

GAHC010255352025



undefined

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

Case No. : Crl.Pet./1423/2025

SHRI RAJESH KUMAR MORE
SON SRI BHAGAWATI PRASAD MORERESIDENT OF 5TH FLOOR,
SHIVAMAPARTMENT, RUKMINIGAON, G.S.ROAD, GUWAHATI, P.S. DISPUR,
DISTRICT KAMRUP(M), ASSAM, PIN- 781022.

VERSUS

SRI VIR VIJAY GARODIA
S/O SURESH GARODIA
RESIDENT OF STARLINE BUILDING, MD. SHAHROAD, NEAR GAUDIYA
MOTHMANDIR, PALTANBAZAR, REHABARI, P.O. P.S. PALTANBAZAR, DIST-
KAMRUP (M), ASSAM-781008.

Advocate for the petitioner : Mr. Amit Goyal ... Advocate.

Advocate for the respondent : Mr. A.K. Bhuyan ... Sr. Advocate.

:::BEFORE:::

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date on which judgment is reserved : **23.03.2026**
Date of pronouncement of judgment : **30.03.2026**
Whether the pronouncement is of the : N/A
operative part of the judgment ?
Whether the full judgment has been : Yes
pronounced?

JUDGMENT & ORDER (CAV)

Heard Mr. Amit Goyal, learned counsel appearing for the appellant and Mr. A.K. Bhuyan, learned Senior Counsel appearing for the respondent.

2. This criminal petition has been instituted seeking quashment of the proceedings in N.I. Case No.2486/2025 which was registered on the basis of a complaint filed by the present respondent as complainant against the present petitioner/accused.

3. Vide order dated 07.07.2025, the learned Judicial Magistrate First Class, Kamrup(M) issued summons against the present petitioner/accused after taking cognizance of the offence under Section 138 of the Negotiable Instruments (N.I) Act, 1881.

4. The facts of the case may be briefly stated. The present respondent as complainant had instituted the aforesaid case alleging therein that the complainant and the petitioner/accused are businessmen and known to each other. The petitioner/accused was awarded with a Work Order on 26.07.2023 by the Department of State Level Advisory Committee of Student's and Youth Welfare Assam for the work namely, "Preparation of Video Advertisement" for duration of 1.05 minutes and 30 minutes with a sanction budget of Rs.13,50,000/- (Rupees Thirteen Lakh Fifty Thousands) only.

5. As agreed by both the parties, the complainant/respondent invested a

total amount of Rs. 8,50,000/- (Rupees Eight Lakh Fifty Thousands) only in three installments for the aforesaid project of the petitioner/accused by way of transfer through NEFT/RTGS to the bank account of the petitioner/accused.

6. It was also agreed by the parties that the total profit from the said project shall be shared between the complainant/respondent and the accused/petitioner at the ratio of 40:60. Accordingly, both the parties also entered into a Memorandum of Understanding (MOU) on 18.08.2023, inter alia incorporating the aforesaid terms and conditions, which was executed in presence of the witnesses, namely, Pawan Kumar More and Pankaj Kumar Dutta.

7. The petitioner/accused in order to refund and pay the investment amount of Rs. 8,50,000/- (Rupees Eight Lakh Fifty Thousands) only to the complainant/respondent, issued a cheque in favour of the complainant/respondent vide Cheque bearing No. 992053 dated 04.03.2025 for Rs. 8,50,000/-(Rupees Eight Lakh Fifty Thousands) only against his Account No.41714360231 drawn on State Bank of India, Six Mile, G.S. Road, Kamrup (M), Assam.

8. The complainant/respondent, thereafter, presented the aforesaid cheque bearing No. 992053 dated 04.03.2025 for Rs. 8,50,000/- (Rupees Eight Lakh Fifty Thousand) drawn on State Bank of India, Six Mile, G.S. Road, Kamrup (M), Assam, issued by the petitioner/accused in his favour, for depositing in his bank account No. 278201001317 lying with ICICI Bank, Platan Bazar, G.S. Road, Guwahati Branch, on 05.03.2025 but the same was returned unrealized in

clearing on 06.03.2025 due to the reason 'Funds Insufficient'. Thereafter, the complainant/respondent again presented the same cheque for deposit in his aforesaid account on 20.03.2025 but again the said cheque bearing no.992053 for Rs. 8,50,000/- (Rupees Eight Lakh Fifty Thousand) issued by the petitioner/accused in favour of the complainant/respondent was returned unrealized in clearing on 21.03.2025 due to the reason 'Funds Insufficient'. The banker of the complainant/respondent accordingly issued return memos as well as a Certificate to the complainant/respondent notifying the dishonor of the Cheque No. 992053 for Rs.8,50,000/- (Rupees Eight Lakh Fifty Thousand) only. Thereafter the complainant/ respondent issued Legal Notice as per the provisions of Section 138 of the N.I. Act by Speed Post which was served upon the petitioner/accused to which the later failed to respond.

