

**IN THE COURT OF THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE**

**AT NORTH LAKHIMPUR**

C.R(N.I ACT) CASE NO: 11 OF 2015  
PROSECUTOR: STATE OF ASSAM Vs  
ACCUSED: SRI ASHOKANANDA BORAH

DISTRICT: NORTH LAKHIMPUR  
IN THE COURT OF ADDITIONAL CHIEF JUDICIAL  
MAGISTRATE, AT NORTH LAKHIMPUR

C.R (N.I ACT) CASE NO: 11 / 2015

U/S 138 OF N.I ACT

PROSECUTOR: STATE OF ASSAM

VERSUS

ACCUSED: SRI ASHOKANANDA BORAH

PRESENT: MR. F.U. CHOUDHURY, AJS

ADVOCATE FOR THE COMPLAINANT: MR. ARUP BORA  
ADVOCATE FOR THE ACCUSED: MR. Z.H. BORAH

OFFENCE EXPLAINED ON : 30/05/2016  
EVIDENCE RECORDED ON : 22/09/16, 05/01/18, 05/10/18,  
14/10/19  
ARGUMENT HEARD ON : 24/03/2021  
JUDGMENT DELIVERED ON : 31/03/2021

**JUDGMENT**

**COMPLAINANT'S CASE IN BRIEF**

1. Prosecution's case in brief as it reveals from the complainant petition is accused Sri Ashok Borah @ Sri Ashokananda Borah borrowed Rupees three lakhs from complainant Md. Arif Ali Hazarika on 08/01/2014 for business purpose. Thereafter, on 20/12/2014, the accused issued a cheque bearing no. 570655 for an amount of Rupees three lakhs against his SBI, North Lakhimpur branch account no. 11015690542 in favour of the complainant for repayment

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of the aforesaid borrowed amount. The complainant then deposited the aforesaid cheque on 19/02/2015 in his bank account maintained at Indian Overseas Bank, North Lakhimpur branch from where the said cheque was forwarded to SBI, North Lakhimpur branch for collection. However, on 20/02/2015, the SBI, North Lakhimpur branch returned the said cheque to Indian Overseas Bank, North Lakhimpur branch with a cheque return memo citing the reason for return as insufficient fund in the account of accused. The aforesaid cheque and return memo were then forwarded to the complainant by Indian Overseas Bank on 20/02/2015. The complainant thereafter issued a notice to the accused through his advocate demanding the repayment of aforesaid Rupees three lakhs within fifteen days of receipt of the notice. However, the accused did not made any such inspite of receipt of the notice on 23/03/2015. The complainant thereafter filed this complaint petition before the court of learned CJM, Lakhimpur, North Lakhimpur on 05.05.2015.

2. On receipt of the complaint petition, the same was registered as C.R (N.I) Case No. 11 of 2015 and transferred to this court for disposal. The complainant submitted his initial deposition of affidavit. Upon considering the initial deposition of complainant and also the relevant documents submitted by him, cognizance was taken for the offence punishable u/s 138 of Negotiable Instruments Act (herein after referred to as N.I Act) against accused Sri Ashok Borah @ Sri Ashokananda Borah. The accused then appeared before this court in response to the summons issued to her. Considering the relevant documents and hearing both the parties, particulars of offence punishable under section 138 of I.P.C are read over and explained to the accused to which he pleaded not guilty and stood to face the trial.

3. The complainant in support of his case examined five witnesses whereas the accused did not examine any witness in support of his defence. The accused was examined under section 313 of CrPC. Defence case is of total denial as it reveals from the statements by the accused and the tenor of cross-examination of complainant's witnesses by defence. I have heard the learned counsel for both the parties and also gone through the documents submitted by complainant side. I have also gone through the Judicial decisions relied upon by complainant side. The complainant has basically relied upon the

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decision of Hon'ble Apex Court in Rajeshbhai Muljibhai Patel & Ors Vs State of Gujrat &Anr [2020 SAR (Cri)567], and in Shiv Kumar alias Jawahar Saraf Vs Ramavatar Agarwal [2020 SAR (Cri) 268], and in Bir Singh Vs Mukesh Kumar [2019 SAR(Cri)309], and also the decision of Hon'ble Gauhati High Court in the case of Sanjay Kr Singh Vs State of Assam &Anr [(2002) 2 GLR 229], and also in the case of Sundar Buragohain Vs Himani Das [(2016) 5 GLR 573].

