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

**CRIMINAL REVISION APPLICATION NO.327 OF 2022
WITH
CRIMINAL APPLICATION NO.3727 OF 2022**

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

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CORAM : SUSHIL M. GHODESWAR, J.

DATE : 03rd SEPTEMBER 2026

P. C. :

1. The applicant is challenging the judgment and order dated 14/10/2022, passed by the learned Additional Sessions Judge, Vaijapur, District Aurangabad, in Criminal Appeal No.3/2020, thereby dismissing the appeal preferred by him, challenging the judgment and order dated 14/01/2020, passed by the learned 2nd Judicial Magistrate First Class, Vaijapur in S.C.C. No.553/2013, thereby convicting the applicant for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to suffer simple imprisonment for three months and to pay a fine of Rs.3,20,000, in default to pay fine, to suffer simple imprisonment for two months.

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2. Respondent No.2 is the original complainant, who had filed a complaint against the applicant for the offence punishable under Section 138 of the Negotiable Instruments Act before the Court of Learned Judicial Magistrate First Class, Vaijapur, District Aurangabad, which came to be registered as S.C.C. No. 553/2013. According to respondent No. 2 (complainant), he had given a hand loan of Rs.1,60,000 on 15/03/2012 to the applicant-accused. Since the said loan amount was not repaid upon repeated demands, the applicant allegedly issued a cheque dated 15/03/2013 drawn on his account at Aurangabad District Central Cooperative Bank, Vaijapur Branch. When complainant presented the said cheque through his bank account at Maharashtra Godawari Gramin Bank, Vaijapur, the same came to be returned with the endorsement "Funds Insufficient." The said cheque came to be presented again on 23/04/2013, and again it came to be returned on the ground of "Funds Insufficient" on 24/04/2013. Therefore, the complainant issued a statutory notice to the applicant/accused. Since the applicant-accused failed to repay the loan amount as claimed, the complainant instituted the complaint under Section 138 of the Negotiable Instruments Act.

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3. After recording the evidence and the statement of the applicant/accused under Section 313 of the Code of Criminal Procedure, the learned Judicial Magistrate First Class held the applicant guilty under Section 138 of the Negotiable Instruments Act and convicted him. The said conviction came to be challenged by the applicant by preferring Criminal Appeal No.03/2020 before the learned Additional Sessions Judge, Vaijapur. Learned Additional Sessions Judge dismissed the appeal vide order dated 14/10/2022. Therefore, the applicant has approached this Court by filing the instant Criminal Revision Application.

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

5. Mrs Chincholkar, learned Advocate for the applicant submits that, both the learned lower Courts erred in law in convicting the applicant on the basis of erroneous and perverse findings and they have mis-appreciated the evidence on record. She further submits that the evidence of the complainant cannot be considered so as to convict the applicant under Section 138 of the Negotiable Instruments Act. She further submits that defence of applicant has not been considered

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properly by the lower Courts below, and thus, the learned lower Courts have committed a grave error in law, thereby holding that the applicant has issued the cheque in discharge of liability towards a legally enforceable debt.

6. Mr Chincholkar further submits that the applicant had not taken hand loan from complainant. There was a specific demand by the applicant from one Darshan Ramayya, who is a friend of the complainant. The applicant/accused had taken a hand loan of Rs.30,000 from said Darshan Ramayya, and to repay the said amount, he had given three blank signed cheques as security towards the hand loan of Rs.30,000/- to said Darshan Ramayya. Out of the said three cheques, one cheque has been misused by the respondent/complainant, and therefore, the learned Subordinate Courts were required to hold that the applicant has not committed the offence as alleged by the complainant. Therefore, Mrs. Chincholkar vehemently submits that the applicant has succeeded in rebutting the presumption drawn against him, and as such, the applicant is entitled to be acquitted from the aforesaid case.

7. Mrs Chincholkar further submits that the cheques given to Darshan Ramayya, have also been returned with the same endorsement

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("Funds Insufficient"), and he had also instituted a complaint separately against the applicant. Against the said complaint, Criminal Revision Application No. 64/2026 is pending before this Court. In the said criminal case as well, the applicant has been convicted, and against the said conviction, the said revision application is preferred by the applicant before this Court.

8. Per contra, Mr. Kasliwal, learned Advocate for respondent No.2/complainant vehemently opposes the instant Criminal Revision Application. According to him, the respondent/complainant has clearly established before the Trial Court that the applicant issued the cheque amount. Same came to be presented to the bank where the respondent/complainant maintains his account. The same came to be returned for the reason "Funds Insufficient," and therefore, the respondent/complainant issued a statutory notice under Section 138 of the Negotiable Instruments Act. Since the applicant did not reply to the said notice, complainant filed a complaint under Section 138 of the Negotiable Instruments Act before the learned Judicial Magistrate First Class. He further submits that the evidence brought before the learned Trial Court by the complainant is sufficient to prove the charges against the applicant. He then submits that, in view of the provisions

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of Sections 118, 138, and 139 of the Negotiable Instruments Act, there is a presumption that the holder of the cheque received the cheque for the discharge of a debt or liability. Such presumption also includes the presumption of a legally enforceable debt or liability. Hence, in view of the presumption raised under Sections 118 and 139 of the Act, the complainant has proved that there is a legally enforceable debt on the accused. The applicant/accused failed to rebut the aforesaid burden, and therefore, it has been fully established that the cheque in question was issued towards a legally enforceable debt. He, therefore, prays for dismissal of the present revision application.

9. After hearing the learned Advocates for the parties and going through the evidence on record, it appears that both the Courts below have given a specific finding that the applicant/accused issued the cheque in favour of the respondent/complainant in discharge of a legal liability, and the said cheque came to be dishonored. The demand notice was also proved to be validly served to the applicant. There was a further finding that the applicant has failed to rebut the statutory presumption under Section 139 of the Negotiable Instruments Act. Thus, it was held that the accused issued the cheque in favour of the complainant in discharge of a legal debt or liability.

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10. After perusing both the judgments carefully and going through the evidence available on record, it is clearly established that the applicant/accused has issued the aforesaid cheque in discharge of a legally enforceable debt. In my opinion, both the learned Courts below have appreciated the evidence in proper perspective. They have given the aforesaid judgments by following the well-established procedure. The evidence brought by the complainant as well as the defence of the accused has been considered in an appropriate manner. There is neither a procedural flaw, nor a failure to consider any vital provision.

11. Since both judgments passed by the learned lower Courts are correct and proper, this Court is not inclined to interfere by exercising its jurisdictional power under Section 397 of the Code of Criminal Procedure. The power under Section 397 of the Code of Criminal Procedure is to be exercised sparingly and only in exceptional cases to rectify a miscarriage of justice. Since both the learned Subordinate Courts, after properly examining the evidence, have arrived at a conclusion that the applicant has issued the cheque towards discharge of legal liability of repaying the loan amount, I am, therefore, of the view that the instant revision application does not

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have any valid or strong grounds to upset the findings given by the learned lower Courts. Hence, the present criminal revision application deserves to be dismissed and accordingly, the same is dismissed.

12. In view of dismissal of the criminal revision application, Criminal Application No.3727/2022 does not survive and the same is also dismissed.

[SUSHIL M. GHODESWAR, J.]

sjk