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

CRIMINAL REVISION APPLICATION NO.114 OF 2019

**JEEVAN S/O MADHUKAR SAWANE
VERSUS
BANSILAL S/O PURUSHOTTAMDAS PRESSWALA**

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Mr R. A. Jaiswal and Mr S. M. Biyani, Advocates for Applicant
Mr A. D. Kasliwal, Advocate for Respondent

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CORAM : SUSHIL M. GHODESWAR, J.

RESERVED ON : 11th SEPTEMBER 2026

PRONOUNCED ON : 24th SEPTEMBER 2026

ORDER :

1. Heard learned Advocates Mr. Jaiswal and Mr Biyani for the applicant and Mr. Kasliwal for the respondent.
2. The applicant is challenging the impugned judgment and order dated 05/04/2019, passed by the learned Additional Sessions Judge, Aurangabad, in Criminal Appeal No.158/2014. By the said impugned judgment and order, the learned Sessions Judge confirmed the conviction and sentence order dated 05/11/2014, passed by the learned Judicial Magistrate First Class, Aurangabad, in S.C.C. No.300/2007, thereby convicting the applicant for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881

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and sentenced him to suffer rigorous imprisonment for six months and directed to pay Rs.1,50,000/- to complainant towards compensation, in default to pay the said amount, directed to suffer rigorous imprisonment for six months.

3. The facts of the case are as under :-

(a) Respondent is original complainant, who had filed complaint against the applicant for the offence punishable under Section 138 of the Negotiable Instruments Act before the Judicial Magistrate First Class, Aurangabad, which came to be registered as S.C.C. No.300/2007.

(b) The respondent/complainant alleged in the complaint that, at the request of accused/applicant, he had lent 200 grams of gold to accused amounting to Rs. 1,20,000/-. In pursuance of the same, notarized agreement dated 16/12/2003 was also executed. Thereafter, respondent/complainant had demanded the gold to accused. The accused, in discharge of said liability, issued cheque No.021583, dated 15/09/2006 for Rs.1,20,000/-. The said cheque was drawn on Devgiri Nagari Sahakari Bank Ltd., Aurangabad. According to the respondent/complainant, the said cheque was dishonored on 19/10/2006.

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(c) Therefore, the complainant issued notice to applicant/accused on 18/11/2006 through the Advocate. The said notice was returned on 27/11/2006 with remark, “refused to accept”. Therefore, the respondent/complainant filed case bearing S.C.C. No.300/2007 on 10/01/2007 before the learned Judicial Magistrate First Class.

(d) The applicant/accused appeared in the Court of the learned Judicial Magistrate First Class and pleaded not guilty. During the trial, the respondent/complainant examined himself as PW-1 vide Exh.22 and also examined one witness Mayur Ramniklal Shah vide Exh.83 and closed his oral evidence. The applicant had cross-examined the complainant and his witness at length.

(e) According to the applicant, the said cheque in-question was issued towards security in the year 2004, which later on, was misused by the complainant in 2006. His another submission was that the complaint is not filed within limitation.

(f) After the evidence of the parties, the learned Judicial Magistrate First Class, Aurangabad, convicted the applicant vide impugned judgment and order dated 05/11/2014 and sentenced as aforesaid.

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(g) Being aggrieved with the aforesaid conviction order, the applicant herein has preferred Criminal Appeal No.158/2014 before the learned Additional Sessions Court, Aurangabad, on 27/11/2014. After hearing the learned Advocates for the respective parties, the Appellate Court confirmed the judgment of the learned Judicial Magistrate First Class and dismissed the appeal.

Being aggrieved by the aforesaid concurrent judgment and orders, the applicant has approached to this Court under Section 397 of Code of Criminal Procedure (Cr.P.C.) by filing instant Criminal Revision Application.

4. Learned Advocate for the applicant submits that both the learned Courts below have passed the erroneous and illegal judgments, which cannot be sustained in the eyes of law. He further submits that the learned Courts below did not consider the evidence in proper perspective. According to him, the learned Courts below failed to consider the major mandatory aspect as regards the limitation prescribed under Section 138 of Negotiable Instruments Act. He then submits that the learned Courts below failed to consider that, no notice under Section 138 was received by the applicant/accused, and

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therefore, the limitation counted by the learned Courts below for taking cognizance of the complaint, is totally erroneous.