4. Upon hearing and on perusal of record I have framed the following points for determination-

**POINTS FOR DETERMINATION:**

- (1) Whether the accused issued the cheque no. 570655 for discharge of any legally enforceable debt or liability towards the complainant?
- (2) Whether the cheque was dishonoured for insufficient funds in the account of the accused?
- (3) Whether the accused received the demand notice issued by the complainant regarding the dishonour of cheque?
- (4) Whether the accused has committed the offence under section 138 of the Negotiable Instruments Act, 1881?

**DISCUSSION OF EVIDENCE, DECISION AND REASONS**

**THEREOF:**

**POINT NO.1**

5. This point relates to the question as to whether the accused issued the cheque no. 570655 for discharge of any legally enforceable debt or liability towards the complainant. As regards this point for determination, complainant Md. Arif Ali Hazarika as PW-1 in his evidence-in-chief has reiterated almost the entire contents of his complaint petition as narrated above. Similarly, PW-2 Md. Rizwan Ali Hazarika, who is the brother of complainant, has corroborated the version of PW-1 by reiterating the gist of the complaint petition and by mentioning that the accused borrowed Rupees three lakhs from complainant in his presence. It is specifically stated by PW1 & PW2 that the accused borrowed Rupees three lakhs from complainant/PW1 on 07/01/2014 for his business purpose. In support of his contention, the PW1/complainant has produced and marked the aforesaid cheque number 570655 as exhibit -1.

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6. Now, as regards the credibility of the aforesaid version deposited by PW1 & PW2, the learned counsel for defence during arguments has vehemently submitted that the complainant has admittedly not produced any document to show that the accused borrowed aforesaid Rupees three lakhs from complainant, and as such, the aforesaid plea of complainant cannot be believed. However, the learned counsel for defence has failed to show any law which mandates that a written document must always be executed in order to prove the fact of lending/ borrowing of money. Further, upon perusal of the evidence it is seen that there is nothing substantial in their cross-examination of PW1 & PW2 which can create any reasonable doubt regarding the credibility of their statements in their evidence in chief with respect to taking of loan by accused. Under such circumstances, I find no room to doubt their version that the accused allegedly borrowed Rupees three lakhs from complainant on 07/01/2014 for his business purpose.

7. In addition to the above, PW1 has alleged that that the accused after taking the aforesaid loan issued cheque no. 570655 (exhibit -1) on 20/12/2014 against his SBI North Lakhimpur branch account number 11015690542 in favour of the complainant/PW1 for repayment of the aforesaid borrowed amount of Rupees three lakhs. In this context, though the accused during his examination under section 313 of CrPC has denied issuing exhibit – 1 cheque in favour of complainant, but, the accused has neither given any explanation that how the exhibit – 1 cheque reached the hands of complainant, nor adduced any evidence to prove that he actually didn't hand over any such cheque to the complainant.

8. For the sake of argument, even if it is presumed that the cheque was stolen by complainant, then, having regard to the common course of human conduct, it can be well presumed that the accused would have definitely lodged an F.I.R or criminal complaint against the complainant after coming to know about the alleged illegal possession of cheque by complainant. Under such circumstances, and in the absence of any explanation and evidence as stated above, I do not find any scope to believe the unsubstantiated statement of accused that he didn't hand over the exhibit – 1 cheque to the complainant.

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9. On the contrary, the PW1/complainant in his complaint petition and evidence has consistently stated that the accused handed over exhibit – 1 cheque to him for repayment of aforesaid borrowed amount of Rupees three lakhs. In support of the aforesaid version, the PW3, namely, Sri Durga Goswami in his evidence in chief has specifically stated that the accused handed over a cheque of Rupees three lakhs drawn on SBI North Lakhimpur branch to the complainant on 20/12/2014 in his presence in the business establishment of complainant and he came to learn that the accused issued that cheque for repayment of Rupees three lakhs which he borrowed from the complainant. It may be added here that there is nothing substantial in the cross-examination of PW1 & PW3 which can create any doubt regarding the credibility of their aforesaid statements. Hence, from the foregoing discussion, it is absolutely clear that the accused handed over exhibit – 1 cheque to the complainant for repayment of aforesaid borrowed amount of Rupees three lakhs.

