



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

CRIMINAL APPEAL NO. 539 OF 2017

. Shamdhan S/o. Ramkisan Singhal
Age: 31 years, Occu.: Business,
R/o. Plot No.35, New S.T.Colony,
N-2, Cidco, Aurangabad. Appellant
(Original complainant)

Versus

1. Smt.Vidhya W/o. Dhansingh Rajput
Age: 35 years, Occu.: Household,
R/o. Prasad Collection, Jaybhawani Nagar,
N-2, Cidco, Aurangabad. (Original Accused)
2. The State of Maharashtra Respondents

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Mr.S.G.Ladda, Advocate for Appellant (through VC).
Ms.Smita S. Kulkarni and Mr. Kiran M. Nagarkar, Advocates for
Respondent No.1.
Mr.S.M.Ganachari, APP for Respondent No.2.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 10-09-2026
Pronounced on : 24-09-2026

JUDGMENT :

1. In instant appeal, original complainant takes exception to Judgment and order dated 12-01-2017 passed by learned Additional Sessions Judge-4, Aurangabad in Criminal Appeal No.212 of 2011, arising out of Judgment and order dated 25-07-2011 passed by learned Judicial Magistrate First Class, Court No.8, Aurangabad in SCC No.2491 of 2010.

2. Appellant/complainant's case in trial Court was that, he and accused were acquainted since 20 years. Due to domestic difficulty in business of husband of respondent No.1/accused, she put up a request for hand loan to the tune of Rs.3,75,000/- to the complainant. Appellant, at that point of time, had no money of his own, but he was custodian of money received by his father-in-law in the backdrop of sale transaction of land. Said amount was handed over to accused, who assured to repay it within 15 days. However, she failed to do so. According to complainant, after continuous persuasion for repayment of hand loan, accused issued cheque bearing No.093626 of Rs.3,75,000/- dated 23-12-2009. The same was put up for realization, but it was returned dishonoured with remarks "insufficient funds". As required under law, complainant despatched legal notice to the accused, but the envelop was returned as "Unclaimed". Ultimately, appellant filed proceedings under Section 138 of the Negotiable Instruments Act (N.I. Act) before the Court of learned Judicial Magistrate First Class (JMFC), who appreciated the oral and documentary evidence and rendered conviction vide above Judgment and order dated 25-07-2011.

Respondent No.1/Accused challenged the said judgment and order before the First Appellate Court i.e. learned Additional Sessions Judge-4, Aurangabad, vide above referred criminal appeal and the

same came to be allowed. Hence, instant appeal by the original complainant.

3. Record shows that, the learned trial Court i.e. Court of JMFC accepted the complainant's case as proved on the ground that complainant substantiated extension of hand loan and issuance of cheque. By applying presumption available under Section 139 of the N.I. Act, complainant's case was accepted, as accused, according to said Court, failed to rebut the said presumption. Learned trial Court rejected the defence set up by accused about complainant stealing the cheque and misusing it. For above reasons, conviction was recorded for offence under Section 138 of the N.I. Act and accused being a lady, learned trial Court directed sentence by way of fine and in default to suffer simple imprisonment and to further pay compensation.

4. In appeal by accused/respondent no.1, learned First Appellate Court recorded a finding that complainant failed to demonstrate and substantiate extension of hand loan and there being no evidence of whatsoever nature regarding advancement of hand loan. While recording such finding, learned First Appellate Court also tested evidence of CW2 father-in-law of complainant, who stood by his son-

in-law on the point of extension of hand loan to accused in his presence. It was a specific finding of the learned First Appellate Court that complainant's witness CW2 failed to depose about issuance of cheque in his presence and moreover, admitted that he was deposing falsely. Learned First Appellate Court also recorded a finding that cheque in question was not drawn on the bank account maintained by accused and lastly, legal notice Exhibit 26 did not contain specific text of demand on account of dishonour and therefore, notice was held to be not valid.

5. Both learned counsel for appellant/complainant as well as learned counsel for respondent No.1/accused heard extensively.

