused has filed the revision against the impugned order.

Perused the certified copies of the impugned order and other relevant papers enclosed with the petition.

First of all the case was registered in the year 2010 and being an old pending case it requires to be disposed of early.

In the petition filed in the trial Court the accused has submitted that while the complainant deposed in C. R. Case No. 3045/2010 has admitted that the signature in Ext. 1 (in case No. 3054/2010) is not the signature of the accused.

The revision petitioner has not enclosed the certified copy of cross-examination of the complainant given in CR Case No. 3045/2010. But furnished the certified copy of cross-examination given in C.R. Case No. 3044/2010.

On perusal the certified copy of cross-examination of the complainant given in C.R. Case No. 3044/2010 it appears that the plea of the defence was that the complainant used to keep the blank cheque as security from accused at the time of supplying coal and the cheque-in-question was blank. The complainant denied the same. From the cross-examination of the

defence it appears that the defence does not challenge the signature of the accused in the cheque in-question. As the plea of the defence is different; so, question of denying or admitting the cross-examination given in other case does not arise.

In view of the above discussion and observation I find no infirmity in the impugner order.

Hence the revision is not admitted.”

9. The genesis of the cases in Criminal Petitions No. 346/2017 and 347/2017 are that the respondent No. 2 had filed two complaint cases before the learned JMFC, Kamrup (M) at Guwahati which were registered as CR Case No. 3044/2010 and CR Case No. 3045/2010 under Section 138 of the Negotiable Instruments Act, 1881 (NI Act for short). One Harish Kumar Garg, proprietor of respondent No. 2 M/S Umang Enterprise, adduced evidence as PW-1 in connection with CR Case No. 3045/2010 and exhibited certain documents and during his cross-examination, he admitted that the signatures in Exhibit-1 is the not petitioner's signature. It is submitted on behalf of the petitioner that the petitioner filed a petition before the learned Trial Court on 06.10.2016 under Section 294 read with Section 311 of the CrPC with prayer to recall the PW-1 to admit or deny the fact which has been admitted by him during the cross-examination, relating to the signatures of Exhibit-1 in connection with CR Case No. 3044^C/2010.

10. Similarly, in connection with CR Case No. 3044^C/2010, it is submitted that PW-1 in connection with other CR Case No. 3044^C/2010, exhibited certain documents and during his cross-examination, he admitted that the signatures in Exhibit-1 is not the petitioner's signature. A petition before the Trial Court under Section 294 read with Section 311 of the CrPC was filed with prayer to recall the PW-1 to admit or deny the fact admitted by him during his cross-examination in connection with CR Case No. 3044^C/2010.

11. It is pertinent to mention that -

Criminal Petition No. 346/2017 is relating to CR Case No. 3045^C/2010 and

Criminal Petition No. 347/2010 relates to CR Case No. 3044^C/2010.

Both the petitions are disposed of conjointly by this order, as the cases are analogous.

12. It is contended that the Trial Court rejected the aforementioned petitions vide order dated 20.02.2017. The petitioner, aggrieved by the order dated 20.02.2017, preferred revision petitions registered as follows :-

CR No. 31/2017-3045^C/2010

CR No. 32/2017-3044^C/2010.

13. The learned Sessions Judge No. 3 (FTC No. 3) did not admit the Civil Revision Petitions mentioned above. It is contended that the Trial Court and the learned Additional Sessions Judge passed the orders whimsically without considering the petitions in its true perspective and the same are liable to be set aside, the discretionary power, being arbitrarily exercised by the Courts.

14. It is submitted that the cases under the NI Act extends limited defence to the accused and depriving the accused a right to defend himself, guaranteed under the law, prejudices the accused. The order dated 20.02.2017 is in violation of Article 21 of the Constitution of India, wherein the right of the petitioner/accused has been stifled at the threshold of the case.

15. It is averred that under Section 294 of the CrPC, either party can be called upon to admit or deny the genuineness of documents which may be read in evidence in enquiry or trial of another proceeding, if not disputed. The proviso to Section 294 provides that a Court has a discretion, requiring signatures of such documents, to be proved.

