

**APPENDIX -12**

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS**

**Present:** Smt. Darshana Nath, JMFC, SONITPUR, TEZPUR

**[Date of the Judgment]**

09.09.2022

[ CR Case No 38 of 2009]

(Details of FIR/ Crime and Police Station)

|                                   |  |
|-----------------------------------|--|
| <b>COMPLAINANT :</b>              | Dr. Hosagrahar Dhattatreya<br>Chief Executive Officer<br>M/S Institute of Integrated Resource Management                       |
| <b>COMPLAINANT REPRESENTED BY</b> | Sri Sudesh Singh, learned counsel.<br>Tapan Ghosh, learned counsel<br>Pankaj Nath, learned counsel<br>Ameli Saikia, and Others |

|                       |   |
|-----------------------|---|
| <b>ACCUSED</b>        | <p>1) Pathali Pahar Rangati Dugdha Utpadan Sommitee</p> <p>2) Bhadreswar Thakur<br/>President, and</p> <p>3) Lohit Kakoti<br/>Secretary<br/>Pathali Pahar Rangati Dugdha Utpadan Sommitee</p> |
| <b>REPRESENTED BY</b> | Sri Paramjit Singh Sethi  |

**APPENDIX -13**

|                                    |             |
|------------------------------------|-------------|
| Date of Offence                    |             |
| Date of FIR.                       |             |
| Date of Charge-sheet               |             |
| Date of Offence Explain            | 22-06-2009  |
| Date of commencement of evidence   | 19-08-2015, |
| Date on which judgment is reserved | 03-08-2022, |

|                                      |   |
|--------------------------------------|---|
|                                      | 16-08-2022,<br>30-08-2022   |
| Date of the Judgment                 | 09.09.2022  |
| Date of the Sentencing Order, if any | The accused persons are convicted and sentenced to undergo RI for 3 (three) months and to pay fine of Rs. 20,00,000/- (Rupees twenty lacs only) i/d RI for two (2) months on their conviction u/s 138 of the Negotiable Instrument Act, 1881. |

**ACCUSED DETAILS:**

| Rank of the Accused | Name of Accused                              | Date of Arrest | Date of Release on Bail | Offences charged with | Whether Acquitted or convicted | Sentence Imposed   | Period of Detention undergone during Trial for purpose of Section 438, Cr.P.C. |
|---------------------|--|----------------|-------------------------|-----------------------|--------------------------------|--|--|
| NGO                 | Pathali Pahar Rangati Dugdha Utpadan Somitee | Nil            | Nil                     |                       |                                | Nil  | Nil  |
| A2                  | Bhadreswar Thakur                            | Nil            |                         | Section 138           | convicted                      | 3 months R.I. and fine of Rs. 20,00,000/- (Rupees twenty lacs only) i/d RI for two (2) | Nil  |

|    |                 |     |  |                |           |   |     |
|----|-----------------|-----|--|----------------|-----------|---|-----|
|    |                 |     |  |                |           | months  |     |
| A3 | Lohit<br>Kakoti | Nil |  | Section<br>138 | convicted | 3 months<br>R.I. and fine<br>of Rs.<br>20,00,000/-<br>(Rupees<br>twenty lacs<br>only) i/d RI<br>for two (2)<br>months | Nil |

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST  
CLASS AT SONITPUR, TEZPUR**

**PRESENT: DARSHANA NATH,  
MA, LL.M, AJS  
JMFC, Sonitpur, Tezpur**

**CR CASE NO: 38/09**

U/S 138 of NI Act, 1881

**Complainant:** Dr. Hosagrahar Dhattatreya

Chief Executive Officer

M/S Institute of Integrated Resource  
Management

VS.

