



TRHC010003162026

2026:THC:757

**HIGH COURT OF TRIPURA  
AGARTALA  
Crl. Rev. P. No.17 of 2026**

**Sri Sonatan Murasingh**

S/o Sri Rabi Mohan Murasingh,  
Driver of M.T. Section, Dhajanagar Police Line,  
Under S.P. (Gomati District) Udaipur, Gomati, Tripura.

----Petitioner

Versus

**1. Smt. Tinku Sarkar,**

W/O Sri Sanjay Datta,  
Of Village-Badarmukham, P.O. & P.S. R.K. Pur,  
Udaipur, Gomati Tripura.

**2. The State of Tripura**

Represented by Ld. P.P.  
High Court of Tripura, Agartala.

---- Respondents

For Petitioner(s)	:	Ms. Ruma Majumder, Adv, Mr. Bibek Banerjee, adv.
For Respondent(s)	:	Mr. Tapash Datta Majumder, Sr. Adv, Ms. Budhinika Kaipeng, Adv, Mr. Raju Datta, P.P.
Date of hearing	:	20.05.2026
Date of delivery of Judgment & Order	:	18.06.2026
Whether fit for reporting	:	YES

**HON'BLE MR. JUSTICE BISWAJIT PALIT**

**Judgment & Order(Oral)**

Heard Learned Counsel, Mr. Bibek Banerjee and  
Learned Counsel, Ms. Ruma Majumder appearing on behalf of  
the petitioner and also heard Learned Senior Counsel, Mr.  
Tapash Datta Majumder assisted by Learned Counsel, Ms.  
Budhinika Kaipeng appearing on behalf of the respondent No.1.

Learned P.P., Mr. Raju Datta also remained present at the time of hearing.

**2.** This criminal revision petition is filed under Section 437 read with Section 442 of BNSS, 2023 corresponding to Section 397 read with Section 401 of Cr.P.C. challenging the judgment and order dated 04.02.2026 passed by Learned Sessions Judge, Gomati District, Udaipur in connection with Crl. Appeal No.2 of 2025. By the said judgment, Learned Sessions Judge has affirmed the judgment and order dated 20.01.2025 passed by Learned CJM, Gomati District, Udaipur in connection with CR(NI)/17/2023 wherein the petitioner was convicted under Section 138 of N.I. Act and was sentenced to pay fine of 4,00,000/- for having committed an offence punishable under Section 138 of NI Act in default to suffer RI for 6(six) months.

**3.** Taking part in the hearing, Learned Counsel Mr. Bibek Banerjee appearing on behalf of the petitioner drawn the attention of the Court that the respondent-complainant filed one case under Section 138 of NI Act before the Learned Trial Court with an assertions that she is a business woman and her husband is a Government servant working as a constable of police and was having friendly relation with the petitioner-accused who is also serving as constable of police. During the first part of the month of February, the petitioner-accused came to the residence of the respondent-complainant asking for a loan of Rs.2,00,000/- for the purpose of construction of house at Rani. The respondent-complainant gave the loan amount of

Rs.2,00,000/- to the accused petitioner on 16.02.2022 at 5 pm in her house in presence of her husband and two other persons namely constable Suman Das and Chitta Das on condition to return the said amount within 6 months i.e. by 16.08.2022. But the petitioner-accused failed to make the payment and pursuant to repeated demand the accused petitioner on 21.11.2022 issued one cheque bearing No.022816 for an amount of Rs.2,00,000/- drawn on Tripura State Cooperative Bank, Belonia Branch. The complainant presented the said cheque to her bank at TGB, Udaipur Branch on the same day but the same was returned dishonoured on 05.12.2022. The matter was informed to the petitioner-accused but he did not make the payment for which the accused petitioner was served with the demand notice dated 09.12.2022 vide registered post which was received by him on 12.12.2022 but he did not make the payment of the same. So, the respondent-complainant filed the complaint petition before the concerned Learned Trial Court in view of the provision provided under Section 138 of NI Act.