9. In view of the above, the impugned proceedings were instituted by the complainant/respondent and upon perusal of the material on record, the learned Magistrate took cognizance and issued summons to the petitioner/accused.

10. It is contended on behalf of the petitioner that the MOU dated 18.08.2023 was on record, as the complainant had annexed it to the complaint petition and therefore it was incumbent upon the learned Trial Court to take into account the various clauses of the MOU for the purpose of arriving at its satisfaction as to whether any case has been made out under Section 138 of the N.I. Act. But the learned Trial Court without considering the same took the cognizance and passed the impugned order. In the present case, as per MOU dated 18.08.2023, the amount invested by the respondent can be said to be a legally enforceable

debt only when the petitioner/accused received the contract amount and thereafter fails to make payment with profit to the respondent as per the contract and it is not in dispute that the petitioner has not received the payment for the work till today and under such circumstances, it cannot be said that the petitioner has not made any payment to the respondent against his legally enforceable debt and therefore the impugned order taking cognizance is unsustainable in law, submits learned counsel for the petitioner.

11. Per contra, Mr. A.K. Bhuyan, learned counsel for the respondent has taken the Court through the contents of the MOU dated 18.08.2023 to show that the respondent/first party to the MOU has invested an amount of Rs.8,50,000/- in three different installments with the petitioner/second party of the MOU and as per the clause of the MOU, the second party is to return the invested amount of the first party along with the profit within the next 60 days which is to be counted after completion of the first 45 days and accordingly, it is submitted that the petitioner/second party/accused had issued the Cheque No.992053 dated 04.03.2025 amounting to Rs.8,50,000/- in favour of the present respondent which came to be dis-honoured as already recounted above.

12. Mr. Bhuyan, learned counsel has in this regard relied upon the decision of the Hon'ble Apex Court in ***Sumit Bansal vs. M/s MGI Developers and Promoters and Another***, reported in ***2026 INSC 40***, wherein in paragraph 39, 42 & 43 of the said judgment, it has been held as follows :

"39. At this point, it is imperative to refer to the decision in ***Kusum Ingots &***

Alloys Ltd. vs. Pennar Peterson Securities Ltd. and Others, reported in ***(2000) 2 SCC 745***, wherein a Division Bench of this Court had highlighted the ingredients which are to be satisfied for making out a case under Section 138 of the NI Act. The relevant excerpt is reproduced hereinbelow:

“10. On a reading of the provisions of Section 138 of the NI Act it is clear that the ingredients which are to be satisfied for making out a case under the provision are:

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;

(ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(iii) that cheque is returned by the bank unpaid, either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

(iv) the payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within

15 days of the receipt of the said notice.”

.....

42. *However, we are of the view that the burden of proving whether there exists any debt or liability is something which must be discharged in trial. A bare perusal of Section 139 of the NI Act would indicate that once a cheque is issued in discharge of liability and dishonoured, a presumption of liability in favour of the complainant arises. The accused person is then required to rebut the presumption by raising facts that either there was no debt or liability when the cheque was drawn, or the cheque was not drawn in discharge of liability, or notice was not served in time. In this regard, we must refer to the decision in **M.M.T.C. Ltd. and Another vs. Medchl Chemicals and Pharma (P) Ltd. and Another**, reported in **(2002) 1 SCC 234**, wherein this Court had made the following observation on this aspect:*

“17. There is therefore no requirement that the complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability was on the respondents. This they have to discharge in the trial. At this stage, merely on the basis of averments in the petitions filed by them the High Court could not have concluded that there was no existing debt or liability.”

(emphasis supplied)

43. *The statutory presumption attached to the issuance of a cheque, being one made in discharge of a legally enforceable debt or liability, is required to be accorded due weight. Therefore, in circumstances where*

the accused approaches the Court seeking quashing of proceedings even before the commencement of trial, the Court must exercise circumspection and refrain from prematurely stifling the prosecution at the threshold, particularly by overlooking the legal presumption that operates in favour of the complainant.”

13. From the contents of the complaint petition itself, it appears that the complainant has satisfied all the conditions required for taking cognizance of the offence under Section 138 of the N.I. Act and in view of the aforesaid decision of the Hon’ble Apex Court, the burden of proving that there was no existing debt or liability is on the accused/petitioner which is to be discharged in the trial and not by invoking the jurisdiction of the High Court under Section 528 BNSS. Since the crux of the defence of the accused/petitioner lies in the MOU dated 18.08.2023, it is for the accused/petitioner to establish, from the terms of the aforesaid MOU or any other material available with him that there was no legally enforceable debt subsisting at the relevant time which can be only done at the trial.

14. In view of the above, the instant petition is found to be devoid of merit and is accordingly dismissed.

JUDGE

Comparing Assistant