5. Learned Advocate for the applicant further submits that the respondent/complainant failed to prove that the applicant/accused had issued the cheque towards the liability for recovery of any legally enforceable debt. He submits that the agreement at Exh.25 does not disclose the details of the cheque in-question. The said cheque was given to the respondent/complainant only for the purpose of security, that too, in the year 2004, however, the same came to be misused by the respondent/complainant. Therefore, according to him, the cheque in-question has never been issued towards discharge of liability for the recovery of legally enforceable debt.

6. In support of his submissions, learned Advocate for the applicant relies upon the judgment dated 29/07/2025, delivered by the High Court of Kerala at Ernakulam in the matter of **Noorudheen Vs. State of Kerala and anr.** (Criminal Revision Petition No.865/2023). Thus, he prays for quashing and setting aside the impugned judgment and orders passed by the learned Courts below and prays for acquitting the applicant.

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7. Per contra, learned Advocate Mr Kasliwal for the respondent vehemently opposes the instant criminal revision application. At the outset, he submits that this Court, in exercise of its revisional jurisdiction cannot embark upon an in-depth roving re-examination of the oral evidence and come to a conclusion contrary to the consistent one reached by two Courts below. He further submits that since learned Courts below have rendered concurrent findings of conviction, the High Court may not substitute its own conclusion and reasoning on the merits of the case. According to him, the judgments passed by the learned Trial Court as well as the learned Appellate Court are well reasoned and correct one, and therefore, no interference is warranted by this Court. He further submits that this Court, in the exercise of its revisional jurisdiction, is not required to delve deep into the details of the testimonies, documents and merits of the case. He then submits that this Court is exercising its revisional jurisdiction, wherein it is not permissible to interfere with the judgments delivered by the learned Courts below, unless a glaring contradiction or patent illegality is apparent on the face of the record.

8. To buttress his submission, Mr. Kasliwal relies upon the following judgments :-

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- (I) Kuntegowda Vs. Thurubaiah, AIRONLINE 2026 SC 726;
- (II) K.G. Kailasanathan Vs. Sajish Babu and anr., 2012 Cri. L.J. 4095;
- (III) C.C. Alavi Haji Vs. Palapetty Muhammed & anr., 2007 ALL MR (Cri.)2044 (S.C.);
- (IV) N. Paraeswaran Unni Vs. G. Kannan and Anr., 2017 (5) SCC 737;
- (V) M/s Saketh India Ltd. and ors. Vs. M/s India Securities Ltd., 1999(2) ALL MR 265
- (VI) B. M. Basavaraj Vs. Srinivas S. Datta, 2016 DGLS(SC) 770;
- (VII) M/s Kalamani Tex Vs. P. Balasubramanian, AIRONLINE 2021 SC 82
- (VIII) D. K. Chandel Vs. M/s Wockhardt Ltd., AIRONLINE 2020 SC 469;
- (IX) Rajesh Jain Vs. Ajay Singh, AIRONLINE 2023 SC 807
- (X) Bir Singh Vs. Mukesh Kumar, 2019 DGLS (SC) 182
- (XI) Rangappa Vs. Mohan, 2010 DGLS (SC) 1051;
- (XII) Prakash Madhukarrao Desai Vs. Dattatraya Sheshrao Desai, AIRONLINE 2023 BOM 1735

9. As regards the merits of the matter, Mr. Kasliwal also submits that the applicant/accused has issued the cheque towards the discharge of liability of legally enforceable date. The complainant had

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filed Regular Civil Suit No.175/2012 before the learned 6th Joint Civil Judge Junior Division, Aurangabad for recovery of the dues of Rs.1,41,000/- and interest from the applicant/accused, who was defendant No.2 in the said suit. The issue therein as regards whether the complainant/the plaintiff therein proved that gold weighing about 200 grams was lent to the applicant/accused [defendant therein], was answered in affirmative. Thus, the said suit came to be decreed, thereby directing the applicant/accused along with defendant No.1 therein to jointly or severally to pay an amount of Rs.1,41,000/- to plaintiff (respondent herein) within a month from the date of the order. The learned Advocate for the applicant/accused does not dispute the passing of the aforesaid judgment by the Civil Court. Thus, according to Mr Kasliwal, the transactions between the applicant as well as the respondent/complainant have been fully established, and also the liability towards the payment of the dues in respect of the transaction between the parties is also fully established by the respondent/complainant. Therefore, Mr Kasliwal submits that the applicant accused is liable to pay the amount as directed by learned Courts below having established the case against him for the offence punishable under Section 138 of the Negotiable Instruments Act.