The present petitioner, being the respondent-accused, contested the case and after conclusion of the trial, the Learned Trial Court found the present petitioner-accused to be guilty of offence and convicted him accordingly under Section 138 of NI Act and sentenced him to pay fine of Rs.4,00,000/- i.d. to suffer R.I. for 6(six) months.

The petitioner also challenged the said judgment before the Court of Learned Sessions Judge, Gomati District, Udaipur

and Learned Sessions Judge heard the parties and by a judgment dated 04.02.2026 passed in Crl. Appeal No.2 of 2025 affirmed the judgment and order of conviction and sentence delivered by Learned CJM, Gomati District, Udaipur and challenging that judgment, the present petitioner has preferred this revision petition before this Court.

Before the Learned Trial Court, to substantiate the charge the respondent-complainant adduced five numbers of witnesses and relied upon some documentary evidences which were marked as Exhibits. On the other hand, the present petitioner as respondent-accused examined himself as DW-1 and relied upon one document which was also marked as Exbt.-D1. For the sake of brevity, the name of witnesses of the parties and their exhibited documents are mentioned hereinbelow:

**LIST OF PROSECUTION/DEFENCE/COURT WITNESSES**

**A. Prosecution**

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW1	Smt Tinku Sarkar	Complainant
PW2	Sri Sanjoy Datta	Witness
PW3	Sri Suman Das	Witness
PW4	Sri Sandip Sarkar	Asstt. Manager
PW5	Sri Litan Kumar Das	Sub Post Master

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

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW1	Sri Sonatan Murashing	Accused person

**C. Court witness, if any: NIL**

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

**A. Prosecution**

Sr.	Exhibit Number	Description
-----	----------------	-------------

No.		
1.	Exbt. P1	Original cheque No. 022816 Dated 21.11.2022 drawn on Tripura State Cooperative Bank Ltd. Belonia Branch
2.	Exbt.P2	Bank Deposit Slip of Tripura Gramin Bank dated 21.11.2022
3.	Exbt.P3	Original bank return memo dated 05.12.2022 of PNB Bank
4.	Exbt.P3/1	Seal and signature on the return memo dated 28.11.2022 by the then Bank Manager
5.	Exbt. P4	Letter with endorsement of the bank
6.	Exbt. P5 series	Demand Notice dated 09.12.2022
7.	Exbt. P6	Original postal slip
8.	Exbt. P7	Original receipt on letter dated 27.12.2022
9.	Exbt. P8	Letter dated 02.02.2023 from Post Master Gokulpur regarding delivery of the demand notice
10.	Exbt. P8/1	Signature of PW 5 in a letter
11.	Exbt. P9	Endorsement of TGB Bank dated 05.12.2022 bearing the seal and signature of the then Bank Manager.

**B. Defence:**

Sr. No.	Exhibit Number	Description
1.	Exbt.D1	Original birth certificate of the younger son of the accused person

**C. Court Exhibits: NIL****D. Material Objects: NIL**

4. Learned Counsel challenging the judgment of the Learned Sessions Judge submitted that in this case no statutory notice was received by the present petitioner-accused because notice was not sent to the proper address by the complainant. Referring the alleged legal notice, Learned Counsel drawn the attention of the Court that the respondent-complainant issued notice showing two different addresses of the addressee: one as an inhabitant of village-Rani, South Buraghat, PS-Kakraban, Udaipur and another as a constable driver of M.T. Section Dhajanagar Police Line, under SP(Gomati District) and the notice was not properly served upon him rather the same was received by someone else. In this context, Learned Counsel

drawn the attention of the Court referring the letter dated 27.12.2022 written by the respondent-complainant requesting the post-master of R.K. Pur Post Office regarding service of notice which has been marked as Exbt.-P7. In reply to that, the post master of Gokulpur S.O. had written a letter to the post master of R.K. Pur H.O. on 02.02.2023 which has been marked as Exbt.-P8. From that correspondence, it is evident that the notice meant for the petitioner-accused was actually received by one Abhijit Murasingh, not by the petitioner himself resulting which the notice was not served upon him in accordance with the law.