10. Moreover, as per Section 139 of N.I Act, *it shall be presumed, unless the contrary is proved, that the holder of the cheque received the cheque for the discharge, in whole or in part, of any debt or other liability.* In the case in hand, the accused has neither given any explanation that how the exhibit -1 cheque came into the hands of complainant, nor adduced any evidence to prove that he didn't issued exhibit – 1 cheque in favour of complainant for repayment of the borrowed amount of Rupees three lakhs. In the absence of any such evidence, it has to be presumed that the exhibit -1 cheque was issued by accused in favour of complainant for discharge of a debt or liability.

11. Therefore, considering the entire discussion made above, I find that the evidence available in the case record proves beyond reasonable doubts that the accused borrowed Rupees three lakhs from the complainant on 07/01/2014 for his business purpose and thereafter issued exhibit – 1 cheque on 20/12/2014 in favour of complainant for repayment of the aforesaid debt.

*DECISION: This point is therefore decided in the negative and goes against the complainant.*

**POINT NO. 2& 3**

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12. For the sake of convenience, the point no.2 & 3 are taken up herein together for discussion and decision. Point no.2 relates to the question as to whether the cheque was dishonoured for insufficient funds in the account of the accused. Point no.3 relates to the question as to whether the accused received the demand notice issued by the complainant regarding the dishonour of cheque.

13. As regards these two points for determination, PW1 in his evidence-in-chief has stated that he deposited the aforesaid exhibit – 1 cheque on 19/02/2016 in his bank account maintained at Indian Overseas Bank, North Lakhimpur branch from where the same was forwarded to SBI, North Lakhimpur branch for clearance from the account no. 11015690542 of accused, but, the cheque was returned to him by SBI, North Lakhimpur branch through Indian Overseas Bank on 20/02/2015 on the ground of insufficient fund in the account of accused. He then issued a notice to accused through his advocate demanding the aforesaid amount within fifteen days, but the accused didn't made any such payment inspite of receiving the notice on 23/0/3015.

14. In support of his contention, the PW1/complainant has produced and marked the counter foil of bank deposit slip as exhibit – 2, the cheque clearing return charge memo as exhibit – 3, the cheque return memo as exhibit – 4, the advocate notice served upon the accused as exhibit – 5, the postal registration receipt as exhibit – 6, and the postal delivery report as exhibit – 7.

15. In the above context, PW4 Sri Promod Pawe, who is the Assistant Branch Manager of SBI, North Lakhimpur branch, in his evidence has supported the version of PW1 by producing exhibit – 9 which the statement of account no. 11015690542 of accused for the period between 15/02/2015 to 25/02/2015 showing insufficient fund to honour exhibit – 1 cheque. Similarly, PW5 Sri Ankur Bikash Sarmah, who is the Branch Manager of Indian Overseas Bank, North Lakhimpur branch in his evidence in chief has corroborated the version of PW1 regarding deposit of exhibit – 1 cheque and return of the same by SBI, North Lakhimpur branch after getting bounced.

16. In the above context, the accused during his examination under section 313 of CrPC has specifically stated that his aforesaid account didn't had

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Rupees three lakhs during the relevant time and he didn't paid aforesaid amount of Rupees three lakhs to the complainant instead of receipt the demand notice. The accused has also stated that it is possible that the exhibit – 1 cheque got bounce as his account didn't had rupees three lakhs during the relevant time. This shows that the statements made by accused in his examination u/s 313 of CrPC clearly corroborates the version of complainant/PW1 as regards the return of exhibit -1 cheque by bank on the ground of insufficient fund in the account of accused and subsequent failure of accused to repay the amount of Rupees three lakhs inspite of receipt of exhibit – 5 demand notice.

17. Therefore, having regard to the evidence deposed by PW1, PW4 & PW5, coupled with the statements made by accused during his examination u/s 313 of CrPC, I find that the complainant has been able to prove beyond reasonable doubts that the exhibit – 1 cheque issued by accused was deposited in SBI, North Lakhimpur branch through Indian Overseas Bank, North Lakhimpur branch, but, the cheque was returned by SBI, North Lakhimpur due to insufficient fund in the account of accused to honour the cheque. Thereafter, the complainant issued exhibit – 5 demand notice to the accused demanding repayment of said Rupees three lakhs within fifteen days but the accused failed to repay the amount in spite of receiving the notice.

