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2026:GAU-AS:16554

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

Case No. : Crl.Pet./1219/2026

M/S NAMAN ENTERPRISE
A PROPRIETORSHIP FIRM HAVING ITS REGISTERED OFFICE AT WARD NO. 4 KARIM CHOWK, MANGALDAI
R/O BARUA PARA, P.S.AND P.O. MANGALDAI, DISTRICT DARRANG, ASSAM, PIN-784125. REPRESENTED BY ITS PROPRIETOR SRI DHRUBAJYOTEE KASHYAP AGED 49 YEAR) R/O BARUA PARA, P.S. AND P.O. MANGALDAI, DIST. DARRANG, ASSAM, PIN-784125

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE LEARNED PUBLIC PROSECUTOR, ASSAM.

2:M/S GOPI MOHAN DRUG DISTRIBUTOR
A PROPRIETORSHIP FIRM HAVING ITS REGISTERED OFFICE AT S.C. GOSWAMI ROAD
PANBAZAR
P.S. AND P.O. PANBAZAR
DISTRICT KAMRUP M
ASSAM
PIN-781001
REPRESENTED BY ITS PROPRIETOR SRI RAJESH KUMAR SIVASARIA

BEFORE

HON'BLE MRS. JUSTICE SHAMIMA JAHAN

Advocate for the petitioner(s) : Mr. W. Raja

Advocate for the respondent(s): Mr. M P Goswami, APP Assam
Mr. M Agarwalla, R-2

Date on which judgment was reserved : **NA**

Date of pronouncement of judgment : **11.11.2026**

Whether the pronouncement is of the operative part of the judgment? : **NA**

Whether the full judgment has been pronounced? : **Yes**

JUDGMENT AND ORDER (ORAL)

Heard Mr. W Raja, learned counsel for the petitioner and Mr. M P Goswami, learned Additional Public Prosecutor for the State of Assam. Also heard Mr. M Agarwalla, learned counsel representing the respondent No. 2.

2. By this application filed under Section 528 of the BNSS, 2023, the petitioner has prayed for setting aside of the complaint case being NI Case No. 412 of 2025 as well as the Order dated 16.10.2025, passed by the Judicial Magistrate First Class-2, Kamrup (Metro) in the said NI Case, by which cognizance of the offence was taken under Section 138 of the Negotiable Instrument Act, 1881 (here-in-after referred to as "the Act") against the petitioner along with the order dated 24.07.2026, by which bailable warrant of arrest was issued against the petitioner.

3. The case of the petitioner is that a complaint was filed by the respondent No. 2, wherein it was stated, *inter alia,* that the complainant firm carries on the wholesale business of sales, distribution of medicines and surgical items and

that that the petitioner is a proprietorship concern, which also carries on the business of sales and distribution of medicines and surgical items. It is further stated that the complainant had a business relationship with the petitioner and had been supplying products to the petitioner since long back on credit basis, as per the orders placed by the petitioner on different dates and that the petitioner had been making payment for all the goods, that the complainant provides to them. It is the further case of the petitioner that during the said transaction, an amount of Rs. 75,650/- remained unpaid and that the petitioner had assured the complainant that he will make the payment. The complainant further stated that in discharge of such a lawful dues, the petitioner had issued one cheque bearing Cheque No. 623718 on 04.12.2024, for Rs. 75,650/- drawn on the Allahabad Bank, Mangaldoi Branch. The complainant thereafter stated that he deposited the said cheque in the bank account maintained by the complainant in the HDFC Bank and the same was dishonoured and was returned by the Bank showing the reason as "**Bank merged"** and the fact of dishonour of the said cheque was communicated to the complainant by the Bank. Subsequent thereto, the complainant stated that he served a legal notice on 26.12.2024, intimating the petitioner about the dishonour of the cheque and demanded payment within a period of 15 days. However, the complainant stated that neither acknowledgement card nor unserved notice was received back, but he

stated that the notice was received by the petitioner on 30.12.2024, as it appeared from the track consignment report. The complainant thereafter, stated that since the petitioner failed to make the payment within a period of 15 days, the case under the Act, was filed before the Court of learned Chief Judicial Magistrate, Kamrup (Metro) which was registered as NI Case No. 412 of 2025. It is further stated that the learned Court had taken cognizance of offence vide order dated 16.10.2025, and by order dated 24.07.2026, bailable warrant of arrest has been issued against the petitioner.