In this regard, reliance was placed upon one judgment of Hon'ble Supreme Court in **M.D. Thomas Vs. P.S. Jaleel and another** reported in **(2009) 14 SCC 398** wherein in para No.7, Hon'ble the Supreme Court observed as under:

**"7. In the present case, the notice of demand was served upon the wife of the appellant and not the appellant. Therefore, there is no escape from the conclusion that the respondent complainant had not complied with the requirement of giving notice in terms of clause (b) of proviso to Section 138 of the Act. Unfortunately, the High Court overlooked this important lacuna in the complainant's case. Therefore, the conviction of the appellant cannot be sustained."**

Referring the same, Learned Counsel Mr. Banerjee drawn the attention of the Court that since the statutory notice as per requirement of clause (b) of the provision of Section 138 of NI Act was not served properly upon the present petitioner-accused, so, the conviction against the petitioner cannot be

sustained in pursuance of the aforesaid judgment of the Hon'ble Apex Court.

Learned Counsel further drawn the attention of the Court referring the evidence of PW-1 i.e. the respondent-complainant who in course of her cross-examination by the present petitioner-accused admitted that she received one letter from the post master of R.K. Pur Head Post office that her letter was delivered to one Abhijit Murasingh and further stated that Sonatan Murasingh is the resident of Belonia.

**5.** Learned Counsel, Mr. Banerjee thereafter drawn the attention of this Court that according to the respondent-complainant, she had paid Rs.2,00,000/- as loan to the present petitioner accused but she did not disclose from which source she got the money; even she failed to satisfy the Court her financial capacity to pay the said amount of money. Even no such documentary evidence like income tax return was submitted to satisfy the Court that she had the capacity to pay the said amount to the present petitioner-accused. In this regard, Learned Counsel has drawn the attention of the Court referring the cross-examination of the respondent-complainant wherein she specifically stated that she has not submitted any document showing her proprietorship over Datta Autospare. She further admitted that she has not submitted any bank statement showing that she has sufficient amount to give loan of Rs.2,00,000/-. Nor she submitted any income tax return. Again, she stated that in her complaint petition or in her

examination-in-chief in affidavit, she did not disclose as to how she arranged the said amount of Rs.2,00,000/-. She further stated that the impugned cheque was blank cheque filled in by her husband.

In this regard, Learned Counsel relied upon another citation of the Hon'ble Supreme Court in **John K. Abraham Vs. Simon C. Abraham and another** reported in **(2014) 2 SCC 236** wherein in para No.9, Hon'ble the Apex Court observed as under:

**"9. It has to be stated that in order to draw the presumption under Section 118 read along with Section 139 of the Negotiable Instruments Act, the burden was heavily upon the complainant to have shown that he had the required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant."**

Referring the same, Learned Counsel submitted that it was the duty of the respondent-complainant to substantiate that she had sufficient fund for advancing money as loan to the petitioner-accused but in this regard, the respondent-complainant very specifically at the time of cross-examination admitted that she did not submit any bank statement nor submitted any IT return and she has not disclosed from which source she procured the money to lend as loan to the complainant resulting which according to Learned Counsel, the respondent-complainant failed to prove the case against the petitioner accused but the Learned Trial Court as well as the Learned Appellate Court at the time of delivery of judgment did

not consider the said facts rather warranted conviction against the petitioner unlawfully which needs to be interfered with.

6. Further, reliance was placed upon another citation of this High Court in **Swapna Debnath and others Vs. Sanjit Chakraborty and another** reported in **(2021) 1 TLR 514** wherein in para No.13 this High Court made the following observation and finally, dismissed the appeal.

**"13. The deposition of PW2, Sri Dilip Dey further substantiates the fact that the complainant had received the cheques of Rs.50,000 and Rs.1,00,000 "at the time of payment". In furtherance thereof, I find that the complainant failed to disclose the source of fund. He did not furnish any evidence in support of his claim that he had financial ability to give loan of Rs.1,50,000 to the respondent. Though he deposed that he was an income-tax payee, but, he did not furnish any such document in support of the fact that he was an income-tax payee."**

Relying upon the same, Learned Counsel drawn the attention of the Court since the respondent-complainant failed to disclose the source of fund; nor the complainant produced any evidence to substantiate that she had financial ability to give loan of Rs.2,00,000/- to the petitioner; nor she submitted any income tax return before the Learned Trial Court, so, in absence of such evidence on record, there was no scope to warrant conviction upon the present petitioner-accused but the Learned Trial Court ignoring the cardinal principle of law found the present petitioner to be guilty.

