



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.236 OF 2006

. Murlidhar s/o Kashinath Rane
Age: 51 years, Occu.: Agri.,
R/o. Kumbharkheda, Taluka Raver,
District Jalgaon .. Appellant

Versus

. Shaikh Mohimoddin Shaikh Nabi
Age: 55 years, Occu.: Business,
R/o. Sakali, Tq. Yawal,
District Jalgaon .. Respondent

...

Mr. D. S. Patil, Advocate h/f Mr. M. S. Deshmukh, Advocate for appellant.

Mr. V. S. Bedre, Advocate for respondent.

...

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 20.08.2026

Pronounced on : 01.09.2026

JUDGMENT :-

1. In this appeal, there is challenge to the judgment and order of acquittal dated 04.07.2005 passed by learned Judicial Magistrate First Class, Raver in Summary Criminal Case No.800 of 2004, acquitting the present respondent from offence punishable under Section 138 of

the Negotiable Instruments Act.

2. Present appellant instituted complaint against present respondent/accused on the premise that, accused, who is a fruit vendor, had purchased Banana worth Rs.3,15,000/-. Towards repayment of the amount, he issued a cheque dated 18.03.2004, drawn on J.D.C.C. Bank. On its presentation, cheque was returned dishonoured and, therefore, on receipt of the bank memo to that extent, complainant issued legal notice calling upon accused to pay the cheque amount, but the amount was not paid and, therefore, proceedings under Section 138 of the Negotiable Instruments Act were instituted against present respondent.

. To substantiate his case, the complainant adduced his evidence at Exhibit-12 and placed on record documentary evidence i.e. the cheque in question at Exhibit-13, the bank memo, a copy of the legal notice, etc.

. The accused adduced his own evidence by way of an affidavit at Exhibit-29 and also examined DW-2, whose evidence is at Exhibit-30.

. The specific defence of the accused was that the amount of Rs.15,000/- mentioned on the cheque had been altered to

Rs.3,15,000/- by making an alteration in the cheque. He submitted that he was not liable to pay an amount of Rs.3,15,000/- and that the complainant had failed to establish that there was legally enforceable debt or liability to the tune of Rs.3,15,000/-.

. The evidence adduced by the complainant has been duly appreciated by the learned Trial Court, and upon considering the documentary evidence on record, the learned Trial Court, by its judgment and order dated 04.07.2005, recorded a finding that the complainant had failed to prove the charges against the accused beyond reasonable doubt. Consequently, the accused came to be acquitted of the said charges. Hence, the present appeal has been preferred against the said judgment and order.

3. Learned Counsel for the appellant would submit that there is no dispute that the complainant and the respondent-accused were dealing in the purchase and sale of bananas. It is submitted that the accused had purchased bananas worth Rs.3,15,000/- from the complainant and, towards discharge of the said liability, had issued the cheque in question. However, the said cheque came to be dishonoured upon presentation. Thereafter, the complainant issued a statutory demand notice calling upon the accused to pay the cheque amount, which the accused failed to comply with. It is, therefore,

submitted that the necessary requirements for constituting an offence under Section 138 of the Negotiable Instruments Act, were duly established on the basis of the evidence on record.

4. Learned Counsel for the appellant further pointed out that the complainant had substantiated his case before the learned Trial Court by leading documentary evidence i.e. cheque in question, bank memo, legal notice and its reply etc. There is no denial of transaction between the parties, nor there was any dispute regarding the issuance of cheque. However, the learned Trial Court erred in acquitting the accused.

5. He further submitted that the learned Trial Court had noticed that there was an alteration as regards the amount and that it was made at the instance of the complainant, but there was no evidence in that regard before the learned Trial Court. Consequently, learned Counsel faulted the findings arrived at by the learned Trial Court and prayed for allowing the appeal by setting aside the impugned judgment and order.

6. Learned Counsel for the respondent/accused would submit that the complainant had failed to prove the alleged transaction and, more particularly, the existence of a legally enforceable debt to the tune of

Rs.3,15,000/-. He submitted that only a cheque for Rs.15,000/- was handed over to the complainant, but the complainant misused the custody of the said cheque and caused alteration therein without the consent or permission of the accused. Said cheque was misused for drawing a larger amount. He pointed out that there was no documentary evidence to show when exactly the transaction of sale and purchase of bananas worth Rs.3,15,000/- had taken place. That, even the cheque drawn was “self cheque”. Resultantly, he submitted that, the complainant having failed to establish the existence of a legally enforceable debt to the tune of Rs.3,15,000/-, coupled with the alteration of the instrument as regards the amount mentioned therein, the learned Trial Court committed no error in acquitting the accused.

7. Re-appreciated the entire oral and documentary evidence adduced in the trial Court.

8. After hearing both sides and on going through the evidence on record, it appears that the complainant, in support of his case, examined himself at Exhibit-12 and also relied upon documentary evidence, including the cheque in question, bank memo, legal notice, postal acknowledgment and reply thereto.

. As pointed out, though the complainant has come with the case that there was a transaction of sale and purchase of bananas, there is no documentary evidence on record regarding the said sale and purchase of bananas. The complainant has also failed to demonstrate when exactly the transaction was carried out and what quantity of bananas was purchased or sold. In view of the specific defence of the accused that he was not liable to pay an amount of Rs.3,15,000/- and that the outstanding amount was only Rs.30,000/-, it was incumbent upon the complainant to establish that there was a transaction of purchase and sale of bananas by the accused worth Rs.3,15,000/-. However, no evidence in this regard appears to have been adduced by the complainant.

9. It is a fair position that, firstly, it is incumbent upon the complainant to establish that there was a legally enforceable debt, and only upon proving the case to that extent, the presumption under Sections 118 and 139 of the Negotiable Instruments Act would get attracted. Here, the transaction of sale and purchase of bananas worth Rs.3,15,000/- has not been proved by adducing any form of evidence.

10. Specific defence of accused is that in the month of July, 2003, accused had given two cheques of Rs.15,000/- bearing cheque

Nos.401409 and 401410 drawn on United Western Bank, and the cheque was altered by complainant and put to use.

11. On a bare look of Exhibit-13 it is seen that figure '3' has been inserted on the left side prior to figure '15000'. Even the words "Three Lakhs" appear to be apparently added and altered.

. The Hon'ble Apex Court in the recent case of **Rajasab Vs. Hulagappa, [Criminal Appeal No. __ of 2026 (arising out of SLP (Crl.) No.17025/2025)]**, in paragraph No.7, observed as under :-

"7. When the alteration of the cheque is patently clear on the face of it, the Courts below ought not to have insisted on any further evidence in that regard. The material alteration of the cheque was manifest. We are, therefore, of the opinion that conviction of the appellant, Rajasab, on the ground that aforestated cheque was dishonoured, upon presentation, cannot be sustained."

12. Moreover, the cheque is drawn for "self" and apparently, the contents of the cheque are in distinct handwriting. Therefore, it appears that, there are material alterations to the cheque that too without consent of accused. Complainant consequently has failed to demonstrate that there was legally enforceable debt. Therefore, no fault can be found in the judgment and order of acquittal. Hence, I

proceed to pass the following order :-

ORDER

. Criminal Appeal is hereby dismissed.

[ABHAY S. WAGHWASE, J.]

scm