



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 220 OF 2022
WITH
CRIMINAL APPLICATION NO. 2419 OF 2022
IN
CRIMINAL REVISION APPLICATION NO.220 OF 2022

SHANKAR BALIRAM HUMBARDE,
Age : 65 years, Occ : Agril,
R/o Vishnupuri,
Tq. and Dist. Nanded.

...PETITIONER
(Orig. accused)

VERSUS

HARSHAD LAXMICHAND SHAH,
Age : 65 years, Occu: Business,
R/o Sahyog Chamber, Kailas Nagar,
Nanded.
Office at Plot No.61-68, C,
Co-op. Industrial Estate,
Shivaji Nagar, Nanded,
Tq. and Dist. Nanded.

...RESPONDENT
(Orig. complainant)

...
Shri Shinde Dhananjay M., Advocate for the applicant/ accused.
Shri Desale Nilesh N., Advocate for the Respondent.
...

CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 09 September 2026

Pronounced on : 22 September 2026

JUDGMENT :-

1. The applicant/ original accused is praying for quashing and setting aside the judgment and order dated 22.04.2022 passed by the learned Sessions Judge, Nanded in Criminal Appeal No. 24 of 2017 and the judgment and order dated 15.02.2017 passed by the learned Judicial Magistrate First Class, Nanded, in SCC No.1606/2007. The applicant is further praying for dismissing SCC No.1606/2007 filed under Section 138 of the Negotiable Instruments Act, 1881 by the respondent/ complainant.

2. SCC No. 1606 of 2007 was filed by the respondent under Section 138 of the Negotiable Instruments Act against the applicant contending therein that he is businessman carrying on business of oil at Nanded since long time and has cordial relations with the applicant/ accused. On 05.11.2006, the applicant approached him and requested for hand loan of Rs.5 lakhs and assured to repay the said loan amount within a period of one month. On 13.11.2006, he gave hand loan of Rs.5 lakhs in cash to the applicant. But, the applicant failed to repay the hand loan amount as agreed. Therefore, the respondent/ complainant

approached the applicant demanding his loan amount. In pursuance to the said demand, the applicant issued cheque No. 725998 dated 31.05.2007 for Rs.2,50,000 of the Maharashtra Gramin Bank, Branch Vishnupuri, Nanded. The applicant instructed the respondent/ complainant to deposit the said cheque after receiving instructions from him.

4. As per the respondent/ complainant, on 22.06.2007 the applicant instructed the complainant to deposit the cheque and accordingly, the cheque was deposited. The said cheque was deposited at Akola Urban Cooperative Bank Limited, Branch at Vazirabad, Nanded. However, on 25.06.2007, the bank of complainant returned the cheque along with the memo of the bank of the accused on the ground that there were insufficient funds in the bank account of the applicant. On 11.07.2007, the respondent issued a legal notice to the applicant calling upon him to repay the amount of the said cheque. But, the applicant allegedly has not received the said notice despite intimation by the postal authority. After expiry of the period, the envelope containing the notice was returned to the complainant by postal authorities with intimation dated 17.07.2007. Therefore, the

respondent complainant filed the complaint under Section 138 of the Negotiable Instruments Act which came to be registered as SCC No. 1606 of 2007 on 28.08.2007.

5. It is pointed out to this Court that upon appearance of the applicant/ accused before the learned Magistrate, when the particulars of allegations below Exhibit 23 were explained to him, he pleaded not guilty and claimed to be tried. Thereafter, the respondent complainant examined himself as CW-1 by filing his affidavit. He was also cross-examined by the applicant accused. However, due to transfer of the presiding officer, the trial was taken up *de novo* as per the order dated 06.02.2012. Thereafter, the complainant again filed his affidavit of evidence on 22.03.2013. The accused, despite several chances to cross-examine the complainant, did not avail the same. The Roznama and order passed on Exhibit 1 would prove the said fact. The complainant has also relied on documents like cheque, cheque return memo, copy of postal receipt, returned envelopes, etc.

6. After recording the statement of the accused under Section 313 of the Cr.P.C., he filed an application at Exhibit 88 to adduce evidence. However, the record discloses that even after

similar such applications, the applicant/ accused did not adduce any further evidence. In pursuance of the aforesaid facts, the learned Judicial Magistrate First Class heard the parties and also permitted the accused to submit his written notes of arguments as per Exhibit 145. Thereafter, the learned Magistrate, by impugned judgment and order dated 15.02.2017, was pleased to convict the applicant for the offence punishable under Section 138 of Negotiable Instruments Act and sentenced him to suffer simple imprisonment for six months and to pay fine of Rs.3 lakhs, in default, to suffer simple imprisonment for two months. It was also directed that after realization of the fine amount, the amount of Rs. 2,75,000/- be given to the respondent/ complainant as compensation after the appeal period is over.