It was further submitted that in a case of this nature, the burden would always lie upon the complainant. The complainant or the prosecution must prove the guilt of the

accused beyond all reasonable doubt. The standard of proof so as to prove a defence on the part of an accused is "preponderance of probabilities". Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which he relies. Even if the petitioner-accused has failed to prove his defence still as per criminal jurisprudence, it is the responsibility of the respondent-complainant to prove the case beyond any reasonable doubt.

**7.** Finally, Learned Counsel drawn the attention of the Court that in course of examination under Section 313 of Cr.P.C., the present petitioner-accused denied the acceptance of notice but the Learned Courts below did not consider the said fact for which the judgments of the Courts below suffers from infirmities which needs to be interfered with.

**8.** Learned Counsel also relied upon another judgment of a coordinate bench of this High Court in **Crl. A. No.51 of 2019 dated 20.01.2022** wherein in para No.13, this High Court observed as under:

**"13. The above view of mine is further reinforced when Mr. Lodh, learned counsel for the respondent has pressed into service the decision of the Hon'ble Supreme Court in the case of M.D.Thomas Vrs. P.S. Jaleel & Anr., (2009) 14 SCC 398 where dealing with the similar issue, the Hon'ble Supreme Court held that:-**

**"5. Section 138 deals with the dishonour of cheque for insufficiency, etc., of funds in the accounts of the person who draws the cheque and lays down that 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.

6. Proviso to Section 138 specifies the conditions which are required to be satisfied before a person can be convicted for an offence enumerated in the substantive part of the section. Clause (b) of the proviso to Section 138 cast on the payee or the holder in due course of the cheque, as the case may be, a duty to make a demand for 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.

7. In the present case, the notice of demand was served upon the wife of the appellant and not the appellant. Therefore, there is no escape from the conclusion that complainant-respondent had not complied with the requirement of giving notice in terms of Clause (b) of proviso to Section 138 of the Act. Unfortunately, the High Court overlooked this important lacuna in the complainant's case. Therefore, the conviction of the appellant cannot be sustained.””

Referring the same, Learned Counsel also submitted that in view of the aforesaid judgment it appears that the respondent-complainant has failed to prove the charge levelled against the present petitioner-accused. So, the judgment delivered cannot be sustained as per law।

9. Further, reference was placed upon another judgment of this High Court in **Crl. A. No.10 of 2021 dated 11.11.2022** wherein in para No.19 and 24, this High Court observed as under:

“[19] In Crl. APP No. 2402 of 2014 K. Subramani Vrs. K. Damodana Naidu the Hon'ble Supreme Court held that “non substantiating source of fund proves fatal to the case of the complainant.”

[24] Moreover in the light of evidence of the complainant and it emerges out in the cross-

examination, the complainant failed to prove regarding grant of loan and no receipt was produced regarding such payment of loan. The complainant being a businessman by profession, obviously maintained records and transactions. He did not lead any documentary evidence or oral evidence. Thus the evidence of the complainant is not trustworthy & reliable. He did not mention even the date when such a huge loan amount of Rs.17,00,000/- was extended to accused. From his averments, as stated the accused has a outstanding due of Rs.17,00,000. It is not believable that the complainant would incur the risk in absence of any written agreement or any receipt there of advancing the loan. It is to be reiterated the said averments do not aid the complainant and removes the suspicion as advancing of loan remains a bare averment as not been proved of any details have been furnished. Thus said averment does not aid the complainant as a proof of loan extended by the complainant and the presumption is rebutted by the accused."

