

GAHC010091812025



2025:GAU-AS:8755

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

Case No. : Crl.Rev.P./155/2025

ATMARAM AGARWAL
SON OF LATE BHAGIRATH MAL AGARWAL,
R/O BUILD INDIA ROAD,
JYOTINAGAR, P.O., P.S. AND DIST. DIBRUGARH, ASSAM, PIN- 786001

VERSUS

SRI BIJAY KUMAR NAWKA
PARTNER OF M/S DRUG HOUSE, HAVING ITS PLACE OF BUSINESS AT H.S.
ROAD, DIBRUGARH, ASSAM, PIN-786001

Advocate for the Petitioner : MR. BHASKAR DUTTA, SENIOR ADVOCATE, MS L
RONGPIPI, MR JITENDRA DAS, MR. SAILENDRA DEKA

Advocate for the Respondent : S K PODDAR, MS. N PODDAR, MR. C SHARMA

:: PRESENT ::

HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner :	Mr. B. Dutta, Senior Advocate.
For the Respondent:	Mr. S.K. Poddar, Advocate.

Date of Hearing :	19.06.2025.
Date of Judgment :	27.06.2025.

JUDGMENT AND ORDER (CAV)

Heard Mr. B. Dutta, the senior counsel appearing for the petitioner. Also heard Mr. S.K. Poddar, the learned counsel appearing for the respondent.

2. This is an application under Section 438 and 442 of the BNSS, 2023 challenging the judgment dated 21.03.2025 passed by the learned Sessions Judge, Dibrugarh in Criminal Appeal No.36(3)/2024.

3. The petitioner gave a loan of ₹10,00,000/- (Rupees Ten Lakh) to the respondent. Thereafter, on 14.10.2022, the respondent wrote a letter to the petitioner whereby he admitted to have taken ₹10,00,000/- from him. Moreover, with that letter, the respondent issued six numbers of cheque worth in total ₹11,20,000/- (Rupees Eleven Lakh Twenty Thousand) to the petitioner. The cheques were dishonoured by the Bank. Therefore, the petitioner filed the case being N.I. Case No.62/2023 in the court of the Judicial Magistrate First Class at Dibrugarh against the present respondent.

4. During the pendency of the case before the Judicial Magistrate First Class, on 30.11.2023, the respondent filed a petition whereby he deposited a cash amount of ₹2,00,000/- and prayed that he may be given opportunity to pay the balance amount to the petitioner in instalments of ₹1,00,000/-. After consideration of the prayer made by the respondent, the trial court directed the respondent to pay ₹1,50,000/- every month to the present petitioner towards liquidation of loan amount of ₹10,00,000/-. The court posted the matter on 02.01.2024 for payment of the first instalment of ₹1,50,000/-.

5. Unfortunately, even after that, the trial court continued the trial by recording evidences etc. and finally, on 19.08.2024, passed a judgment convicting the respondent under Section 138 of the N.I. Act. The trial court held that though the respondent paid ₹2,00,000/-, but failed to pay the remaining amount of ₹9,20,000/-.

The the respondent was sentenced to pay the fine of ₹10,00,000/-. The respondent filed an appeal before the court of Sessions. The learned Sessions Judge, allowed the appeal and the judgment passed by the Judicial Magistrate First Class was set aside.

6. Mr. Dutta has relied upon a Circular of this Court dated 2nd August, 2021. The relevant portion of the said Circular is quoted as under:

“PRACTICE DIRECTIONS”

II. It shall be explained to the accused person that if he intends to make any application expressing his desire to remit payment against the dishonoured cheque in terms of the of the guidelines stated by the Hon’ble Supreme Court of India in ***Criminal Appeals No.963 of 2010 with Nos.964-66 of 2010*** titled as ***Damodar S. Prabhu vs. Sayed Babalal H.***, reported in (2010) 5 SCC 663, he can do so by making an application. If such an application is made by the accused person, the Court shall, in presence of the complainant, consider the same in terms of the said guidelines and shall dispose of the case, if the application is found in conformity with those guidelines.

II. Section 375 of the Code *inter alia* provides that when an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal if the conviction is by a Court of Metropolitan Magistrate or Judicial Magistrate of first class, except as to the extent or legality of the sentence. The Court while stating the particulars of the offence, shall also inform the accused person the consequence of his pleading guilty of the offence in terms of the provision contained in Section 375 of the Code.”

7. I have given my anxious considerations to the submissions made by the learned counsel of both sides.

8. At this stage, Section 375 of the Code of Criminal Procedure (now 416 of the BNSS, 2023) reads as under:

“Section 375 – No appeal in certain cases when accused pleads guilty- Notwithstanding anything contained in section [374](#), where an accused person has pleaded guilty and has been

convicted on such plea, there shall be no appeal-

- (a) if the conviction is by a High Court; or
- (b) if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence."

9. Now, a brief visit to Section 416 of the BNSS, 2023 would be fruitful. It reads as under:

"Section 416- No appeal in certain cases when accused pleads guilty- Notwithstanding anything contained in section [415](#), where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal-

- (i) if the conviction is by a High Court; or
- (ii) if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence."

10. On 30.11.2023, the respondent actually pleaded guilty and deposited a cash amount of ₹2,00,000/- and prayed before the court to allow him to pay the remaining loan amount in instalments of ₹1,00,000/-. But the court directed the respondent to repay the loan in monthly instalments of ₹1,50,000/-. The petitioner has already received the amount of ₹2,00,000/-.

11. At this stage, Section 375 of the old Criminal Procedure Code and 416 of the BNSS, 2023 comes into play. It appears that the learned Sessions Judge did not notice the aforesaid aspect of the case.

