

**IN THE COURT OF THE SESSIONS JUDGE :: NALBARI**

Present: Smti S. Bhuyan.  
Sessions Judge,  
Nalbari.

**(Criminal Revision Case No. 36/19)**

**Revision u/s- 397/399 CrPC against the order dated  
04/11/2019 passed by learned JMFC, Tihu in  
connection with NI Case No. 5/19 u/s- 138/142 of NI  
Act.**

**Sri Dhrubajyoti Baishya**

S/o- Sri Sarat Ch. Baishyaas

R/o- village Khalihaguri

P.O. & Mouza- Tihu, PS- Tihu

Dist - Nalbari, Assam ..... Revisionist/ Complainant

-Versus-

**Smti. Sagorika Hatibaruah**

D/o- Sri Guna Hatibaruah

R/o- village Nahulla Tinkhong

P.O & PS- Bamunbari

Dist - Dibrugarh, Assam ..... Respondent/ Accused

**Advocates appeared:-**

For the Revisionist : Mr. Jayanta Kalita, Advocate.

For the Opp. Party : None appeared

Date of argument : 15-06-2020

Date of judgment : 15-06-2020

**JUDGMENT**

1. The instant revision has been preferred u/s-397/399 Cr.P.C by Sri Dhrubajyoti Baishya being aggrieved with the impugned order dated 04/11/2019 passed by learned JMFC,

Tihu in connection with Case No. 5/19 u/s- 138/142 of the NI Act.

2. Fact leading to the revision petition is that Revisionist Sri Dhurbajoyti Baishya filed a complaint petition against accused Smti. Sagorika Hatibaruah u/s- 138/142 of the NI Act before the learned JMFC, Tihu citing that in the month of March, 2016 revisionist lent Rs. 4,50,000/- (Rupees four lakhs fifty thousand) only to the accused on condition that accused shall repay the loan amount with interest after one year. But the accused did not repay the loan amount as per condition agreed and on several approaches made by the revisionist, accused issued a post dated cheque in the 1st week of May, 2019 in favour of the revisionist for Rs. 4,50,000/- vide cheque No. 434323 dated 01/06/2019 of SBI, Moran Branch, Dibrugarh. Thereafter, revisionist presented the said cheque in his bank account at Assam Gramin Vikash Bank, Tihu Branch which was returned with a cheque returning memo dated 16/08/2019 showing ground "Fund Insufficient". On 11/09/2019 revisionist sent one pleader notice to the accused and the same was delivered on 25/09/2019 at the present address of the accused but the accused neither gave reply nor paid the borrowed money to the revisionist.

3. On receipt of the complaint petition NI Case No. 5/19 has been registered in the court of learned JMFC, Tihu and on perusal of the complaint petition, learned JMFC, Tihu made observation that the pleader notice, which is claimed to be served upon the accused, has no date. As such the court below find it difficult to ascertain whether the pleader notice was issued to the accused within limitation and opined that the complaint petition failed to comply with the provision of section 138(2) of the NI Act and accordingly the complaint

petition has been dismissed by the learned court below. Hence the present revision filed by the complainant.

4. Revisionist/ complainant is represented by his engaged counsel. I have heard learned revisionist counsel in the virtual court through Jitsi platform and scrutinized the revision petition as well as record of the learned trial court to arrive at a just decision.

**5. Points for determination**

- i) Whether the postal receipt and postal consignment tracking report is sufficient to prove the fact that revisionist has issued pleader notice to the accused within 30 days from the receipt of information from the bank regarding non-payment of the cheque?

6. Learned counsel appearing for the revisionist made submission that though the revisionist did not mention the date of issuance in the pleader notice issued to the accused, yet the postal receipt and postal tracking report is sufficient to prove that revisionist has issued the pleader notice through registered post on 11/09/2019 vide consignment No. RS527074969IN and the same was delivered to the accused on 25/09/2019 at her present address.

7. I have scrutinized the revision petition, main complaint petition filed u/s- 138/142 of the NI Act and trial court case record. Along with the revision petition, revisionist submitted photocopy of the cheque vide No. 434323 dated 01/06/2019 marked as Annexure-I. Validity of a bank cheque is 3 months. Revisionist has presented the cheque in his bank account at Assam Gramin Vikash Bank, Tihu Branch and the bank returned the cheque with cheque return memo dated 16/08/19 pointing that cheque was dishonoured due to

“Funds Insufficient”. Annexure-II is the photocopy of cheque returning memo. On receipt of cheque return memo dated 16/08/2019 from the bank, revisionist/ complainant issued a pleader notice to the accused which is marked as Annexure-III. In Annexure-III pleader notice, date of issue is not mentioned. Annexure-IV is the photocopy postal receipt of booking consignment received from Head Post Office, Nalbari and Annexure-V is the consignment tracking report obtained from the official website of postal department i.e. [www.indiapost.gov.in](http://www.indiapost.gov.in). Postal receipt vide consignment No. RS527074969IN pointed that it was booked at Nalbari H.O, on 11/09/2019 at counter No.1, addressed to Sagorika Hatibaruah, Bamunbari PIN- 786613 and consignment tracking report shows that the same was delivered on 25/09/2019. Postal receipt and tracking report is the proof that pleader notice to the accused was served within time.

8. Learned trial court has dismissed the complainant petition on the ground that date is not mentioned in the pleaded notice served upon the accused. Learned trial court hold that the pleader notice was not served within time. On scrutiny of the order dated 04/11/2019 passed by the learned trial court it is seen the learned trial court has not considered the Annexure-IV postal receipt and Annexure-V tracking report, wherein both the document clearly pointed the issuance and delivery of pleader notice on 25/09/2019. Therefore, I find that learned trial court has misinterpreted the provision of section 138(2) of the NI Act. In my considerate opinion, Annexure-IV and Annexure-V are sufficient enough to prove that the pleader notice was served upon the accused within time as per the provisions of section 138(2) of the NI Act.

9. In view of the above discussion, the revision is allowed and impugned order dated 04/11/2019 passed by the learned trial court is set aside with a direction to the learned trial court to pass order in terms of section 138(1)/138(2) of the NI Act and dispose of the case after giving opportunity to both the sides in accordance with law.

10. Send down the trial court record with a copy of this court judgment to the learned trial court immediately.

11. Judgment delivered under hand and seal of this court on this 15<sup>th</sup> day of June, 2020 at Nalbari, Dist-Nalbari.

(Smti S. Bhuyan)  
Sessions Judge, Nalbari.

Dictated & corrected by me

(Smti S. Bhuyan)  
Sessions Judge, Nalbari.

Typed by  
Jitumani Talukdar  
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