Referring the same, Learned Counsel drawn the attention of the Court that since the respondent-complainant has failed to prove the source of fund, so, in absence of any cogent evidence on record, there was no scope on the part of the Learned Trial Court to award conviction to the present petitioner, as such, the judgment of the Learned Courts below suffers from infirmities which needs to be interfered with.

**10.** Lastly, Learned Counsel also referred another citation in **Patel Amrutbhai Narayan Das Vs. State of Gujarat** reported in **2012 SCC OnLine Guj 528** wherein in para No.8 the High Court of Gujarat observed as under:

"8. The complainant in his evidence Exh. 11, deposed that he served notice on 27.8.1998 and it was served by registered post acknowledgement due. The complainant has produced acknowledgement due at Exh. 14. It appears from the acknowledgement due at Exh. 14 that it was received by Patel Ashaben Ganeshbhai. Therefore, it emerges that the accused did not receive the notice. In the decision of M.D. THOMAS v. P.S. JALEEL reported in (2009) 14 SCC 398, Hon'ble Supreme Court ruled that clause (b) of the

**proviso to Section 138 cast on the payee or the holder in due course of the cheque, as the case may be, a duty to make a demand for 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 when the notice of demand was served upon the wife of the appellant and not the appellant, the complainant had not complied with the requirement of giving notice under the said provision. In the present case also notice is not served upon the accused but it was received by a family member of the accused. Therefore, the complainant has not complied with the requirement of giving notice in terms of clause (b) of the proviso to Section 138 of the Act."**

Referring the same, Learned Counsel submitted that the present case is squarely covered by the said judgment and urged for allowing this petition by setting aside the judgment of the Learned Trial Court as well as the Appellate Court.

**11.** On the other hand, Learned Senior Counsel for the respondent-complainant drawn the attention of this Court that the present revision petition is not maintainable as per law. The petitioner has failed to project any ground to dismiss the appeal. Moreso, both the Courts below have given concurrent findings and also have failed to deal with the issue regarding service of notice. So, at this stage, there is no scope to interfere with the findings of the Appellate Court.

Learned Senior Counsel also submitted that in view of the provision of Section 139 of NI Act, presumption leans in favour of the respondent-complainant and there was no ground for reversion of presumption against the present respondent-complainant.

Learned Senior Counsel also drawn the attention of the Court that as stated by the petitioner-accused, the cheque was issued for policy purpose but in this regard, no such documentary evidence was adduced.

Further, Learned Senior Counsel also drawn the attention of the Court in para Nos.36 and 37 of the judgment delivered by Learned Trial Court wherein it was mentioned by the Learned Trial Court that the present petitioner-accused approached the complainant during the first part of 2022 for loan of Rs.2,00,000/- and accordingly, he was asked to come on 16.02.2022(Wednesday) at 5 pm. On that day, the present petitioner-accused went to the house of the complainant where in presence of her husband and two others namely Suman Das and Chitta Das the money was paid and those witnesses turned up and affirmed the said fact. Further, Learned Senior Counsel also drawn the attention of the Court referring the last part of para 36 of the judgment written by the Learned Trial Court where it has been mentioned that on conjoint reading of the paragraphs, it is apparent that the loan was given to the accused on 16.02.2022 at 5pm in the house of the complainant. PW-1 did not say anything different in her cross-examination. Though separately the date is not mentioned in para 4 but on reading of para 3 and 4 of the complaint it was apparent that the contents of both the paras narrates about the incident of the same date and discarded the plea of the petitioner-accused. Learned Counsel further drawn the attention of the Court

referring para 37 of the judgment of the Learned Trial Court wherein it was specifically mentioned that the accused could not produce any cogent evidence in respect of the fact that the cheque was procured by the complainant by any other means and that was not issued for the purpose of discharging his debt. Also, no defence was put forward in support of the fact of non-existence of any enforceable debt. Further, PW-3 also supported the version of the complainant that he was present when the alleged transaction took place and when the money was taken. So, Learned Trial Court came to the observation that there was no ground to brush aside the version of the respondent-complainant and finally, considering the evidence on record Learned Trial Court rightly found him guilty and convicted him and there was no infirmity in the judgment delivered by Learned Trial Court which has been affirmed by the Learned Sessions Judge and Learned Senior Counsel thus urged for dismissal of this revision petition.