**Accused persons:** 1) Pathali Pahar Rangati Dugdha Utpadan  
Sommittee

2) Bhadreswar Thakur

President, and

3) Lohit Kakoti

Secretary

Pathali Pahar Rangati Dugdha Utpadan  
Sommittee

Evidence recorded on : 23/12/2019

Arguments heard on : 19/07/2022

Judgement delivered on : 09/09/2022

Appearing for complainant : Sri Sudesh Singh and ors.  
Appearing for Defence : Sri P. Sethi

### **JUDGMENT**

1. This is a case instituted under section 138 of the Negotiable Instruments Act, 1881 alleging that the accused persons, A2 and A3 had issued one cheque in favour of the complainant which was dishonoured due to the reasons of "insufficient fund".
2. The brief facts giving rise to the institution of this complaint case inter alia is that the complainant is a society registered under the Societies Registration Act, 1860 and also registered u/s 12AA of the Income Tax Act, 1961 and the accused A1 is an NGO. The accused persons A2 and A3 as office bearer of A1 gave a cheque bearing no. 0106389 dated 26/11/08 for Rs. 13,00,000/- (Rupees Thirteen lacs) only drawn on Assam Gramin Vikash Bank, Narayanpur Branch. On an earlier occasion also, the same accused issued a cheque bearing no. 0106386 dated 16/09/08 for the same amount. The earlier cheque was dishonoured and a notice was issued through advocate to the accused persons. On receipt of notice, the accused appeared and gave a fresh cheque dated 26/11/08. But this cheque was also dishonoured as there was "insufficient funds" in the account of the accused persons and the banker of the complainant returned the said cheque back to it along with an intimation and a covering letter of 15/12/08.
3. The complainant then sent a legal notice dated 23/12/2008 through its advocate by registered post to

the accused under clause (b) of the proviso to section 138 of the Negotiable Instrument Act, 1881 bringing to the knowledge of the accused the dishonour of the cheque due to insufficiency of fund. The complainant requested the accused to make the payment within a period of fifteen days from the date of receipt of the said notice. All accused received the notice on 27/12/08 as they signed on the acknowledgement cards.

4. But despite such notice, the accused failed to pay the amount. Hence, the instant complaint before the court.
5. After taking cognizance of the offence, summons were issued to the accused persons. Accused persons appeared in pursuance of the summons; then also enlarged on bail and after compliance of section 207 CrPC as well as hearing of both sides, the court explained and read over the substance of accusations u/s 138/142 of the NI Act, 1881 to the accused to which they pleaded not guilty and claimed to be tried.
6. During the course of trial, the complainant side examined as many as one witness, i.e., complainant. On closure of the evidence of the complainant, the statement of the accused was recorded u/s 313 CrPC. Accused adduced three witnesses in their defence.
7. Heard the argument advanced by the learned counsels of both sides and arrived at the conclusion as follows:

### **POINTS FOR DETERMINATION**

8. Whether the accused on 26/11/08 issued cheque no. 0106389, drawn from the bank account maintained by them, in favour of the complainant for the amount of Rs. 13,00,000/- (Rupees Thirteen lacs only) to discharge his

any debt or other liability? If yes, whether or not, the accused persons are punishable u/s 138/142 of NI Act?

**PLEA OF THE ACCUSED/DEFENCE**

9. In this case, the accused persons denied the allegation levelled against them. Further the accused A3 stated in his statement recorded u/s 313 CrpC that he took loan from the complainant. At that time, he signed a blank cheque. The loan amount was **repaid** by the accused persons in cash. Accused A2 stated that he said same thing that he and A3 took loan from the complainant and signed blank cheque. They repaid the loan amount in cash. They stated that after receiving notice, they met the complainant; but the latter asked them to wait and later filed the case in the meantime.

**DETERMINATION OF POINT, DISCUSSION, DECISION AND REASONS THEREOF**

10. PW1 is the CEO of Institute of Integrated Resource Management (IIRM). He stated that his organization is an NGO and has been registered under the Societies Registration Act, 1860 and has also been registered u/s 12AA of the Income Tax Act, 1961. Complainant organization IIRM has been providing loans (micro) to the rural people so that they can borrow and utilise the same for business or agricultural purposes. Accused A1 being an NGO approached IIRM with request to extend loan to its 44 members and passed a resolution on 15/12/06 authorising its 44 members to sign papers with IIRM. Accordingly accused A2 and A3 along with one Lakhiram Saikia and Shyam Kalita signed a Deed of Undertaking on 18/12/06. The loan to 44 members was to be released in phased