12. Mr. Dutta has further relied upon the judgment of the Hon'ble Supreme Court that was delivered in *Joseph Stephen v. Santhanasamy*, (2022) 13 SCC 115. Paragraphs 9 and 10 of the said judgment are quoted as under:

"**9.** Now so far as the first issue, whether in exercise of the revisional jurisdiction under Section 401CrPC, the High Court can convert a finding of acquittal into one of conviction and what is the procedure to be followed by the High Court, as such, the

said issue is now not res integra. On the aforesaid, few decisions of this Court, referred to hereinabove, are required to be considered.

9.1. In *K. Chinnaswamy Reddy* [*K. Chinnaswamy Reddy v. State of A.P.*, 1962 SCC OnLine SC 32 : AIR 1962 SC 1788], while considering the similar provision under the old Code, namely, Section 439(4)CrPC, it is observed and held that "though sub-section (1) of Section 439 of the Criminal Procedure Code authorised the High Court to exercise in its discretion any of the powers conferred on a court of appeal by Section 423, yet sub-section (4) specifically excludes the power to convert a finding of acquittal into one of conviction". It is observed that "at that stage the Revisional Court stops short of finding the accused guilty and passing sentence on him by ordering a retrial". What order should be passed by the High Court in a revision application against the order of acquittal, while exercising the revisional jurisdiction, has been dealt with and considered in para 11, which reads as under : (AIR p. 1794)

"11. The next question is what order should be passed in a case like the present. The High Court also considered this aspect of the matter. Two contingencies arise in such a case. In the first place there may be an acquittal by the trial court. In such a case if the High Court is justified, on principles we have enunciated above, to interfere with the order of acquittal in revision, the only course open to it is to set aside the acquittal and send the case back to the trial court for retrial. But there may be another type of case, namely, where the trial court has convicted the accused while the appeal court has acquitted him. In such a case if the conclusion of the High Court is that the order of the appeal court must be set aside, the question is whether the appeal court should be ordered to rehear the appeal after admitting the statement it had ruled out or whether there should necessarily be a retrial. So far as this is concerned, we are of opinion that it is open to the High Court to take either of the two courses. It may order a retrial or it may order the appeal court to rehear the appeal. It will depend upon the facts of each case whether the High Court would order the appeal court to rehear the appeal or would order a retrial by the trial court. Where, as in this case, the entire evidence is there and it was the appeal court which ruled out the evidence that had been admitted by the trial court, the proper course in our opinion is to send back the appeal for rehearing to the appeal court. In such a case the order of the trial court would stand subject to the decision of the appeal court on rehearing. In the present case it is not disputed that the entire evidence has been led and the only defect is that the appeal court wrongly ruled out evidence which was admitted by the trial court. In the circumstances we are of opinion that the proper course is to direct the appeal court to rehear the appeal and either maintain the conviction after taking into consideration the evidence which was ruled out by it previously or to acquit the accused if that is the just course to take. We should like to add that the appeal court when it rehears the appeal should not be influenced by any observations of the High Court on the appreciation of the evidence and should bring to bear its own mind on the evidence after taking into consideration that part of the evidence which was considered inadmissible previously by it. We therefore allow the appeal subject to the modification indicated above."

9.2. In *Ram Briksh Singh* [*Ram Briksh Singh v. Ambika Yadav*, (2004) 7 SCC 665 :

2004 SCC (Cri) 2009] , after considering the decision in *K. Chinnaswamy Reddy* [*K. Chinnaswamy Reddy v. State of A.P.*, 1962 SCC OnLine SC 32 : AIR 1962 SC 1788] and earlier decision in *D. Stephens v. Nosibolla* [*D. Stephens v. Nosibolla*, 1951 SCC 184] , it is observed and held that the High Court in a revision application against the order of acquittal and while exercising the powers of the Revisional Court can set aside an order of acquittal and remit the case for retrial where material evidence is overlooked by the trial court.

9.3. Again, in *Sheetala Prasad* [*Sheetala Prasad v. Sri Kant*, (2010) 2 SCC 190 : (2010) 2 SCC (Cri) 1002] , it is reiterated that Section 401(3)CrPC prohibits conversion of a finding of acquittal into one of conviction and in such cases retrial or rehearing of the appeal might be ordered.

10. Applying the law laid down by this Court in the aforesaid decisions and on a plain reading of sub-section (3) of Section 401CrPC, it has to be held that sub-section (3) of Section 401CrPC prohibits/bars the High Court to convert a finding of acquittal into one of conviction. Though and as observed hereinabove, the High Court has revisional power to examine whether there is manifest error of law or procedure, etc. however, after giving its own findings on the findings recorded by the court acquitting the accused and after setting aside the order of acquittal, the High Court has to remit the matter to the trial court and/or the first appellate court, as the case may be."

13. Reverting to the case in hand, there is no doubt that the respondent pleaded guilty before the court of the Judicial Magistrate First Class. Overlooking this aspect of the case, the learned Sessions Judge has disposed of the appeal by allowing the same. Therefore, the impugned judgment dated 21.03.2025 passed by the learned Sessions Judge, Dibrugarh is bad in law. The judgment dated 21.03.2025 passed by the learned Sessions Judge, Dibrugarh in Criminal Appeal No.36(3)/2024 is set aside.

14. The matter is remanded to the court of the Sessions Judge, Dibrugarh for deciding the issues afresh. The Criminal Revision Petition is disposed of accordingly.

Send back the LCR.

JUDGE

Comparing Assistant