

GAHC010182432025



2026:GAU-AS:11527

IN THE GAUHATI HIGH COURT
HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Crl.Pet./1043/2025

Debesh Goswami,
S/o Late Ananta Mohan Goswami,
R/o-Namghar Path, House No.6,
Near Champawati High School,
Ganeshpara, Guwahati,
P.S. Fatasil Ambari,
District-Kamrup(M), Assam, Pin-781025.

.....Petitioner

-Versus-

1. State of Assam,
Represented by Public Prosecutor.
2. Sri.Mahesh Sarma,
S/o Late Abhay Ch. Sarma,
R/o-Kahilipara,
Guwahati,
District-Kamrup(M), Assam, Pin-78100.

.....Respondents

For Petitioner

Mr. B. Deka, Advocate.

For Respondent(s) 1. Mr. R.J. Baruah, Additional Public Prosecutor.
 2. Mr. U. Dutta, Advocate.

Date of Hearing : **04.08.2026**

Date of Judgment : **14.08.2026**

BEFORE

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

JUDGMENT AND ORDER

[1] Heard Mr. B. Deka, the learned counsel for the petitioner/appellant. Also heard Mr. R.J. Baruah, the learned Additional Public Prosecutor appearing for the State of Assam as well as Mr. U. Dutta, the learned counsel for the respondent No. 2.

[2] This is an application under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 read with Article 227 of the Constitution of India, whereby the petitioner seeks interference with the impugned judgment and order dated 07.07.2017, passed by the learned Additional Sessions Judge (FTC) No. 3, Kamrup (Metro) in Criminal Appeal No. 200 of 2013, which had affirmed the judgment and order dated 15.10.2013, passed by the learned Judicial Magistrate First Class, Kamrup (Metro) at Guwahati in C.R. No. 1940 of 2008.

[3] By the said judgment, the petitioner was convicted of the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'the Act') and sentenced to undergo SI for

two months and to pay a compensation of Rs. 5,00,000/- (Rupees Five Lakhs only), in default, SI for another one month.

- [4]** The ground on which the present criminal petition invoking the inherent jurisdiction of this court under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 has been preferred is on account of a settlement said to have been arrived at between the parties.
- [5]** It is submitted that a Criminal Revision Petition No. 452 of 2017, was preferred by the present petitioner which was admitted, subject to deposit of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only) by the petitioner, which was done by the petitioner and the said amount was released to the complainant/respondent No.2. Earlier the petitioner had paid an amount of Rs. 99,000/- (Rupees Ninety Thousand only) out of the cheque amount of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only) on 19.09.2008 by cheque No. 628281 dated 16.09.2008, which was during the course of the trial.
- [6]** During the pendency of the instant criminal petition, a joint affidavit has been submitted by the petitioner and respondent No. 2 stating that the matter of payment has been settled between the parties by executing a Settlement Agreement dated 16.06.2026, in terms of which the parties have agreed to settle for a total amount of Rs. 4,50,000/-(Rupees Four

Lakhs Fifty Thousand only). It is stated that in order to settle all the disputes between the parties, the second party, i.e., the petitioner herein offered a settlement in full and final against the cheque amount as well as the compensation amount in dispute to pay an amount of Rs. 4,50,000/- (Rupees Four Lakhs Fifty Thousand only) which is termed as the settlement amount. As per the terms of the aforesaid agreement, this amount of Rs. 4,50,000/- (Rupees Four Lakhs Fifty Thousand only) is in addition to the amount of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only) already paid by the second party/ petitioner at the time of the admission of Criminal Revision Petition No. 452 of 2017. It is also stated that the aforesaid amount has already been paid by the petitioner to the respondent No. 2. Accordingly, it is submitted that the offence may be compounded keeping in view the provisions of Section 147 of the Negotiable Instruments Act, 1881.

- [7]** The question that naturally arises is whether the High Court in exercise of its inherent powers under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 can compound an offence under the Negotiable Instruments Act, 1881 in terms of Section 147 of the said Act after the original conviction and sentence has been affirmed in appeal and, thereafter, the challenge to the said appeal has been dismissed by the High Court in a Criminal Revision Petition.

- [8] In this regard, learned counsel for the petitioner has referred to a decision, i.e., "**Mr. Ravi S/o Ramesh Muthal Vs. Mr. Avinash Shinde & Anr.**" reported in "**2026:BHC-NAG:4511**," which is a single bench decision of the Hon'ble Bombay High Court. In the said judgment, reference has been made to a decision of the Hon'ble Allahabad High Court in "**Rishi Mohan Srivastava Vs. State of U.P & Anr.**" reported in "**Case No. 516 of 2021 decided on 13.08.2021**" wherein the same issue was raised and in that decision it was observed that in respect to an offence under Section 138 of the Negotiable Instruments Act, 1881 read in terms of Section 147 of the said Act, the parties are at liberty to compound the matter at any stage, even after the dismissal of the revision petition. It was held that the complainant can approach the court even when he is undergoing a sentence and pray for his release by invoking jurisdiction under Section 482 of the Code of Criminal Procedure, 1973. It was also observed that in such a situation when a compromise has been arrived at, if the parties are asked to approach the Apex Court, the same has to be considered in the light of the principle of justice at the doorstep.
- [9] The said aspect of the matter was also considered by a Division Bench of the Hon'ble Himachal Pradesh High Court upon a reference made by a learned Single Judge. Answering the said reference the Division Bench of the Himachal Pradesh High Court in the case of "**Chune Ram Vs. Brikam Chand**"