manner as the verbal advice of accused A1. IIRM extended loan of Rs. 19,85,000/- on different dates to 44 members of the accused A1 on active advices of accused A2 and A3. After receiving loan, accused A2 and A3 as office bearers of accused A1 gave a cheque bearing no. 0106389 dated 26/11/08 for Rs. 13,00,000/- drawn on Assam Gramin Vikash Bank (AGVB), Barbali Branch. On earlier occasion also, the accused persons issued a cheque bearing no. 0106386 dated 16/09/08 for the same amount. The earlier cheque was dishonoured and a notice was issued through advocate to the accused persons. On receipt of notice, the accused appeared and gave a fresh cheque dated 26/11/08. But this cheque was also dishonoured as there was "insufficient funds" in the account of the accused persons and the banker of the complainant returned the said cheque back to it along with an intimation and a covering letter of 15/12/08. The complainant then sent a legal notice dated 23/12/2008 through its advocate by registered post to the accused under clause (b) of the proviso to section 138 of the Negotiable Instrument Act, 1881 bringing to the knowledge of the accused the dishonour of the cheque due to insufficiency of fund. The complainant requested the accused to make the payment within a period of fifteen days from the date of receipt of the said notice. All accused received the notice on 27/12/08 as they signed on the acknowledgement cards.

- 11.** In cross-examination, he stated that he is not fluent in Assamese, but he knows simple conversation in Assamese conversation. He admitted that officers of IIRM sanctioned loan to 44 people of the accused A1. His organization is a micro finance institution and he does not possess any kind of licence to run the

institution. Private and nationalized banks used to lend money to IIRM for loan purposes. He has not submitted any kind of document about receiving money from lending institutions in the court. He denied the suggestion that IIRM had deducted 12% of the amount of loan as margin money from different loans. He stated that IIRM gave loan direct to 44 members of the accused A1 and loan was sanctioned in the last part of 2006-07. He stated that part loans were repaid by the accused A3 in following manner-

**12.**

\*Ext. C - receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 16,254/- on 04/01/2008 and

\*Ext. D - receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 27,631/- on 17/01/2008

\*Ext. E - receipt issued by IIRM whereby accused A3 had made loan repayment of 23,601/- on 25/01/2008

\*Ext. F - receipt issued by IIRM whereby accused A3 had made loan repayment of 23,027/- on 28/01/2008

\*Ext. G - receipt issued by IIRM whereby accused A3 had made loan repayment of 23,027/- on 28/01/2008

\*Ext. H - receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 13,545/- on 05/02/2008

\*Ext. I - receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 13,545/- on 05/02/2008

\*Ext. J - receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 31,154/- on 27/12/2007

\*Ext. K - receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 23,992/- on 24/12/2007

\*Ext. L - receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 18,906/- on 04/03/2008

\*Ext. M - receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 16,254/- on 08/04/2008

\*Ext. N - receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 25,193/- on 18/12/2007

\*Ext. O - receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 16,255/- on 05/12/2007

\*Ext. P – not issued by complainant

\*Ext. Q - receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 16,250/- on 05/11/2007

\*Ext. R - receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 32,119/- on 23/10/2007

\*Ext. S – receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 39,281/- on 28/08/2007.

\*Ext. T - receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 33,862/- on 21/09/2007.

**13.** He did not agree with receipts dated 26/10/07, 18/07/07, 23/07/07, 31/07/07, 17/08/07, 24/08/07 and 27/09/07, i.e., a total amount of Rs. 2,12,567/- was not repaid by the accused persons as they claimed according to the complainant. As per claimed made by the complainant a total amount of Rs. 6,85,000/- was

repaid by the accused persons against the total loan amount of Rs. 19,85,000/-.

