

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE  
SONITPUR AT TEZPUR**

PRESENT : Smt. M.R. Sharma  
Additional Sessions Judge  
Sonitpur, Tezpur

**CRIMINAL REVISION NO. 47 (S-3) OF 2011**

[ Revision Petition filed u/s 397 Cr.P.C. against the Order dated 01-07-2011 passed by Smt. S. Rabha, Judicial Magistrate, 1st class, Tezpur, in connection with C.R. Case No. 679 / 2009 ]

Sri Manash Lahkar .... **Petitioner**

-VERSUS-

Sri Sanjoy Bora .... **Respondents**

**ADVOCATES WHO APPEARED IN THIS CASE**

For the petitioners : Sri K.P. Singh, Advocate

For the Respondents : Sri N. M. Goswami,  
Advocate

Date of Argument : 02-02-2013

Date of Judgment : **02-02-2013**

**J U D G M E N T**

This Criminal Revision has been registered on a petition No. 1139 dated 25-07-2011, Under Section 397, Cr.P.C. against the Order dated 01-07-2011 passed by Smt. S. Rabha, Judicial Magistrate, 1st class, Tezpur, in connection with C.R. Case No. 679 / 2009, allowing the complainant-respondent to bring postal official as a witness.

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**2.** The case of the revision petitioner is that the respondent of the present case i.e. complainant in the CR Case lodged a complaint u/s 138 of the Negotiable Instruments Act before the learned Chief Judicial Magistrate, Sonitpur, Tezpur. On receipt of the said complaint, learned Chief Judicial Magistrate sent the complaint petition to the Court of the Judicial Magistrate, 1st class, Tezpur for trial. During the course of trial, the complainant examined himself and one Bank Official. The revision petitioner averred in his petition that on 02-06-2011, the complainant submitted a petition being No. 2017, praying for calling the postal officials as a witness to adduce evidence though the complainant did not cite the postal official as a witness in the complaint. It is also alleged in the revision petition that during the cross-examination of the complainant, it came out that there was no confirmation of delivery of statutory notice and also the A/D Card (Ext- 5) did not bear the signature of the accused-petitioner. Even the complainant did not exhibit the notice which he allegedly sent to the accused-petitioner prior to filing of the complaint. It is also alleged by the revision petitioner that the complainant was failed to prove the service of statutory notice on the accused and thus to fill up the lacuna in his evidence, the complainant is now intends to undo the effect of cross-examination and thereby wants to take away defence of the accused. It is stated by the revision petitioner that he immediately raised protest against the said petition but the learned trial Court allowed the petition vide its order dated 01-07-2011.

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**3.** Being highly aggrieved and dissatisfied with the impugned order dated 01-07-2011 of the learned Judicial Magistrate, 1st class, Tezpur, the present petitioner has filed this criminal revision before this Court mainly on the following grounds :-

That the impugned order of the learned lower Court did not give its thoughtful considerations for allowing to bring postal officials as witness and also the said order discloses anything about the necessity of recording evidences of the said witness, could be found out ;

That the learned trial Court failed to give any reason for not citing postal officials as witness and not calling it earlier and thus, the learned lower Court mechanically allowed the same without there being any reasonable ground which is illegal;

that the impugned order the learned trial Court is illegal and improper and deserves to be interfered with.

Under the above facts and circumstances, the Revision Petitioner has prayed for setting aside the impugned Order dated 01-07-2011.

**4.** I have heard the learned counsel Sri K.P. Singh, appearing for the revision petitioner as well as the learned counsel Sri N.M. Goswami, appearing for the Respondent. I have perused the lower Court records and also all other materials available on record.

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**5.** On going through the order dated 01-07-2011, passed by the learned Judicial Magistrate, 1st class, Tezpur, allowing the petition of the complainant-respondent for bringing Postal Official as a witness relates to this case which has been filed under the provision of Sections 138 / 142 of the Negotiable Instruments Act. The record also shows that two witnesses were adduced by the complainant and thereafter a petition was filed by the complainant to allow to bring Postal Officials as witness who was not cited as witness. The complaint petition shows that the witness cited as the complainant Assistant Manager, Union Bank of India and Assistant Manager, HDFC Bank, Tezpur Branch. No other witnesses are cited. The witnesses already examined are complainant himself and the Assistant Manager, Union Bank of India, who is the cited witness. The other cited witness, namely, assistant Manager, State Bank of India has not yet been examined as is seen from the record.

**6.** This revision petition has been filed against allowing on calling the witness of the Postal Department which is allowed by the learned trial Court. The evidence shows that Ext - 5, the Notice, was not deemed to be served as the A/D Card did not bear the signature of the accused-petitioner. Under such circumstances, the respondent-complainant had filed the petition for allowing Postal persons as witnesses which was allowed. I do not find any illegality in the said order as recording the evidence of Postal witnesses will clarify the dispute of Ext - 5 regarding whether the notice was served or not. It will not in any way jeopardize the other side, as the same will be based on documents only. The adducing of such

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Postal witnesses will not in any manner fill up the lacuna or lapses of the complainant's side. I also do not find any reason to come to the conclusion that the learned trial Court mechanically allowed the prayer for adducing the evidence of Postal Department.

**7.** I, therefore, dismissed the Criminal Revision on contest with the direction that the learned trial Court will proceed with the trial and after completion of taking evidence of the cited witnesses, i.e. witness No. 2, Branch Manager Sri Surjya Baroowah, the witness of the Postal Department can be adduced to the exclusive point of whether the Notice (Ext - 5) was properly served or not. The Revision petitioner is also a liberty to cross-examine the Postal Witness as per provisions of law to that extent.

**9.** This Revision is disposed of on contest.

Return the record of CR Case No. 679 / 2009 along with a copy of judgment of this Court.

Given under my hand and seal of this Court on this **2nd day of February, 2013.**

**( M.R. Sharma )**  
**Additional Sessions Judge**  
**Sonitpur : Tezpur**

Dictated and corrected by me  
and every page bears my signature.

**( M.R. Sharma )**  
**Additional Sessions Judge**  
**Sonitpur : Tezpur**

Transcribed and Typed on dictation by me –

**( I. Goswami )**  
**Stenographer**