(***Cr.MMO No. 188 of 2025 decided on 13.11.2025***) reformulated the question of law as follows"-

"Whether the power under Section 528 BNSS can be exercised by the High Court for compounding the offence under Section 147 of the Negotiable Instruments Act and to quash the conviction finally affirmed by the High Court under Section 138 of the Negotiable Instruments Act, when no proceedings are pending before any Court."

[10] The said question was answered in the affirmative in the aforesaid reference.

[11] The relevant provision under Section 147 of the N.I. Act, is reproduced as under :-

"147. Offences to be compoundable. - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable."

[12] In the case of ***"K.M. Ibrahim Vs K.P. Mohammed"*** reported in ***"2010 (1) SCC 798,"*** wherein it has been held:

"13. As far as the non obstante clause included in Section 147 of the 1881 Act is concerned, the 1881 Act being a special statute, the provisions of Section 147 will have an overriding effect over the provisions of the Code relating to compounding of offences. The various decisions cited by Mr. Rohatgi on this of issue do not add to the above position."

14. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the appellate forum. However, Section 147 of the aforesaid Act does

not bar the parties from compounding an offence under Section 138 even at the appellate stage of the proceedings. Accordingly, we find no reason to reject the application under Section 147 of the aforesaid Act even in a proceeding under Article 136 of the Constitution.

15. Since the parties have settled their disputes, in keeping with the spirit of Section 147 of the Act, we allow the parties to compound the offence, set aside the judgment of the Courts below and acquit the appellant for the charges against him."

[13] At this stage the reference may also be made to the decision of the Hon'ble Apex Court in "***Gian Chand Garg Vs. Harpal Singh and Another,***" reported in "***2025 SCC OnLine SC 2317***" wherein the Apex Court has referred to its earlier decision as follows:

9. In B.V. Sessaiah v. State of Telangana⁶ this court was of the view that when parties enter into an agreement and compound the offence, they do so to save themselves from the process of litigation and when such a step is taken by the parties, the law very well allows them to do so. Hence, the courts cannot override such compounding and impose its will.

10. Therefore, it is very clear that although dishonour of cheque entails criminal consequence, the legislature by virtue of section 147 of the NI Act has made it compoundable notwithstanding the provisions of the Code of Criminal Procedure, 1973 and the same can be compounded at any stage of the proceedings especially when the parties

have themselves arrived at a voluntary compromise.

[14] What is important to notice at this stage is that the Hon'ble Apex Court has clearly held that the offence can be compounded at any stage of the proceedings especially when the parties have themselves arrived at a voluntary compromise. In the aforesaid case also the High Court in exercise of revisional jurisdiction had already affirmed the impugned judgments of the trial court as well as the appellate court, whereby the accused/petitioner was convicted and sentenced. Subsequently the parties arrived at a compromise and in that background the petitioner/appellant had preferred an application seeking modification of the order passed in revision by the High Court, but the High Court dismissed the said application on ground of non-maintainability. However the Hon'ble Apex Court in the aforesaid case set aside the aforesaid order of the High Court. It, therefore, logically follows that the High Court ought to have passed an order allowing the aforesaid application and consequently to have quashed the conviction and sentence of the petitioner/appellant.

[15] From the above discussion, there remains no doubt that in view of the provision of Section 147 of the Negotiable Instruments Act, 1881 there is no fetter upon any court to compromise to compound the offence under Section 138 of the Negotiable Instruments Act, 1881 at any stage, even

when no further litigation is pending consequent upon dismissal of a revision by the High Court preferred against the judgments and orders of conviction and sentence as passed by the trial court and affirmed by the Appellate Court. Consequently, the High Court in exercise of his inherent powers can also and indeed must, following the mandate of Section 147 of the Negotiable Instruments Act, 1881 and keeping in view the object and purpose of the Act as well as in view of the public policy to encourage, compromise of disputes between the parties allow the compounding of such offences.

[16] In view of the above, the offence is permitted to be compounded and the impugned judgment of conviction and sentence, passed by the learned trial court as affirmed by the learned appellate court stands set aside and furthermore, the NBWA against the petitioner stands quashed.

[17] The instant petition stands allowed as aforesaid.

JUDGE

Comparing Assistant