7. Feeling aggrieved with the said order dated 15.02.2017, the applicant preferred Criminal Appeal No. 24/ 2017. The learned Sessions Judge, while adjudicating upon Criminal Appeal No. 24/ 2017, was pleased to frame three major points. One of the points was as to whether the complainant has proved that he issued notice in writing demanding the amount of cheque from the accused being drawer of the cheque, and that the

accused failed to pay the amount of cheque within a stipulated period of 15 days and thus, he deemed to have committed the offence punishable under Section 138 of Negotiable Instruments Act, 1881. Apart from the said point, the learned Sessions Judge also proceeded to frame the issue as regards whether, the complainant has proved that he has presented the said cheque within the period of its validity with the banker of the accused, and that the said cheque was returned unpaid by the banker of the accused due to insufficiency of funds in the account maintained by the accused. All the points have been answered by the learned Sessions Judge in the affirmative. Therefore, vide impugned order dated 22.04.2022, the learned Sessions Judge was pleased to partly allow the appeal. The conviction passed by the learned Judicial Magistrate First Class, Nanded came to be maintained. However, the sentence came to be altered and the applicant was sentenced to suffer imprisonment till rising of the court and to pay fine of Rs.5 lakhs, in default of fine, to suffer simple imprisonment for three months.

8. Being aggrieved by the aforesaid impugned judgments and orders, the applicant / accused has preferred the

instant Criminal Revision Application under Section 397 read with 401 of Cr.P.C. before this Court.

9. Heard Mr. Shinde, learned advocate appearing for the applicant/ accused and Mr. Desale, learned advocate appearing for the respondent/ complainant at length.

10. According to Mr. Shinde, learned counsel for the applicant, the respondent has failed to prove that the cheque was issued against legally enforceable debt. Both the courts below shifted the burden upon the applicant by presuming that, since the complainant was not cross-examined and no evidence was led by the applicant, the cheque must have been issued towards legally enforceable debt.

11. The major ground which Mr. Shinde pointed out is that the learned subordinate courts failed to consider that the notice of demand was issued on 10.07.2007 and on 11.07.2007 the intimation was given to the house of accused. The same is returned to the complainant on 17.07.2007. According to Mr. Shinde, considering this, the cause of action for lodging the complaint would start from 11.07.2007. The respondent/ complainant ought to have waited till 26.07.2007 for fulfillment

of demand notice and he should have filed the complaint on 26.08.2007. However, the respondent has filed the complaint on 28.08.2007 which means the complaint is out of limitation and therefore, the complaint ought to have been dismissed on this count only. He further submitted that the return memo, though shown to be dated 17.07.2007, however, no evidence was led about the same except the postal receipt which shows only date of intimation dated 11.07.2007. Still, the complaint ought to have been lodged till 26.08.2007, but as stated earlier the complaint came to be lodged on 28.08.2007. Therefore, same is beyond limitation.

12. According to Mr. Shinde, the intimation about postal notice is given, but nowhere it comes on record that the accused has denied to accept the notice. Hence, the service of notice and the intimation is not proper and based on this intimation, the proceeding itself is bad in the eyes of law. Mr. Shinde further submitted that the disputed cheque amount is of Rs.2,50,000/-. However, as per the respondent, the total legal debt amount is Rs.5 lakhs and therefore, the amount which is mentioned in the cheque is less than the legally enforceable debt. Therefore, on

this count, the complaint ought to have been dismissed by the subordinate courts.

13. Mr. Shinde would further argue that it is unusual to accept that the complainant has paid huge amount of Rs.5 lakhs to the applicant without obtaining any single document. In view of the aforesaid submissions, Mr.Shinde submits that the conviction of the applicant /accused for the offence punishable under Section 138 of Negotiable Instruments Act is not sustainable. He submits that both the subordinate courts have failed to consider the aforesaid submissions and therefore, the judgments passed by the learned lower courts are illegal and same are required to be quashed and set aside thereby acquitting the applicant. In support of his submissions, Mr. Shinde, has relied upon the judgments reported in *Sil Import, USA vs. Exim Aides Silk Exporters, Bangalore, (1999) 4 SCC 567* and *Darshan Singh vs. State of West Bengal and others, 2000 SCC OnLine Cal 171*.