- 14.** PW1 stated that he has not submitted any annual assessment of income tax since 2005, neither he has submitted any document sharing receipts of money from banks or other financial institutions. He did not mention the amount of loan received from 44 members. He stated that he obtained security for payment of loan to 44 members from accused A1 in the form of loan production fund only.
- 15.** After analyzing evidence of PW1, it is seen that as per claimed by PW1, a total amount of 6,85,000/- is repaid by the accused A1 to the IIRM against loan of Rs. 19,85,000/- given by the latter to the former.
- 16.** In statement recorded u/s 313 CrpC, the accused persons A2 and A3 stated that they took loan from the complainant. At that time, they signed a blank cheque. The loan amount was **repaid** by the accused persons in cash. They stated that after receiving notice, they met the complainant; but the latter asked them to wait and later filed the case in the meantime. Defence adduced three (3) witnesses in their support.
- 17.** DW1, i.e., accused A3 in his examination-in-chief stated that he is the secretary and accused A3 is the president of accused A1. He stated that IIRM approached accused A1 to provide loan to them on suggestion of some Arun Dairy. At the time of grant of loan, IIRM asked for two cheques for security purpose and accordingly he issued two blank cheques from his personal account. IIRM sanctioned a loan for an amount of Rs. 19,85,000/- in the name of accused A1.

The loan was disbursed to 44 members of accused A1 after deducting 12% margin money, 2.5% processing charge, 1.5% loan protection fund and Rs. 50 per head membership fees. After that IIRM asked for two blank cheques from president and secretary of accused A1 and two cheques were issued by accused A3 and A2. The members used to pay the instalments in cash and subsequently the loan was extended up to Rs. 59,95,000/-. During grant of the extended loan amount, they deducted Rs. 9,65,000/- on account of processing fees, membership fees etc. The accused A1 has already paid an amount of Rs. 62,03,760/- with excess payment of Rs. 2,08,760/-. Ext. A(1) to A(18) are the money receipts issued by branch manager of IIRM. Ext. B(1) to B(30) are the money acknowledgment receipts. Ext. C to Z are the money receipts and acknowledgement given to accused A3.

**18.** In cross examination he stated that he along with accused A3 took responsibility of repaying the loan amount sanctioned to the accused A1. He failed to identify the blank cheques in the court. He admitted that Ext.17 is declaration paper and he put his signatures. Further he admitted that Ext. 17(1) and Ext. 17(2) are his signatures. On one hand he stated that his signature was obtained in blank stamp paper by the complainant, on the other hand he admitted that he was shown a declaration where he put his signatures.

**19.** Accused A3 submitted two views and his evidence that his signature was obtained in blank stamp paper by the complainant contradicts his evidence that he was shown a declaration where he put his signatures. Hence, credibility of evidence given by DW1, i.e., accused A1 is not satisfactory.

**20.** DW2 stated that he was the president of accused A1. He admitted that he took loan amounting to Rs. 59,95,000/-. Loan was received by the president and secretary, i.e., accused A2 and A3. IIRM granted loan of Rs. 50,29,000/- to the accused A1 by deducting 15% of loan amount as margin money along with 3% loan protection fund and some processing charges. He stated that IIRM obtained 3 cheques for security purpose from accused A2 and A3. Members of accused A1 repaid amount of Rs. 62,03,700/- to IIRM. Exhibits A(1) to A(18) are the receipts of repayment of loan amount to IIRM. Exhibits B(1) to B(30) are issued by IIRM for deduction of membership fees, LPF and margin money. Ext. C to Ext. X are the loan repayment receipts with effects from 2007-08.

**21.** In cross examination he stated that he received notices, i.e., Ext 7 and Ext. 8 from IIRM. He admitted that Ext. 18 is the declaration and Ext. 18(1) and Ext. 18(2) are his signatures.

**22.** DW3 stated that he knew both complainant and accused persons. He is the member of accused A1. He stated that the complainant gave them approximately Rs. 19,00,000/- as loan and deducted from loan amount in three phases- firstly 1.5% of loan was deducted as loan protection fund, 2.5% was deducted as processing charge and Rs. 50/- per member was deducted as membership fees. On average about Rs. 40,000/- was received as loan from the complainant society by each of the 44 members. He was present at the time of taking loans. At the time of availing loan accused A2 and A3 gave two blank cheque to the complainant as security. Subsequently, on application of accused A1, complainant extended loan to Rs. 59,95,000/-. Out of this loan amount, the complainant

deducted approximately Rs. 9,00,000/- and the accused A1 repaid Rs. 62,03,000/- to the complainant. The accused A1 paid an excess amount of Rs. 2,00,000/- to the complainant.