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10. After hearing the learned Advocates for the respective parties, I have gone through the judgments passed by the Courts below. I have also perused the record and proceedings of the trial Court as well as the Appellate Court. The point that arises for my consideration is whether the concurrent findings recorded by both the Courts below, convicting the applicant for offence punishable under Section 138 of Negotiable Instruments Act are perverse, illegal, or suffer from any patent error of law, and whether any interference is called for under revisional jurisdiction. My answer to this point is in the negative for the reasons that issuance of the cheque bearing No.021583 dated 15/09/2006 for Rs.1,20,000/- drawn on Devgiri Nagari Sahakari Bank Limited, Aurangabad, is not disputed by the applicant. The signature on the cheque is also not disputed by the applicant. The statutory presumption under Section 139 and Section 118 of the Negotiable Instruments Act clearly operates in favour of the respondent/complainant. The primary defence taken by the applicant is that the cheque was given by way of security in the year 2004 and has been subsequently misused by the complainant. However, the applicant has miserably failed to adduce any cogent or convincing evidence to rebut the strong statutory presumption operating in favour of the complainant.

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11. So far as the question of limitation is concerned, the notice issued by the complainant under Section 138 of the Negotiable Instruments Act was sent to the applicant. The postal remark clearly indicates that the notice was refused by the applicant. Refusal to accept the notice amounts to a valid and proper service in the eyes of law, and therefore, the computation of limitation by the Trial Court and the Appellate Court cannot be faulted.

12. Furthermore, the respondent/complainant had also instituted Regular Civil Suit No.175/2012 before the 6th Joint Civil Judge Junior Division, Aurangabad, for recovery of dues amounting to Rs.1,41,000/-. The said civil suit has been duly decreed by the Civil Court, holding that the transaction regarding the lending of 200 grams of gold to the applicant stands proved. The judgment and decree passed by the Civil Court further reinforces the existence of a legally enforceable debt or liability against the applicant.

13. Both the Trial Court as well as the Appellate Court have meticulously scrutinized the oral and documentary evidence on record. The findings recorded by both the Courts below are based on a proper appreciation of evidence and do not suffer from any perversity or illegality. This Court, while exercising revisional jurisdiction under

Section 397 read with Section 401 of the Code of Criminal Procedure, does not act as a Court of second appeal. Interference with concurrent findings of fact is warranted only if the findings are perverse or contrary to the evidence on record, which is not the case here.

14. This Court while exercising powers under Section 397 of the Cr.P.C. is having very limited scope of jurisdiction, so as to avoid miscarriage of justice. The Hon Apex Court in the judgment of Kuntegowda Vs. Thurubaiah (supra) has observed in paragraph No.7.3 as under :-

“7.3 The contours for exercise of revisional jurisdiction has been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders passed by the lower court unless :

i. The order or finding of the lower Courts is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.

ii. The lower court has passed the impugned order after considering an immaterial or irrelevant material or no material at all.

Iii. There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.”

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15. In view of the aforesaid guidelines, it is clear that the scope of this Court while exercising powers under Section 397 of the Cr.P.C. is very limited. After going through the judgment and orders passed by the learned Courts below, I found no perversity or illegality in the said orders. All the aspects of the applicant/accused have been already considered in proper perspective. There is no any strong or valid grounds involved in the instant criminal revision application so as to upset the well reasoned findings given by the learned lower Courts.

16. In view of the aforesaid discussion, I am of the considered opinion that there is no merits in the present Criminal Revision Application. Consequently, this Criminal Revision Application stands dismissed. The impugned judgment and order dated 05/04/2019, passed by the learned Additional Sessions Judge, Aurangabad, in Criminal Appeal No.158/2014, confirming the conviction and sentence passed by the Trial Court, is hereby upheld.

17. Criminal Revision Application is disposed of accordingly.

[SUSHIL M. GHODESWAR, J.]

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