4. The learned counsel for the petitioner submits that the cheque that is alleged to have been issued by the petitioner towards discharge of his legally enforceable debt, is not for the same and that the said cheque was issued by the petitioner many years before the alleged transaction. He submits that the said cheque was issued as a security cheque during the business transaction between the petitioner and the respondent No. 2. He further submits that he has no legally enforceable debt towards the respondent as he had made all the payments, required to be made to the respondent No. 2, in due time with regard to the transactions. He further submitted that the cheque which has been returned by the Bank on the ground of merger of bank, cannot be considered as a valid cheque, and the same will also not entail prosecution under Section 138 of the Act. To substantiate his argument, he placed a

judgment of the Allahabad High Court passed in ***Smti. Archana Singh Gautam vs. State of U.P***, delivered on 05.06.2024, in application u/s 482 No. 9536 of 2024, by which the Allahabad High Court had categorically stated that after the merger of the Allahabad Bank into the Indian Bank on 01.04.2020, any cheque of Allahabad Bank is to be considered as invalid. It is also held that presentation of such a cheque, which is not valid before the Indian Bank, after the merger, will not attract liability under Section 138 of the Act, as per the proviso (a) of Section 138 of the said Act. He further submits that admittedly there was an amalgamation of Allahabad Bank into Indian Bank, on 4th of March, 2020, issued by the Government of India, and it was further provided that all branches of Allahabad Bank will function as branches of Indian Bank from 1st of April, 2020. He, as such submits that the cheque purportedly shown to have been issued in the year 2024, is an invalid cheque and the same will not entail any proceedings under the Act.

5. On the other hand, the learned counsel appearing for the respondent No. 2 submits that the petitioner had issued the cheque in discharge of his legally enforceable debt, towards the respondent No. 2, on 04.12.2024, for an amount of Rs. 75,650/-. He further submits that the issue of merger of Bank has been

considered by a number of High Courts of the country and there are divergent view with regard to the same. He, however, submits that the petitioner has an enforceable debt towards respondent No. 2, which he is legally bound to meet.

6. I have heard the learned counsels and I have carefully gone through the records.

7. It is a well-settled proposition that High Court, while exercising power under Section 482 of Criminal Procedure Code, 1972, which is now Section 528 of Bharatiya Nagrik Suraksha Sanhita, 2023 (BNSS), is empowered to quash the criminal proceedings or complaint, in cases where it is satisfied that no prima facie offence is made out. It is also in cases where the High Court arrives at a conclusion that proceedings sought to be quashed, if permitted to sustain would amount to sheer abuse of the process of law and it is likely to fail in all probabilities, it can exercise power under Section 528 of BNSS, and quash the FIR, criminal proceedings as well as complaint. In the judgment passed by the three-Judge Bench of the Hon'ble Apex Court in **State of Karnataka, vs. L. Muniswamy and others**, reported in **(1977) 2 SCC 699**, it was held that High Court, while exercising power under Section 482 Cr.PC, is entitled to quash the proceedings, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of

justice require that the proceeding ought to be quashed.

8. Further in **State of Haryana and others v. Bhajan Lal and others**, reported in **1992 Supp (1) SCC 335**, the Hon'ble Apex Court, while elaborately discussing the scope and competence of High Court to quash criminal proceedings under Section 482 Cr.PC, laid down certain principles governing the jurisdiction of High Court to exercise its power. The observations are as follows: -

> *8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible kinds of cases wherein such power should be exercised:*
>
> *(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;*

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or

where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

9. By keeping the aforesaid guidelines into account, this Court will now examine as to whether the present case can be quashed vis-a vis the factual matrix of the same.

10. In the instant case, the complainant had stated in clear terms that during the business transaction carried on between the petitioner and the respondent No. 2, the petitioner did not pay an amount of Rs. 75,650/- to the complainant and it is also seen that the cheque was issued on 04.12.2024 by the petitioner for the said amount. However, the authenticity of the said cheque was disputed by the petitioner on the ground that one cheque was issued to Respondent No. 2 as a security cheque many years before, which according to the petitioner has been used by the complainant for ulterior motive.

11. The main argument made by the learned counsel for the petitioner is that under proviso to Section 138 of the Act, the conditions are enumerated therein,

under which a case will lie under the said Section. To ascertain the correctness of the aforesaid plea, this Court would like to take note of Section 138 of the Act, which reads as under:-

> "*138. Dishonour of cheque for insufficiency, etc., of funds in the account.-- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, 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 by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:*
>
> *Provided that nothing contained in this section shall apply unless—*
>
> *(a)the 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;*

(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 thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c)the drawer of such cheque fails to make the payment of the said amount . of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.-- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]"

12. A careful perusal of the aforesaid provision of law reveals that where any cheque drawn by a person, on an account maintained by him for payment to another person, towards discharge of his lawful liability, is returned by the Bank unpaid because of insufficiency of funds or it exceeds the amount agreed to be paid from that account, by an agreement, it shall be deemed that the person drawing the cheque has committed an offence under Section 138 of the Act.