**23.** In cross examination, he admitted that Ext 1(3) and 1(4) are his signatures on Ext. 1. He also recognized the signatures of accused A2 and A3 on Ext. 1 as Ext. 1(1) and Ext. 1(2) respectively. He stated that he had not seen the accounts of accused A1 regarding repayment of Rs. 62,03,000/- to the complainant.

**24.** Heard the arguments of complainant counsel and defence counsel. I have perused the materials available on record.

**25.** Complainant relied on section 118 read with section 139 of N.I. Act. **Section 118** reads as: "That every negotiable instrument was made or drawn for consideration and that every such instrument when it has been accepted, endorsed, negotiated or transferred for consideration." Further **section 139** reads as: "It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, or any debt or other liability."

**26.** Learned counsel of the complainant relied upon the decision of Hon'ble Supreme Court in ***Sripati Singh vs. The State of Jharkhand and Anr. [Criminal Appeal No.s 1269-1270 of 2021]***. Learned counsel for the complainant stated that a cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper. Security is something given as a pledge of

payment. If it is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. He submitted that under provision of section 139 of the NI Act, 1881; it is mandatory for the court to presume that the holder of the cheque has received the cheque for discharge, in whole or part, of a debt or any other liability.

- 27.** Learned counsel on behalf of the complainant relied on another decision of Hon'ble Supreme Court in ***M/S KALAMANI Tex and Anr vs P Balasubramanian [Criminal Appeal No. 123 of 2021]*** wherein it is stated that the statute [NI Act] mandates that once the signature(s) of an accused on the cheque/negotiable instrument are established, then these 'reverse onus' (presumptions drawn u/s 118 and 139 of the NI Act) clauses become operative.
- 28.** Learned counsel of the complainant relied upon another decision of Hon'ble Apex Court- ***Bir Singh vs Mukesh Kumar [Criminal Appeal no. s 230-231 of 2019]***, it is stated that the object of section 138 of the Negotiable Instruments Act is to infuse credibility to negotiable instruments including cheques and to encourage and promote the use of negotiable instruments including cheques in financial transactions. The penal provision of of section 138 of the Negotiable Instruments Act is intended to be a deterrent to callous issuance of negotiable instruments such as cheques without serious intention to honour the promise implicit in the issuance of the same.
- 29.** Ld counsel for the complainant submitted that the evidence of the complainant successfully corroborated the fact averred in the complaint and there is no room

for any doubt to disbelieve the testimony of prosecution witness as well as commission of offence u/s 138 of the N.I. Act. Hence, he prayed to convict the accused and to pass necessary compensation order to relief the complainant.

**30.** Ld counsel of the accused relied on the decision of the Hon'ble Apex Court - ***Vijay vs. Laxman and Anr. [Criminal Appeal No. 261 OF 2013]*** wherein it is stated that "the standard of proof required for rebutting the presumption under sections 118 and 139 of the N.I. Act is not as high as that required of the prosecution and is rebuttable on the preponderance of probabilities. So long as the accused can make his version reasonably probable, the burden of rebutting the presumption would stand discharged."

**31.** Ld counsel on behalf of the accused relied on another decisions of the Apex court in ***B. Krishna Reddy vs. Syed Hafeez Per Lr Smti Naseema Begum and Anr [Criminal Appeal No. 1509 of 2019]***. As no document was produced and no evidence was given by the respondent (complainant) against the appellant (accused), the Apex court restored the judgment and order of acquittal passed by the Trial Court.

**32.** On careful reading of the decision relied by the accused, this court finds that existence of the debt and liability on behalf of the appellant (accused) has been discarded in each decision on the ground that the complainant failed to produce any evidence against the accused and the accused successfully rebutted the claims of the complainant.

**33.** Learned counsel of the accused has submitted that the contents of Ext. 17 and Ext. 18 could not be proved by the complainant and the complainant ceased to examine official witness to his case. The burden lied on the complainant could not be proved by the complainant and hence, he prayed to acquit the accused.