14. *Per contra*, Mr. Desale, learned counsel for the respondent /complainant, strongly opposed the instant revision application. He submitted that there being concurrent findings by

the two subordinate courts that the applicant is convicted for the offence punishable under Section 138 of Negotiable Instruments Act, therefore, the scope of this Court is highly limited so as to exercise powers under Section 397 of the Cr.P.C. He further submitted that the respondent has proved all the issues in his favour and as such, there is no lacuna or illegality in the judgments passed by the learned lower courts. All the issues raised by the applicant, not only before this Court but even before the Sessions Court as well as the Trial Court, have been considered at length while evaluating the evidence led by the parties before the Trial Court. All the aspects having been considered carefully and examined properly, there is no scope for entertaining this revision application. He further submitted that it would be stretching too far if the applicant is permitted to raise the same grounds which have been already elaborately answered by the learned Trial Court as well as the Appellate Court.

15. Mr. Desale further submitted that the complainant has proved that the accused issued cheque bearing No. 725998 of Rs.2,50,000/- to the complainant for discharge of legally enforceable debt. The complainant has also proved that the

cheque has been presented to the bank within the period of its validity. It is also further proved that the cheque is returned by the bank as unpaid because the amount of money standing to the credit of account is insufficient to honour the cheque. It is further proved by the complainant that he had made demand for the payment of the cheque amount by giving a statutory notice in writing to the accused within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. He further submitted that the complainant has also proved that despite receipt of notice on 17.07.2007, calling upon accused to repay the cheque amount, the applicant accused failed to make the payment of cheque amount within 15 days from the date of receipt of notice.

16. Mr. Desale further submitted that even before the Appellate Court, when the applicant /accused has challenged the judgment of the trial court, the learned Sessions Judge in appellate proceeding has also held that the complainant has proved that he issued the legal notice in writing demanding the amount of cheque from the accused being the drawer of cheque and the accused failed to pay the said cheque amount within

stipulated period of 15 days. Thus, the applicant has committed the offence punishable under Section 138 of Negotiable Instruments Act. He, therefore, submitted that as both the learned courts have properly appreciated all the aspects and the issues, therefore, having committed no illegality or mistake or error, the scope of the High Court to entertain such revision application under Section 397 would be too narrow and therefore, the instant revision application is liable to be dismissed.

17. After hearing the learned counsel for the parties and going through the impugned orders passed by the subordinate courts, first of all, it is very useful to refer to paragraph no.5 of the judgment delivered by the Hon'ble Apex Court in the case of ***State of Kerala vs. Puttumana Illath Jathavedan Namboodiri reported in (1999) 2 SCC 452 : 1999 SCC (Cri) 275*** as under:-

“5. *In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction.*

Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.”

18. In view of the aforesaid observations by the Hon'ble Supreme Court, the contours for exercise of revisional jurisdiction has been well settled by the judicial dicta wherein time and again it has been observed that the High Court shall not interfere with the orders of lower court unless: i) the order or finding of the lower court 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; and iii) there is non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously.

19. In the aforesaid background, it is also useful to refer to paragraph No.27 of the judgment delivered by the Hon'ble Apex Court in ***Sanjabij Tari v. Kishore S. Borcar***, reported as

2025 SCC OnLine SC 2069 : [2025] 9 S.C.R. 1515, which reads as under:-

“27. *It is well settled that in exercise of revisional jurisdiction, the High Court does not, in absence of perversity, upset concurrent factual findings. This Court is of the view that it is not for the revisional court to re-analyze or re-interpret the evidence on record. As held by this Court in Southern Sales and Services and Others vs. Sauermilch Design and Handels GmbH, 2008 (14) SCC 457 / AIR 2009 SC 320, it is a well-established principle of law that the revisional court will not interfere even if a wrong order is passed by a court having jurisdiction, in absence of a jurisdictional error. Consequently, this Court is of the view that in absence of perversity, it was not open to the High Court in the present case in revisional jurisdiction to upset the concurrent finding of the trial court and the Sessions Court.*”

20. In the background of aforesaid observations and clear cut guidelines, after examining the case in hand, there is no hesitation in holding that the trial court as well as the appellate court have dealt with each and every issue raised by the applicant/ accused. The main contention of the learned counsel for the applicant is that Section 138(b) of the Negotiable Instruments Act requires the payee or holder in due course to make a demand for payment by giving notice in writing to the

drawer within thirty days of receipt of information regarding the return of the cheque as unpaid. However, as per the complainant, such notice was issued by him through his advocate. The said notice was dispatched to the applicant /accused on his two different addresses under postal receipts as deposed by the complainant. So far as the service of notice is concerned, the postal authorities intimated the accused about the notice, but the accused did not accept it and therefore, after expiry of period, the envelopes containing the notice were returned to the complainant by postal authorities on 17.07.2007. Even after waiting for 15 days, the accused has not made payment, and as he failed to pay the amount, therefore, the complainant has filed the complaint on 28.08.2007. The applicant has strongly disputed the aspect of complaint filing within limitation from the date of serving of notice on the accused.