13. The question which needs to be determined in the present case is whether reasons, other than the reasons, detailed under Section 138 of the Act, assigned

by the Bank, while returning the cheque can be a ground for filing complaint under Section 138 of the Act. This question has been aptly answered by the Apex Court in ***Laxmi Dyechem vs. State of Gujarat****;* reported in **(2012) 13 SCC 375.** It has been held that the expression "insufficiency of fund" or "the amount in excess" has been described as the genus and dishonour of the cheque for reasons such as account closed, payment stopped, signature did not match etc. are only species of that genus. The Apex Court had observed in the following terms:-

> *15. The above line of decisions leaves no room for holding that the two contingencies envisaged under Section 138 of the Act must be interpreted strictly or literally. We find ourselves in respectful agreement with the decision in NEPC Micon Ltd. (supra) that the expression "amount of money is insufficient" appearing in Section 138 of the Act is a genus and dishonour for reasons such "as account closed", "payment stopped", "referred to the drawer" are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the "signatures do not match" or that the "image is not found", which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act. This Court has in the decisions referred to above taken note of situations and contingencies arising out of deliberate acts of omission or commission on the part of the drawers of the cheques which would inevitably result in the dishonour of the cheque issued by them. For instance this Court has held that if after issue of the cheque the drawer closes the account it must be presumed that the amount in the account was nil hence insufficient to meet the demand of the cheque. A similar result can be brought about by the drawer changing his specimen signature given to the bank or in the case of a*

company by the company changing the mandate of those authorised to sign the cheques on its behalf. Such changes or alteration in the mandate may be dishonest or fraudulent and that would inevitably result in dishonour of all cheques signed by the previously authorised signatories. There is in our view no qualitative difference between a situation where the dishonour takes place on account of the substitution by a new set of authorised signatories resulting in the dishonour of the cheques already issued and another situation in which the of drawer of the cheque changes his own signatures or closes the account or issues instructions to the bank not to make the payment. So long as the change is brought about with a view to preventing the cheque being honoured, the dishonour would become an offence under Section 138 subject to other conditions prescribed being satisfied. There may indeed be situations where a mismatch between the signatories on the cheque drawn by the drawer and the specimen available with the bank may result in dishonour of the cheque even when the drawer never intended to invite such a dishonour. We are also conscious of the fact that an authorised signatory may in the ordinary course of business be replaced by a new signatory ending the earlier mandate to the bank. Dishonour on account of such changes that may occur in the course of ordinary business of a company, partnership or an individual may not constitute an offence by itself because such a dishonour in order to qualify for prosecution under Section 138 shall have to be preceded by a statutory notice where the drawer is called upon and has the opportunity to arrange the payment of the amount covered by the cheque. It is only when the drawer despite receipt of such a notice and despite the opportunity to make the payment within the time stipulated under the statute does not pay the amount that the dishonour would be considered a dishonour constituting an offence, hence punishable. Even in such cases, the question whether or not there was a lawfully recoverable debt or liability for discharge whereof the cheque was issued would be a matter that the trial Court will examine having regard to the evidence adduced before it and keeping in view the statutory presumption that unless rebutted the cheque is presumed to have been issued for a valid consideration."

14. The Bombay High Court in its decision in the case of ***Chetan Sunderji Bhanushali and Others vs. Hema Ramesh Chheda***; reported in **MANU/MH/1187/2026,** had held that no straitjacket formula can be applied to conclude that an offence under Section 138 of the NI Act, is not made out solely because the cheque appeared to have been presented after the original drawee bank ceased to exist and it is also held that proceeding under Section 138 of the NI Act cannot be quashed merely because, a cheque was presented after structural changes, such as, merger or acquisition of the drawee bank. The observations made by the Bombay High Court are as follows:-

> "*40. The conspectus of aforesaid consideration is that, though the expression 'within the period of its validity' used in the later part of the clause (a) of the proviso to Section 138 of the N. I. Act, 1881, is elastic enough to cover in its fold a case where the validity of the cheque, is affected by the factors like acquisition by or merger with another bank, despite the validity period specifically mentioned on the cheque not having come to an end, yet, the attendant circumstances bear upon the question whether the cheque has been presented within its validity period. In cases where despite the original drawee bank having ceased to be 'the bank' within the meaning of clause (a) of the said proviso the cheque is returned un-encashed with the remarks "insufficiency of funds" and the like, the investigation into facts becomes necessary, and the question whether the drawee bank could have honoured the cheque as it was rendered invalid, would warrant adjudication at the trial. Whereas, in cases where the cheque has been returned with the remarks, 'invalid' or 'presented on the successor bank after the period of the validity of the cheque' and the like, compliance of clause (a) of the proviso to Section 138 of the N. I. Act, 1881, in the matter of presentation of the cheque within the validity period, could be examined by the Court, in the light of the attendant facts and circumstances of the case. No straight- jacket formula that, since the cheque appeared to have been presented after expiry of the period of validity of the cheque drawn on the erstwhile drawee bank, no offence punishable under Section 138 of the N. I. Act, is made out, can be adopted."*