6. Learned counsel for appellant would point out that, there is no dispute about long standing relations and acquaintance with accused. That, complainant was possessing money received by his father-in-law after selling land and with consent of and in presence of such father-in-law, demand of accused was complied. That, evidence of CW1 complainant found support from CW2 Govind. That, their evidence in cross-examination had remained intact and therefore, it is his submission that complainant has proved borrowing of hand loan by accused beyond reasonable doubt and also receiving it by assuring to

repay it but she failed to do so. Learned counsel pointed out that after the cheque was put up for realization, it was returned dishonoured. That time complainant realized mischief played by accused in handing over cheque of Prerana Bachat Gat of which she was an office bearer. However, liability is not denied as cheque was signed and issued by accused towards discharge of said liability. That, legal notice, as required under law, was also despatched and it was refused to be accepted and therefore, learned JMFC has rightly held receipt of notice to be valid. Hence, all essential ingredients for attracting offence under Section 138 of the N.I.Act were very much available and therefore, learned trial Court rightly applied the law and convicted the accused. However, according to him, learned First Appellate Court did not comprehend the complainant's evidence in its proper perspective. That, there was no need for interference in the well reasoned and sound judgment. That, learned First Appellate Court also failed to consider and apply the settled law on the point of presumption available under the N.I.Act and failure of accused to rebut the same. According to him, there was no denial of issuance of cheque or signature over it and therefore, presumption available under the law automatically gets attracted. In support of such submission, he seeks reliance on the judgment of the Hon'ble Apex Court in the case of *Rangappa v. Sri Mohan*, [(2010) INSC 289].

Consequently, he urges to set aside the impugned Judgment and order passed by the learned First Appellate Court and to restore the Judgment and order of the learned trial Court.

In support of his submissions, learned counsel for appellant also relied on the Judgments of the Hon'ble Apex Court in the cases of *Dhanasingh Prabhu v. Chandrasekar and Another*, (2025) 10 SCC 96, *Ashok Singh v. State of Uttar Pradesh and Another*, 2025 SCC Online SC 706. He also relied on decision of this Court in case of *Tarmahomed Haji Abdul Rehman v. Tyeb Ebrahim Bharamchari*, 1948 SCC OnLine Bom.66.

7. Learned counsel for respondent No.1/original accused would point out that, there was no hand loan. That, cheque of accused was stolen and misused. That, complainant failed to establish legally enforceable debt and moreover, when the cheque in question was of Bachat Gat with which there was no transaction and the said cheque being misused, learned First Appellate Court rightly acquitted the accused. She pointed out that, there was no whole hearted corroboration by witness CW2 and he had not deposed about accused issuing any cheque in his presence. She would emphasize that even there is incomplete demand notice which is also silent on the point of demand. Resultantly, she justifies the Judgment and order of

acquittal passed by learned First Appellate Court and prays to dismiss appeal for want of merits.

To substantiate her contentions, learned counsel for respondent No.1 relied on the Judgments of the Hon'ble Apex Court in the cases of *Rajesh Prasad v. State of Bihar and Another*, (2022) 3 SCC 471; *H.D.Sundara and Others v. State of Karnataka*, (2023) 9 SCC 581; *Reverend Mother Marykutty v. Reni C.Kottaram and Another*, (2013) 1 SCC 327, *Krishna Janardhan Bhat v. Dattatraya G.Hegde*, (2008) 4 SCC 54; *Vijay v. Laxman and Another*, 2013 SCC OnLine SC 122.

She also relied on the Judgments of this Court in the cases of *Mr.Vijaykant Motilal Kothari v. The State of Maharashtra and Others*, (Criminal Appeal No.1120 of 2011 dated 28-01-2026); *Vinay Parulekar v. Pramod Meshram*, 2007 SCC OnLine Bom 1077; *Mohd. Yakub Saudagar v. The State of Maharashtra and Others* (Criminal Revision Application (St.) No.57 of 2017 dated 19-08-2026), *Sanjay Mishra v. Kanishka Kapoor @ Nikki and Another*; 2009(4) Mah.L.J. 155; *Mrs.Rosa Maria Fernandes v. Nauso N.Kepkar*, 2010(2) Mah.L.J. (Cri) 654; *Punjabrao Bhagwanrao Ghuge v. Rajkumar s/o. Kamalkishor Agrawal*, 2010 (2) Mah. L.J. (Cri) 654; *Shriniwas Ramdas Siwerwat v. Shantaram Pandurang Deotale*, 2011 SCC OnLine Bom 858.