21. In this case, the cheque in question was dated 31.05.2007 and the notice was issued on 10.07.2007. The envelopes containing the notice with acknowledgment slips came to be returned on 17.07.2007. From the dates mentioned by the postal authorities on envelopes at Exhibit 32 and 33, it is

disclosed that on 11.07.2007 the applicant accused was absent, on 12.07.2007 oral intimation in the house of accused was given, and on 17.07.2007, there is an endorsement of 'not claimed'.

22. However, according to the learned counsel for the applicant, the cause of action to file the complaint would accrue on 26.07.2007 and therefore, the complaint ought to have been filed within one month i.e. on or before 26.08.2007. However, the complaint came to be filed on 28.08.2007, therefore it is barred by limitation. Hence no cognizance could have been taken by the learned Magistrate. This issue raised by the learned counsel for the applicant has been elaborately considered by both the courts below and after giving detailed finding, the learned Sessions Court in appeal held in paragraphs Nos.37 and 41 that the complaint is within limitation. It is held that the postal authorities, after waiting till 17.07.2007, returned the envelopes containing notice to the advocate of the complainant with the endorsement 'not claimed'. Relying upon the judgment in ***K. Bhaskaran vs. Sankaran Vaidhyan Balan reported in (1999) 7 SCC 510 : 1999 AIR (SC) 3762*** and in ***Rambhau Tulsiram Bhusari v. Assanand Dhanumal Vensiani & Anr., 2019 SCC***

OnLine Bom 3277, it is observed by the learned Sessions Court that the period would start from 17.07.2007 and not from 11.07.2007. Taking the date of service of notice as 17.07.2007, after considering 15 days period within which the accused could have paid the amount of cheque i.e. on or before 01.08.2007, the complaint could have been filed within one month after ignoring 01.08.2007 i.e. the period of limitation would start from 02.08.2007. One month time to file the complaint would thus expire on 01.09.2007, whereas admittedly the complaint is filed on 28.08.2007, which is well within limitation as per Section 138(c) of the Negotiable Instruments Act. The cause of action accrued on 01.08.2007 on failure of the accused to pay the amount of cheque. On careful reading of the impugned judgments passed by both the courts, all aspects are correctly and properly examined and it has been found that the accused is guilty.

23. Reliance placed by the learned counsel for the applicant on the judgments cited by him does not advance the case of the applicant in the facts and circumstances of the present case. The said authorities are either distinguishable on facts or

deal with the question of computation of limitation in a factual and statutory context which is materially different from the case in hand. It is settled that for the purpose of computing the prescribed period of one month, the date on which the cause of action arises is to be excluded. In the present case, upon acceptance of 17.07.2007 as the date of receipt/deemed service of the statutory notice, the statutory period of fifteen days expired on 01.08.2007 and the cause of action accrued thereafter; the complaint filed on 28.08.2007 was, therefore, within the period prescribed under Section 142(b) of the Act. Consequently, the authorities relied upon by the applicant do not warrant different conclusion in the present case.

24. The contention that the amount mentioned in the cheque is less than the total amount of the alleged debt also does not, by itself, render the prosecution under Section 138 of the Negotiable Instruments Act unsustainable. The statutory provision expressly contemplates issuance of a cheque towards discharge, in whole or in part, of a legally enforceable debt or other liability. Therefore, merely because the cheque amount of Rs.2,50,000/- is less than the alleged outstanding liability of

Rs.5,00,000/-, the statutory ingredients of Section 138 cannot be said to be absent on that ground alone.

25. In view of the above discussion, I find that all aspects raised by the applicant have been properly examined and considered by the appellate as well as trial court, and as such, there is no perversity or illegality in the said judgments. In that view of the matter, I find that no case is made out for interference in the judgments passed by the learned subordinate courts. As such, the instant Revision Application is dismissed.

26. In view of dismissal of the revision application, the pending Criminal Application does not survive and stands disposed of.

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(SUSHIL M. GHODESWAR, J.)