15. In similar facts and circumstances, the High Court of Punjab and Haryana in ***Surjit Kumar vs. Sunil Kumar Dalmia,*** *delivered on 9th of October, 2023 in CRM-M No. 51125 of 2023*, had held that once it is not in dispute that cheque was issued towards discharge of lawful liability, mere fact that cheque was returned unpaid on account of the fact that erstwhile State Bank of Patiala merged with State Bank of India, cannot be deduced that case will not lie under Section 138 of the Act and further as to whether the cheque has been issued by the accused person is proper or not, is a question of trial, which has to be adjudicated by the trial Court.

16. In yet another decision decided by Punjab and Haryana High Court in ***Balkour Singh vs State of Punjab and Others,*** delivered on 05.12.2023 in CRM-M No. 36565 of 2019, similar facts and circumstances were placed and the relevant observations are quoted hereinbelow:-

> "*11. Another argument raised by the counsel for the petitioner that the return memo dated 18.12.2018 with remarks 'account closed' was obtained by the respondent No.2 in an illegal and unjust manner, as the cheque issued was of the State Bank of Bikaner and Jaipur, which bank was merged with State Bank of India and on such merger, the cheques issued by the erstwhile State Bank of Bikaner and Jaipur were declared invalid by the Reserve Bank of of India w.e.f. 30.06.2018. The dishonour*

of cheque with remarks 'account closed' would certainly be an offence under Section 138 of the NI Act as has been held by the Hon'ble Supreme Court in NEPC Micon Ltd. v. Magma Leasing Ltd., (1999) 4 SCC 253. Further, invalidation of the cheque on account of merger with another bank would be a disputed question of fact and would be a probable defence that the petitioner is free to take before the trial Court. This Court cannot negate the complainant's case without allowing the complainant to lead evidence while exercising its discretionary power under Section 482 Cr.P.C. Furthermore, it is also a disputed question of fact whether the respondent No.3 kept the cheque of the petitioner with him or the petitioner himself gave the alleged invalid cheque, which was dishonoured on presentation by respondent No.2. Therefore, at this nascent/pre-trial stage, this Court cannot delve upon the disputed question of fact under Section 482 Cr.P.C., without giving an opportunity to the respondent No.2-complainant to lead evidence in rebuttal."

17. In the present case, since the cheque allegedly issued by the petitioner towards discharge of lawful liability as stated by the complainant was returned unpaid by the Indian Bank on the ground of merger, it cannot be presumed that the complainant was aware of the legal or contractual consequences flowing from the merger of Allahabad Bank with the Indian Bank. The complainant could not be reasonably expected to know that cheques issued by Account holders of the erstwhile Allahabad Bank, had become invalid after the merger and that the Indian Bank was under no obligation to honour such cheques. These are matters lying within the exclusive knowledge of the concerned banking institutions and cannot, by themselves, be a ground for a bar to a suit under

Section 138 of the Act.

18. Although the learned counsel for the petitioner had shown the ledger account of the petitioner, by which he endeavored to show that he had no legally enforceable debt against the respondent No. 2, but the same is disputed by the respondent No. 2 and when there are disputed facts, this Court normally cannot go into the same, as the same has been a settled position of law. Further, the question as to whether there was a lawfully recoverable debt from the petitioner or as to whether the cheque was issued by the petitioner in discharge of his liability towards the complainant or as to whether the said cheque was issued as a security cheque wayback to the complainant are matters that the Trial Court will examine, by taking into account, the evidence adduced before it and also by keeping in view the statutory presumption that the cheque will be considered to have been given for valid consideration unless rebutted by the petitioner.

19. For the reasons discussed hereinabove, this Court, as such, is not inclined to interfere with the complaint case, being NI Case No. 412 of 2025, filed by the respondent No. 2 as well as the order dated 16.10.2025, by which cognizance of offence was taken by the Court of Judicial Magistrate First Class, Kamrup (M) under Section 138 of the Act against the petitioner.

20. As such, the criminal petition is dismissed and disposed of.

JUDGE

Comparing Assistant