



(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.64 OF 2026

Nitin s/o Vishwasrao Deshmukh
VERSUS
The State of Maharashtra and another

.....

Mrs Surekha G. Chincholkar, Advocate for Applicant
Mr M. A. Aher, APP for Respondent No.1/State
Mr A. D. Kasliwal, Advocate for Respondent No.2

.....

CORAM : SUSHIL M. GHODESWAR, J.

DATE : 03rd SEPTEMBER 2026

P. C. :

1. The applicant is challenging the judgment and order dated 11/02/2026, passed by the learned Additional Sessions Judge, Vaijapur, District Aurangabad, in Criminal Appeal No.02/2022. Vide said judgment, the learned Additional Sessions Judge dismissed the appeal, thereby confirming the conviction order dated 23/02/2021, passed by the learned 2nd Judicial Magistrate First Class, Vaijapur, in S.C.C. Number 448,2013. The learned 2nd Judicial Magistrate First Class, Vaijapur, vide said judgment dated 23/02/2021, convicted the applicant for the offence punishable under Section 138 of Negotiable Instruments Act.

(2)

2. Respondent No.2 is the original complainant, who had filed a complaint against the applicant, which came to be registered as S.C.C. No.448/2013 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. According to respondent No.2/complainant, he had given a hand loan of Rs.3,35,000 to the applicant/accused on 06/08/2011. The applicant/accused had given an undertaking to repay the said hand loan on or before 15/08/2012. Since the accused failed to repay the said amount on demand, on 26/02/2013, he issued cheque bearing Cheque No.648565, for an amount of Rs. 1,75,000 and also on 20/03/2013, another cheque bearing Cheque No.648569 for an amount of Rs.1,60,000. Both the cheques were drawn on Aurangabad District Central Co-operative Bank Limited, Branch Shivur. Both the cheques were presented by the respondent/complainant, however, they were returned with an endorsement "Funds Insufficient" on 10/04/2013 and 09/04/2013. The respondent/complainant, therefore, issued a statutory notice on 26/04/2013. Since the applicant/accused has not replied to the said notice, the respondent/complainant instituted the above complaint before the learned Judicial Magistrate First Class against the applicant for the offence punishable under Section 138 of Negotiable Instruments Act.

(3)

3. The learned Judicial Magistrate First Class, vide his judgment and order dated 23/02/2021, convicted the applicant/accused for the offence punishable under Section 138 and sentenced him to suffer three months simple imprisonment and a fine of Rs.6,70,000/- (twice the two-cheques amount i.e.Rs. 3,35,000/-), in default to pay fine, to suffer two months simple imprisonment.

4. Being aggrieved by the judgment and order of the learned Judicial Magistrate First Class, the applicant has filed Criminal Appeal No.02/2022 before the learned Additional Sessions Judge, Vaijapur. The learned Additional Sessions Judge, Vaijapur dismissed the said appeal on 11/02/2026 and confirmed the judgment of the learned Judicial Magistrate First Class, Vaijapur.

Therefore, being aggrieved by the two concurrent findings, the applicant has approached this Court under Section 397 of Code of Criminal Procedure.

5. Heard Mrs. Chincholkar, learned Advocate for the applicant, Mr. Aher, learned APP for respondent No.1/State and Mr Kasliwal, learned Advocate for respondent No.2.

6. Learned Advocate for the applicant submits that, both the learned lower Courts mis-appreciated the evidence on record. The

(4)

judgments delivered by the Subordinate Courts are erroneous and perverse. According to her, the impugned judgments are based upon unsustainable findings, and the same have been passed without considering the evidence brought before the Court. According to her, the applicant had taken a hand loan of Rs. 30,000/- from respondent/complainant, and to repay the said amount, he had given three blank cheques by signing as security towards the hand loan of Rs.30,000. The said cheques have been misused by the present respondent/complainant. She submits that, the complainant misused the blank signed cheques and blank signed Rs.100/- stamp paper given for a legal debt of Rs.30,000/- only.

7. The learned Advocate for the applicant further submits that the complainant virtually failed to establish that the cheques were issued in discharge of the payment of a legally enforceable debt. She further submits that the applicant had already paid Rs.30,000/- to the respondent/complainant. Thus, according to her, there was no question of issuing any cheque towards the repayment of the hand loan amount.

8. In support of her submissions, learned Advocate Mrs Chincholkar for the applicant places reliance on the following judgments :-

(5)

- (A) K. Prakashan Vs. P. K. Surenderan, (2008) 1 SCC 258;
- (B) Kulvinder Singh Vs. Kafeel Ahmed, dated 04/01/2013, in Criminal L.P. No.478/2011 (High Court of Delhi) AD(DEL)-2013-2-81;
- (C) Vipul Kumar Gupta Vs. Vipin Gupta, 2012 SCC OnLine Del 4384;
- (D) Basalingappa Vs. Mudibasappa, 2019 AIR(SC) 1983 and
- (E) K. S. Ranganatha Vs. Vittal Shetty, 2021 DGLS(SC) 912.

9. Accordingly, learned Advocate for applicant prays for considering the evidence brought before the learned lower Courts which they have failed to consider the same in proper perspective, and thus, prays for allowing the instant revision application.