*DECISION: Point no.2 & 3 are decided in the affirmative and goes in favour of the complainant.*

#### **POINT NO.4**

18. This point relates to the question as to whether the accused has committed the offence under section 138 of the Negotiable Instruments Act, 1881. As regards this point, it is already held that the exhibit-1 cheque was issued by the accused in the account maintained by him and that the said cheque was dishonoured due to insufficient fund in the account of the accused. The cheque was dated 20/12/2014 as it is seen from exhibit-1 and was presented for payment in the bank of the complainant on 19/02/2015 which is evident from exhibit – 2 counter foil of deposit slip. This shows that the cheque was deposited within three months from the date of issue. The

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cheque then got dishonoured on 20/02/2015 as it can be seen in exhibit – 3 receipt and exhibit – 4 return memo. The demand notice was then issued on 17/03/2015 as it reveals from exhibit-6 postal receipt i.e., within 30 days from the date of dishonour. Also, from exhibit-7 it is evident that the notice was received by accused on 23/03/15. The complainant filed the complaint petition in court on 05/05/2015 i.e., within 30 days after the lapse of 15 days from the date of receipt of demand notice. Therefore, the complaint is lodged within the period of limitation.

19. In view of the above discussion, it is evident that all the ingredients of the offence under section 138 of the Negotiable Instruments Act, 1881 are fulfilled in the case in hand. As such, it is held that the accused has committed the offence under section 138 of the Negotiable Instruments Act, 1881.

*DECISION: This point is therefore decided in the affirmative and goes in favour of the complainant.*

#### **ORDER**

20. In view of the discussions made above and the decisions reached in the foregoing points for determinations, it is held that accused Sri Ashok Borah @ Sri Ashokananda Borah has committed offence under section 138 of the Negotiable Instruments Act, 1881 and as such the accused is convicted under section 138 of the Negotiable Instruments Act, 1881.

21. I have heard the accused on the point of sentence. As the offence committed is an economic offence in nature hence releasing the accused on probation will result in huge loss to the complainant. As such, I am not inclined to extend the benefit of the provisions of the Probation of Offenders Act, 1958 to the accused.

22. Considering the nature of the offence and the facts and circumstances of this case, accused Sri Ashokananda Borah is convicted for the offence under section 138 of the Negotiable Instruments Act, 1881 and he is sentenced to undergo simple imprisonment for six months and further to pay a fine of Rs.4,00,000/- (Rupeesfour lakhs) only. The total fine amount, as and when realized,shall be handed over to the complainant as compensation. The fine amount is imposed as Rupees 4,00,000/- as the total cheque amount

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is Rs.3,00,000/- and more than five years have passed from the date of issuance of the cheque.

23. It is further directed that the convict shall undergo simple imprisonment for another two (2) months in default of the payment of fine.

Furnish a free copy of the judgment to the convict immediately.

The case is disposed of on contest.

This judgment is given under my hand and seal of this court on this the 31<sup>st</sup> day of March, 2021.

F.U. Choudhury  
Additional Chief Judicial Magistrate  
North Lakhimpur

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Mr F.U. Choudhury, Addl. CJM, Lakhimpur

**APPENDIX**

**(A) COMPLAINANT'S EXHIBITS**

- Exhibit.1 – Cheque no. 570655
- Exhibit.2 – Counter foil of deposit slip.
- Exhibit.3 – Cheque clearing charge receipt
- Exhibit.4 – return memo dated 20/02/15 for Cheque no. 570655
- Exhibit.5 – Advocate notice
- Exhibit.6 – postal Registration receipt
- Exhibit.7 – Postal A/D Card.
- Exhibit.8 – Authorization letter.
- Exhibit.9 – Bank Account Statement.

**(B) DEFENCE EXHIBITS**

Nil

**(C) COMPLAINANT'S WITNESSES**

- P.W. 1 – Md. Arif Ali Hazarika.
- P.W. 2 – Md. Rizwan Ali Hazarika.
- P.W. 3 – Sri Durga Goswami.
- P.W. 4 – Sri Promod Pawe.
- P.W. 5 – Sri Ankur Bikash Sarmah.

**(D) DEFENCE WITNESSES**

F.U. Choudhury  
Additional Chief Judicial Magistrate  
North Lakhimpur

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