**34.** The Hon'ble Gauhati High Court, while discussing the provision of section 139 of the NI Act in the case of ***Manik Lodh vs State of Assam, reported in 2007(3) GLT 207***, held that the presumption under section 139 of the NI Act is a presumption of law as distinguished from a presumption of fact and the said presumption of law cannot be discharged by offering an explanation alone. In view of the expression "unless the contrary is proved" which occurs in section 139 of NI Act, it has to be proved that the explanation given is true. Presumptions are always rebuttable and defence may rebut the same either by bringing on record material extracted by cross examining the prosecution witnesses or by adducing defence evidence.

**35.** No doubt, the above mentioned presumptions of law are rebuttable in nature. The accused can take probable defence in the scale of preponderance of probability to rebut the presumption available to the complainant. Let me examine whether the accused has successfully rebutted the said presumptions of law.

**36.** Section 58 of the Evidence Act reads as: "No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have

admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

**37.** In the instant case, the accused persons admitted the facts that they took a loan of Rs. 19,85,000/- which subsequently extended to 59,95,000/- and received notice to repay it. Hence, there is no doubt that the accused took loan from the complainant as the accused admitted it.

**38.** The complainant claimed only for loan amount of Rs. 13,00,000/- for which the cheque was bounced. The complainant did not mention about Rs. 59,95,000/- either in complaint petition or in his evidence. He only claimed regarding cheque bearing no. 0106389 dated 26/11/08 for Rs. 13,00,000/-. From the Ext. 2(1) to Ext. 2(44), it is clearly proved that the complainant gave loan of Rs. 19,85,000/- which the accused failed to rebut. Hence the court considers Rs. 13,00,000/- as disputed amount.

**39.** The accused persons failed to submit any documents which could prove their claim that they repaid the amount of Rs. 62,03,760/- to the complainant. When they claimed repayment of loan, burden shifts from the complainant to the accused persons to prove it. But neither any document nor their evidence recorded could prove the re-payment of Rs. 62,03,760/-.

**40.** Exhibit 1 shows that accused persons A2 and A3 took the responsibility of repayment of any debt incurred by accused A1. In cross examination both accused A3, i.e., DW2 and A2, i.e., DW3 admitted the

fact that they gave undertaking before IIRM by which they took responsibility to repay loans.

**41.** In cross examination, DW1 stated that he has not submitted any accounts to prove that he has no liability against Ext.3 and Ext.4. Rather he admitted that they opened account in AGVB, Borbali Branch against which Ext.3 and Ext.4 were issued. He and DW2 received statutory notice (Ext. 7 and Ext. 8) prior to institution of the case, but they did not respond to the said notices. Moreover, he also admitted that Ext. 17(1) and Ext. 17(2) are his signatures in Ext. 17.

**42.** DW2 in his cross examination stated that Ext. 3(1) in Ext. 3 and Ext. 4(1) in Ext. 4 along with Ext. 18(1) and Ext. 18(2) in Ext. 18 are his signatures. Hence, the evidence given by DW1 and DW2 regarding signatures can be corroborated with the evidence given by the PW1.

**43.** The discussion on evidence and other materials on record coupled with the decisions laid down by the Hon'ble Apex court reveals that the complainant successfully and satisfactorily proved the basic components of the offence u/s 138 of the Negotiable Instrument Act, 1881 and the accused persons A2 and A3 are liable for the consequence of the dishonour of the cheque. Hence, the point is decided in favour of the complainant and against the accused.

### **CONCLUSION AND FINDING**

**44.** From the decisions and discussions made above, it can be safely concluded that the complainant side has successfully and satisfactorily brings home the guilt of the accused for commission of offence u/s 138 of the

Negotiable Instrument Act, 1881 and accordingly the accused persons A2 and A3 are convicted u/s 138 of the Negotiable Instrument Act, 1881.

### **SENTENCE HEARING**

**45.** Heard the accused on the point of sentence proposed to be imposed on him. Accused persons stated that they are teachers in Govt school and sole earners of their families. They have no criminal records. Accordingly, they prayed to have lenient view at the time of dealing their conviction.

### **PROBATION**

**46.** From the nature and circumstances of the commission of the offence, it appears that the convicts committed the offence to the complainant society from whom they used to borrow loan and the complainant was deprived from lending money to the needy institutions or persons due to the commission of the offence by the accused persons. Considering overall socio-economic nature of the offence and the impact of such acts on business transactions, I am of the opinion that granting the benefits of probation might send a wrong message to the victim.