**12.** I have heard the parties at length and perused the records of the Learned Trial Court including the judgment delivered by Learned Appellate Court as well as the Learned Trial Court. Also, I have gone through the evidence on record of the respondent-complainant as well as the evidence of the present petitioner-accused. Admittedly, the present petitioner-accused denied to receive any money from the respondent-complainant and also denied to issue any cheque to enforce the debt. As already stated, the respondent-complainant in course

of her cross-examination specifically stated that she did not submit any document showing her proprietorship over Datta Autospare. She did not submit any bank statement to substantiate that she had sufficient amount to give loan of Rs.2,00,000/-. Also, she did not submit any income tax return. Thus, it appears from the evidence on record of the respondent-complainant that she has failed to explain the source from where she got the money and how she has given the money to the petitioner-accused. From the judgment of the Hon'ble Supreme Court in **John K. Abraham (supra)** as referred above, it is the settled position of law that in order to draw presumption under Section 118 read with Section 139 of NI Act, the burden was heavily upon the complainant to show that he/she had required funds for advancing money as loan to the petitioner-accused. But here in the case at hand, from the evidence on record, it appears that the respondent-complainant has failed to satisfy as to how she got the money but the Learned Trial Court as well as the Learned Appellate Court did not consider the said aspect. Similarly, she also failed to disclose the source of fund and she did not furnish any evidence in support of her claim that she had financial capacity to give loan of Rs.1,50,000/-. No such documentary evidence like income tax return was proved. Nor she submitted any bank statement to substantiate that she had the required amount to pay any money as loan to any person. The observation made by a coordinate bench of this High Court in **Swapna Debnath and**

**others** (supra) appears to be very relevant for decision of this case. At the time of hearing of argument, Learned Senior Counsel for the respondent-complainant failed to satisfy these points regarding the source of fund although Learned Senior Counsel only stretched upon that both the Learned Courts below gave concurrent findings on that matter. This submission of the Learned Senior Counsel cannot be accepted and the aforesaid judgment appears to be more significant for decision of this case.

Furthermore, regarding service of notice, it was asserted by the present petitioner that no notice was served upon the petitioner-accused in accordance with law and the complainant i.e. the respondent herein in course of her cross-examination admitted that she received one letter from the post master of R.K. Pur PO from which it appears that the notice was received by one Abhijit Murasingh who may be the son of the present petitioner and in this regard, the judgment of the Hon'ble Apex Court in **M. D. Thomas** (supra) that the respondent-complainant had not complied with the requirement of notice in terms of clause (b) of the provision of Section 138 of the NI Act but the Learned Courts below did not consider the same. Thus, after hearing both the sides, it appears to this Court that both the Courts below have failed to appreciate the evidence on record properly and also failed to appreciate the aforesaid observation of the Hon'ble Apex Court that no statutory notice as required in terms of clause (b) of Section

138 of NI Act was served upon the petitioner-accused. The present respondent-complainant also failed to satisfy the Court regarding the required fund for having advancing the money to the petitioner-accused but the Courts below also failed to appreciate these facts and law. Thus, in the considered opinion of this Court the judgment of the Learned Courts below suffers from infirmities and as such, both the judgment and order of conviction and sentence are liable to be interfered with.

**13.** In the result, the revision petition filed by the present petitioner is allowed. The judgment and order of conviction and sentence dated 04.02.2026 delivered by Learned Sessions Judge, Gomati District, Udaipur in CrI. A. No.2 of 2026 affirming the judgment and order dated 20.01.2025 delivered by Learned CJM, Gomati District, Udaipur in connection with Cr.(NI)/17/2023 stands set aside and quashed accordingly. The petitioner is thus discharged and acquitted from the case. Bail bond stands discharged.

No order is passed as to cost.

A copy of this order be circulated to all Judicial Officers of the State.

Send down the records of Learned Courts below along with a copy of the order/judgment.

Pending application(s), if any, also stands disposed of.

**JUDGE**