10. Per contra, Mr. Kasliwal, learned Advocate for the respondent/complainant vehemently opposes the instant revision application. According to him, both the Courts below have considered the evidence in proper perspective. The complainant has proved that he has received the cheque towards the recovery of the amount of a legally enforceable debt. It has also been proved that he had advanced the loan amount of Rs.3,35,000/- to the applicant/accused. For returning the said amount, the applicant had issued two cheques to the

(6)

respondent/complainant. Despite various requests, the applicant failed to pay the aforesaid hand loan amount. Therefore, the accused had issued two cheques for the payment of the aforesaid hand loan amount. The applicant had also issued an undertaking to the respondent/complainant on stamp paper for repaying the aforesaid amount. He, therefore, submits that the learned Trial Court as well as the Appellate Court have rightly considered the provisions of law, and, as such, committed no mistake in holding that the applicant has committed a crime for the offence punishable under Section 138 of the Negotiable Instruments Act.

11. To buttress his submissions Mr Kasliwal places reliance on the following judgments :-

(A) State of Kerala Vs. Puttumana Ithath Jathavedan Namboodiri Etc., 1999 ALL MR (Cri) 517;

(B) Kishan Rao Vs. Shankargouda, 2018 ALL SCR (Cri) 1197;

(C) Johar & ors. Vs. Mangal Prasad & Anr., 2008 ALL SCR 704;

(D) B. M. Basavaraj Vs. Shrinivas S. Datta, 2016 DGLS(SC) 770;

(7)

- (E) M/s Kalamani Tex Vs. P. Balasubramanian, (2021) 1 KCCR 545(SC);
- (F) Prakash Madhukarrao Desai Vs. Dattatraya Sheshrao Desai, AIRONLINE 2023 BOM 1735;
- (G) D. K. Chandel VS. M/s Wockhardt Ltd., AIRONLINE 2020 SC 469;
- (H) Rajesh Jain VS. Ajay Singh, AIRONLINE 2023 SC 807;
- (I) Bir Singh Vs. Mukesh Kumar, 2019 DGLS(SC) 182; and
- (J) Rangappa Vs. Mohan, 2010 DGLS(SC) 1051.

12. Thus, according to learned Advocate for respondent No.2/complainant, both the judgments are correct and proper and requires no interference by this Court. He, therefore, prays for dismissal of the instant revision application.

13. With the assistance of learned Advocates for the rival parties, I have perused the record. After going through the record, it is found that both the Courts have given the findings that the complainant proved that the applicant/accused drew a cheque on the account maintained by him in a bank, and that the cheque issued to him by the applicant is returned unpaid with the remark of "Funds Insufficient". The complainant also proved that he had sent the demand notice on

(8)

26/04/2013 to the accused, thereby claiming the cheque amount. The said notice was properly sent to the accused. The complainant has also proved that the applicant/accused failed to make payment of the cheque amount of Rs.3,35,000/-.

14. Both the Courts have recorded the finding that the respondent/complainant proved the terms of transaction, i.e. a legally enforceable debt with the accused, and further that the accused has not discharged the burden shifted on him on a standard of preponderance of probabilities. Accordingly, the Subordinate Courts have held that the applicant has committed an offence punishable under Section 138 of the Negotiable Instruments Act, and therefore, he rightly came to be convicted vide the impugned orders.

15. As regards the issue, as to whether the respondent/complainant had proved that there is a legally enforceable debt on the applicant/accused, it is observed that the respondent/complainant had given Rs.3,35,000/- as a hand loan to the accused. In order to repay the said hand loan, the applicant/accused had given him two cheques. Thus, there is a legally enforceable debt on the accused. The defence of the applicant/accused that he took a hand loan of Rs 30,000/- from the complainant, and as part of security,

(9)

handed over blank signed cheques and a signed blank Rs.100/- stamp paper to the complainant. His defence is that he had already repaid the said amount and only interest over it remained to be paid. Therefore, according to him, claims that there is no legally enforceable debt.

16. As regards the aforesaid submissions, the date of issuance of the loan has been categorically stated by the complainant. Even the source of income of the complainant is also established. It is useful to refer to the statutory provisions under Section 118 and Section 139 of the Negotiable Instruments Act, which read thus :-

“118. Presumptions as to negotiable instruments.—

Until the contrary is proved, the following presumptions shall be made:—

(a)of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b)as to date —that every negotiable instrument bearing a date was made or drawn on such date;

(c)as to time of acceptance —that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d)as to time of transfer —that every transfer of a negotiable instrument was made before its maturity;

(e)as to order of indorsements —that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f)as to stamps —that a lost promissory note, bill of exchange or cheque was duly stamped;

(10)

(g)that holder is a holder in due course —that the holder of a negotiable instrument is a holder in due course:”

139. Presumption in favour of holder.—

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, of any debt or other liability.”

17. Once the signature of an accused on the cheque is established, then there is a reverse onus on the applicant/accused, which becomes operative. As the applicant/accused has admitted that his signature is over the cheque, in view of the presumption under Section 118 and Section 139 of the Act, it needs to be presumed that the accused has issued two cheques for a legally enforceable debt. It is also required to be presumed that the accused has given the blank signed cheques and blank signed Rs.100/- stamp paper to the complainant, yet, the statutory presumption cannot be obliterated. Though the presumptions are rebuttable in nature, the same has to be rebutted on the basis of the standard of preponderance of probability and not mere possibility. As stated earlier, the accused failed to rebut the burden shifted on him. It is clear that he has committed an offence punishable under Section 138 of the Negotiable Instruments Act.

18. After perusing both the judgment and orders passed by the Subordinate Courts and going through the record, it is found that, no case is made out for interfering in the aforesaid verdicts. The scope of the revisional Court under Section 397 read with Section 401 of Code of Criminal Procedure is very limited. Such power of revision is required to be exercised in cases where there is a manifest error of law and to rectify the miscarriage of justice. However, in the case in hand, I could not come across any ground to upset the finding given by the subordinate Courts. In that view of the matter, the instant Criminal Revision Application is dismissed.

[SUSHIL M. GHODESWAR, J.]

sjk