**47.** Moreover, a court of law is bound not just to see that the actual offender receives a punishment commensurate to his crime but also to see that potential offenders are deterred from committing similar offence. As such I am disinclined to extend the benefits of the Probation of Offenders Act to the convicts.

**SENTENCE AND ORDER**

- 48.** I have considered the quantum of sentence to be imposed upon the convicts. Section 138 of the Negotiable Instrument Act, 1881 carries punishment of imprisonment of either description for a term which may extend to two years, while fine may extend to twice the amount of cheque.
- 49.** Considering all, the convicts are hereby sentenced to undergo RI for 3 (three) months and to pay fine of Rs. 20,00,000/- (Rupees twenty lacs only) i/d RI for two (2) months on their conviction u/s 138 of the Negotiable Instrument Act, 1881.
- 50.** The fine amount shall be given to the complainant as compensation u/s 357(1)(b) CrPC.
- 51.** Any period of jail custody already undergone shall be set off against the sentence of imprisonment as per Section 428, Criminal Procedure Code.
- 52.** His bail bonds are extended for a further period of 6 (six) months as per the provisions of Section 437-A, Criminal Procedure Code. Let the items, which were seized in connection with this case, be returned to the rightful owners in due course.
- 53.** Free copies of the judgment shall be furnished to the convicts u/s 363(1) CrPC.
- 54.** The judgment is given under my hand with the seal and sign of the court and pronounced and

delivered in the open court in presence of the parties  
on 9<sup>th</sup> day of September, 2022.

Typed by me:

Darshana Nath  
JMFC, Sonitpur, Tezpur

**APPENDIX -14**  
**LIST OF PROSECUTION / DEFENCE / COURT**  
**WITNESSES**

**A. Prosecution:**

| <b>RANK</b> | <b>NAME</b>                | <b>NATURE OF EVIDENCE</b><br>(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS) |
|-------------|----------------------------|---|
| PW1         | Dr. Hosagrahar Dhattatreya | complainant   |

**B. Defence Witnesses, if any :**

| <b>RANK</b> | <b>NAME</b>       | <b>NATURE OF EVIDENCE</b><br>(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS) |
|-------------|-------------------|---|
| DW1         | Bhadreswar Thakur | Accused   |
| DW2         | Lohit Kakoti      | Accused   |
| DW3         | Lakhi Saikia      | Other witness   |

**C. Court Witnesses, if any :**

| <b>RANK</b> | <b>NAME</b> | <b>NATURE OF EVIDENCE</b><br>(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS) |
|-------------|-------------|---|
| Nil         | Nil         | Nil   |

**LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS**

**A. Prosecution:**

| <b>Sr. No</b> | <b>Exhibit Number</b> | <b>Description</b> |
|---------------|-----------------------|--------------------|
|---------------|-----------------------|--------------------|

|    |          |   |
|----|----------|---|
| 1. | Ext. C - | receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 16,254/- on 04/01/2008 and |
| 2. | Ext. D - | receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 27,631/- on 17/01/2008     |
| 3. | Ext. E - | receipt issued by IIRM whereby accused A3 had made loan repayment of 23,601/- on 25/01/2008         |
| 4. | Ext. F - | receipt issued by IIRM whereby accused A3 had made loan repayment of 23,027/- on 28/01/2008         |
| 5. | Ext. G - | receipt issued by IIRM whereby accused A3 had made loan repayment of 23,027/- on 28/01/2008         |
| 6. | Ext. H - | receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 13,545/- on 05/02/2008     |
| 7. | Ext. I - | receipt issued by IIRM whereby accused A3 had made loan repayment of                                |

|     |          |   |
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| 8.  | Ext. J - | Rs. 13,545/- on 05/02/2008<br>receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 31,154/- on 27/12/2007 |
| 9.  | Ext. K - | receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 23,992/- on 24/12/2007                               |
| 10. | Ext. L - | receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 18,906/- on 04/03/2008                               |
| 11. | Ext. M - | receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 16,254/- on 08/04/2008                               |
| 12. | Ext. N - | receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 25,193/- on 18/12/2007                               |
| 13. | Ext. O - | receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 16,255/- on  |