16. It is contended that in the cross-examination of the complainant, it has been admitted that Exhibit-1, 2 and 3, does not bear any seal of sales tax and the complainant for respondent No. 2 also admitted that the petitioner used to sign in Hindi but all the documents

relied upon by the complainant/respondent No. 2 were in English. This has to be proved in defence by the petitioner. The petitioner was not accorded an opportunity to resort to such a defence and bring his case forward. It is also alleged that the complainant in his cross-examination vacillated from his statements, which becomes necessary for the petitioner to put forth the contradictions by bringing on record the cross-examination of PW-1 in CR Case No. 3045^C/2010 to CR Case No. 3044^C/2010 and vice-versa. It is thereby, contended that the impugned orders dated 20.02.2017 and 04.04.2017, are liable to be set aside and quashed.

17. The prayer becomes interesting at this juncture. The petitioner has prayed to admit this petition and direct the complainant i.e. PW-1 to admit Exhibit-1 of CR Case No. 3045^C/2010 in CR Case No. 3044^C/2010 and to ask the PW-1 to admit or deny his cross-examination in CR Case No. 3044^C/2010 when he was deposing as a witness in CR Case No. 3045^C/2010. Whether it is possible to interchange evidence of different cases in this manner through an application under Section 482 of CrPC? The answer is No.

18. Section 482 of the CrPC says :-

482. Saving of inherent powers of High Court. – Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

19. A bare reading of the provisions of Section 482 in this case implies that this case is not a case to prevent the abuse of the process of the Court or to secure the ends of justice.

20. The scanned copies of the Trial Court Records of both the cases CR Case No. 3044^C/2010 and CR Case No. 3045^C/2010 are before this Court. These are two distinct cases relating to dishonour of two different cheques. The allegation in CR No. 3044^C/2010 is regarding dishonour of a cheque No. 063011 dated 24.05.2010 for an amount of Rupees Three Lacs Eighteen Thousand One Hundred and Eighty (Rs.3,18,180/-) and the other case CR No. 3045^C/2010 is regarding dishonour of a cheque bearing No. 294135 dated 25.05.2010

for an amount of Rupees Four Lacs and Eighty Thousand (Rs.4,80,000/-). Both the cheques were dishonoured due to insufficiency of funds.

21. The complainant brought up a case under the NI Act against the petitioner and both the cases were registered separately in connection with two different cheques. There are other procedures to resort to defence and exhibit documents by a defence witness. The prayers in the instant cases through the applications under Section 482 of the CrPC are not maintainable. Disposing of the Criminal Revision Petitions, it has been held by the Court that the petitioner as an accused has not disputed the signature of the petitioner either in English or in Hindi. It is no more *res integra* that the accused or the defence has to be accorded an opportunity for defence, but cross-examination of any witness and production of a document by the witness for cross-examination will be regulated by law. The document of one distinct case cannot be examined in a routine manner as a relevant document and be cross-examined in another distinct case on the strength of a petition under Section 482 of the CrPC. As the petitions are filed in connection to proceedings under the NI Act, there are provisions under the Indian Evidence Act, 1872 as well as the Code of Criminal Procedure to cross-examine a witness relating to admissibility of certain documents or relating to any documentary evidence. Prayer to cross-examine a witness relating to a document in another criminal case cannot be allowed by producing the other case as documentary evidence. For example, the prayer in this case to allow the petition and cross-examine the PW-1 or direct the PW-1 to admit the Exhibit-1 of CR Case No. 3045^C of 2010 in another case i.e. CR Case No. 3044^C of 2010 cannot be allowed and is hereby rejected.

22. However, the petitioner/accused can be given a fair opportunity to defend himself properly. Concomitantly the prayer of the petitioner in Criminal Petition No. 346 of 2017 to direct the Trial Court in connection with CR case number 3045^C/2010, to call the PW-1/complainant and ask the PW-1 to admit or deny his cross-examination in CR Case No. 3044^C/2010 (another distinct case) cannot be allowed and is hereby rejected. However, the petitioner is granted a liberty to approach the Trial Court for relief, if any, in accordance with law.

23. It is therefore made clear that only to the extent of applying for any other relief, the orders dated 04.04.2017 passed in Criminal Revision Petition No. 31/2017 and Criminal Revision Petition No. 32/2017 by the learned Additional Sessions Judge No. 3 (F.T.C. No. 3), Kamrup (M) and the orders dated 20.02.2017 in connection with CR Case No. 3045^C/2010 and CR Case No. 3044^C/2010 by the learned Judicial Magistrate First Class, Kamrup (M), are hereby set aside and quashed.

24. This disposes of the Criminal Petition No. 346/2017 and Criminal Petition No. 347/2017.

25. No order as to costs.

JUDGE

Comparing Assistant