GAHC010211602025

2026:GAU-AS:10563

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

Case No. : Crl.Rev.P./412/2025

PROTIMA DUTTA KALITA
W/O SRI JIBESWAR KALITA
VILL- KUMARGAON,
P.O. AND P.S. DERGAON,
DIST. GOLAGHAT, ASSAM

VERSUS

SMTI RINA BORGOHAIN
W/O SRI GANESH BORGOHAIN
WARD NO. 4, KUMARGAON, P.O. AND P.S. DERGAON, DIST. GOLAGHAT, ASSAM

Advocate for the Petitioner : MR B SINHA, MR. H ISLAM

Advocate for the Respondent : C KALITA, L K BORAH,MR. D K BORAH

Advocate for the petitioner : Mr. B Sinha

Advocates for the respondents : Mr. L K Borah

:::BEFORE:::

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : 21.07.2026

Date of pronouncement of judgment :

Whether the pronouncement is of the Operative part of the judgment : NA

Whether the full judgment has been Pronounced :

Judgment &Order(CAV)

(Sanjeev Kumar Sharma, J)

Heard Mr. B. Sinha, learned counsel for the petitioner. Also heard Mr. L.K. Borah, learned counsel for the respondent.

2. This is an Revision Petition filed under Section 438/442 of the BNSS filed by the Revision Petitioner against the impugned Judgment & Order dated 14.07.2025 recorded by the Court of Sessions Judge, Golaghat, in Crl.A. No. 3/2023 upholding the conviction under Section 138 NI Act passed by the Court of the learned CJM, Golaghat as per Judgment & Order dated 21.02.2017 and modifying the sentence to undergo SI of 6 months and to pay compensation of Rs. 2,60,000/-.

3. The brief facts of the case are that the complainant/respondent and the accused/revisionist are well known to each other, and they had a good relationship between themselves. Once the revisionist came to the respondent's house and requested financial assistance of Rs: 1,30,000/- for her son's marriage, verbally promising to repay the amount to the respondent. Thereafter, considering the good relationship, the respondent agreed to pay the revisionist an amount of Rs. 1,30,000/- only, after she had arranged the said amount from her self-help group. Subsequently, on the respondent's repeated request to the revisionist for repayment of the borrowed money, the revisionist issued a cheque to the respondent, bearing No. 463045, dated 16.12.2016, of Rs. 1,30,000/-, drawn on the State Bank of India, Dergaon Branch, in her favor against the debt. In this regard, the revisionist had also executed a handwritten note regarding her debt and thereafter gave the handwritten note to the respondent, after affixing her signature over revenue stamps.

4. The learned CJM, Golaghat conducted the trial and, on conclusion thereof, convicted and sentenced the accused/revisionist to undergo S.I for 1 (one) year and to pay compensation of Rs. 3,00,000/- (Three Lakhs only), which decision was partly modified in appeal as aforesaid. The revisionist has urged only two grounds in the course of the hearing.

5. The first ground is that the complainant had not mentioned the exact date on which the revisionist had taken the sum of Rs. 1,30,000/- from the complainant. The accused/revisionist has not denied her signature on the cheque. That being the position, the presumption under Section 139 of the N.I. Act applies. It is a settled law that unless the said presumption is rebutted by the accused/revisionist either by cross-examination of the prosecution witnesses or by leading her own evidence, the same will stand, and merely because the complainant had not mentioned the exact date on which the money exchanged hands, the presumption would not stand rebutted.

Moreover, the revisionist, during cross-examination of the respondent/complainant and her witnesses, failed to discharge her burden of proving that she did not issue the cheque in question toward a legally enforceable debt. Therefore, I do not find any substance in this contention on behalf of the revisionist.

7. The second ground, which has been urged rather forcefully on behalf of the revisionist, is that there was no demand made by the complainant/respondent for payment of the cheque amount upon the dishonor of the cheque.

8. In this regard, the learned counsel has referred to the Notice dated 09.01.2017(Exbt.4) issued by the advocate for the complainant to the accused/revisionist.

9. It is pointed out by the learned counsel that by way of the said Notice, the accused/revisionist was only advised to pay the cheque amount, and no demand as such was made; as such, the requirement of Proviso (b) to Section 138 of the N.I. Act has not been fulfilled.

10. Proviso (b) to Section 138 of the NI Act says that nothing contained in Section 138 of the NI Act shall apply unless the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.

11. The requirement imposed by Proviso (b) to Section 138 of the N.I. Act is that, upon dishonor of a cheque, the payee or holder in due course is required to clearly communicate the necessity to make good the cheque amount to the drawer, and the said requirement to pay must be discernible after considering the notice as a whole. The word 'advice' is merely a polite use of language, just like 'request', but the same must legally be treated as a demand for the purpose of Section 138 of the N.I. Act if the notice as a whole conveys the requirement on the part of the drawer to make good the cheque amount.

12. In this regard, the Hon'ble Apex Court in the case of ***Central Bank of India & Anr Vs Saxons Farma & Ors*** reported in ***(1999) 8 SCC 221*** dealing with a similar situation held as follows:

> "*Section 138 of the Act, inter alia, provides that where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount to another person is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the*

amount arranged to be paid from that account, such person shall be deemed to have committed an offence under the above Section. According to the proviso to the said Section unless the three clauses mentioned therein are fulfilled the provisions of the Section shall not apply. In these appeals, we are concerned with Clause (b) which is quoted below;

> "*(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and"*

Though, no form of notice is prescribed in the above Clause(b) the requirement is that notice shall be given in writing within fifteen days of receipt of information from the bank regarding return of the cheque as unpaid and in the notice a demand for payment of the amount of the cheque has to be made.

> *The object of notice is to give a chance to the drawer of the cheque to rectify his omission and also to protect honest drawer. Service of notice of demand in Clause(b) of the proviso to Section 138 is a condition precedent for filing a complaint under Section 138 of the Act. In the present appeals there is no dispute that notices were in writing and these were sent within fifteen days of receipt of information by the appellant-bank regarding return of cheques as unpaid. Therefore, only question to be examined whether in the notice there was a demand for payment.*

The last line to the portion of notice extracted above reads as under:

> *"Kindly arrange to make the payment to avoid the unpleasant action of my client." [**In our opinion it is a clear demand as required under Clause (b) of Section 138."]** (Emphasis mine).*

5. As can be seen from the above, in the aforesaid case as well, the word 'demand' was not used.

Instead, a polite expression was used to seek payment of the cheque amount, and the consequence was also spelled out as in the present case, wherein it has been specifically stated in the said notice that failure to make the payment would lead the payee to approach the Court of law under the N.I. Act.

6. In view of the clear exposition of law made by the Hon'ble Apex Court in this regard, nothing further needs to be said.

7. Therefore, there is no substance in the second contention of the accused/revisionist either.

8. In view of what has been discussed above, the present Criminal Revision Petition is held to be devoid of merit and accordingly stands dismissed.

JUDGE

Comparing Assistant