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| 14. | Ext. P             | 05/12/2007<br>not issued by complainant  |
| 15. | Ext. Q             | receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 16,250/- on 05/11/2007  |
| 16. | Ext. R             | receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 32,119/- on 23/10/2007  |
| 17. | Ext. S             | receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 39,281/- on 28/08/2007. |
| 18. | Ext. T             | receipt issued by IIRM whereby accused A3 had made loan repayment of Rs. 33,862/- on 21/09/2007. |
| 19. | Ext. A(1) to A(18) | the money receipts issued by branch manager of IIRM  |
| 20. | Ext. B(1) to B(30) | the money acknowledgment receipts issued by complainant society                                  |

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| 21. | Exhibit-1             | The Deed of Undertaking. Exhibit-1(1) and 1(2) are The signature of accused A2 & A3.       |
| 22. | Exhibit-2(1) to 2(44) | The Payment Voucher showing payment of loan amount to the members of the accused A1.       |
| 23. | Exhibit-3             | Cheque no. 0106386 of Assam Gramin Vikash Bank, Barbali Branch, dated 16/09/2008           |
| 24. | Exhibit-3(1)          | the signature accused A2   |
| 25. | Exhibit-3(2)          | the signature of accused A3.   |
| 26. | Exhibit-4-            | Cheque no. 0106389 of Assam Gramin Vikash Bank , Barbali Branch, dated 26/11/2008          |
| 27. | Exhibit-4(1) &        | the signature accused A2   |
| 28. | Exhibit-4(2)          | the signature of accused A3.   |
| 29. | Exhibit 5 & 5(1)      | the Cheque returning memos of Assam Gramin Vikash Bank, Narayanpur Branch, dated 16/09/08. |

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| 30. | Exhibit-6 & 6(1)               | the Cheque returning memos of Assam Gramin Vikash Bank, Narayanpur Branch, dated 15/12/08.                      |
| 31. | Exhibit-7- and Exhibit-7(1)    | the Copy of the notice dated 30/09/08 issued on the accused by Sri Sudesh Kr. Singh, Advocate and his signature |
| 32. | Exhibit-8- is the Exhibit-8(1) | Copy of the notice dated 23/12/08 issued on the accused y Sri Sudesh Kr. Singh, Advocate. his signature         |
| 33. | Exhibit-9(1) & 9(2)            | the Postal receipt No. RLAD B 4752 and RLAD B 4753 dated 30/09/08.  |
| 34. | Exhibit-10(1) to 10(3)         | Postal receipt No. RLAD C 808, RLAD C 807 RLAD C 811 dated 23/12/08.  |
| 35. | Exhibit-11(1) to 11(4)         | the A/D cards dated 10/10/08 & 27/12/08.  |

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| 36. | Exhibit-12    | the letter written by advocate to the Postal dept. Dated 13/10/08.                                    |
| 37. | Exhibit-12(1) | His signature   |
| 38. | Exhibit-13    | the letter written from the Postal Dept. regarding delivery of the said notice dated 30/10/08.        |
| 39. | Exhibit-14    | the Registration Certificate issued by Registrar of Societies, Assam.                                 |
| 40. | Exhibit-15    | the Order u/s 12AA of the Income Tax Act, 1961, issued by the Commissioner of Income Tax, Guwahati-1. |
| 41. | Exhibit-16    | the Memorandum of Association of the institute.   |

**B. Defence:**

| <b>Sr. No</b> | <b>Exhibit Number</b> | <b>Description</b> |
|---------------|-----------------------|--------------------|
| Nil           | Nil                   | Nil                |

**C. Court Exhibits:**

| <b>Sr. No</b> | <b>Exhibit Number</b> | <b>Description</b> |
|---------------|-----------------------|--------------------|
| Nil           | Nil                   | Nil                |

**D. Material Objects**

| <b>Sr. No</b> | <b>Exhibit Number</b> | <b>Description</b> |
|---------------|-----------------------|--------------------|
| Nil           | Nil                   | Nil                |
|               |                       |                    |

Darshana Nath  
JMFC  
Sonitpur, Tezpur