8. Each of the learned counsel has sought reliance on above mentioned numerous precedents, but the same being on settled law, there is no dispute to that extent.

9. Being appeal, entire oral and documentary evidence is visited, re-appreciated and re-analyzed.

Before the trial Court, complainant CW1, apart from his own evidence at Exhibit 23, seems to have adduced evidence of **CW2** Govind, his father-in-law at Exhibit 39 and sought reliance on documentary evidence like cheque in question (Exhibit 24), bank memo (Exhibit 25), copy of legal notice (Exhibit 26) and postal envelop (Exhibit 27).

While setting up resistance to the above case of complainant, accused adduced evidence of **DW1** Balaji, Bank official of Adarsha Mahila Nagari Sahakari Bank at Exhibit 52, **DW2** Sangita, her own sister at Exhibit 54, her husband **DW3** Dhansingh at Exhibit 55 and her son **DW4** Pravin at Exhibit 56.

10. It seems that complainant came with a case that, due to 20 years long acquaintance with accused and as both belong to same community, accused requested hand loan due to domestic issues and for business of her husband. Complainant's case is that coincidentally,

at that time, though he did not have his own amount, Rs.3,75,000/- received by his father-in-law due to sale transaction of land, which were kept with him, were handed over as a hand loan to accused and in spite of assurance to repay within 15 days, accused failed and on persuasion, issued a cheque in question (Exhibit 24), which was on its presentation, stood dishonoured and inspite of legal notice being despatched, the same was refused to be accepted and therefore, there is good service and hence, the complaint for offence under Section 138 of the N.I.Act.

When above was the case of complainant, obviously as required under law, complainant has to establish existence of transaction of hand loan beyond reasonable doubt. If issuance of cheque and transaction are demonstrated, presumption as available under Sections 118 and 139 of the N.I.Act automatically comes into play and then thereafter, it becomes incumbent on accused to rebut the said presumption. This is fairly the legal framework and settled position.

11. On re-appreciating evidence of **CW1** complainant and his witness **CW2** his father-in-law, it is emerging that in support of his pleading that accused approached him and sought hand loan, except bare words, there is no other distinct evidence or any writing work in

that regard. In those days i.e. when transaction had allegedly taken place, an amount of Rs.3,75,000/- was definitely a huge amount and therefore, it required substantial evidence about extension of hand loan. There is no acknowledgment of receipt of Rs.3,75,000/- in black and white nor any promissory note seems to have been got drawn by complainant from accused. Attempt is made to support the above contention of extension of hand loan by adducing evidence of CW2, who is none other than father-in-law of complainant. However, on visiting his evidence at Exhibit 39, more particularly, his examination-in-chief, it is noticed that though he speaks of receiving sale consideration and keeping it in possession of his son-in-law i.e. complainant till his proposed next transaction was to be completed and his son-in-law calling him on 02-10-2008 and in his presence Rs.3,75,000/- were given to accused by his son-in-law, as pointed out, his further examination-in-chief is conspicuously silent on the point of accused in turn issuing a cheque in question (Exhibit 24) dated 23-12-2009. It was expected of this witness to lend support to complainant in that regard also. However, he has not deposed in his written affidavit at Exhibit 39 also to that extent. Even though in his cross-examination, he has denied that he did not maintain his own bank account, he has merely denied that he never maintained bank account of his own. However, in cross-examination, it seems that he

was confronted with 7/12 extract of Gut No.231 wherein entry of borrowing Rs.50,000/- was reflected. Hence, this witness has not fully supported complainant.

It is also pointed out by learned counsel for respondent No.1 that, mere xerox copy of the sale deed is placed on record to substantiate sale transaction of land of CW2, which allegedly fetched him money, however, the figure reflected therein does not match with the quantum of amount i.e. in sale deed and rather sale transaction is shown to be concluded at Rs.1,85,000/-, whereas hand loan is of Rs.3,75,000/-. Therefore, there is no explanation regarding raising further amount by complainant or contributing remaining amount as his own share. Resultantly, as submitted by learned counsel for respondent No.1, there is no convincing evidence on behalf of complainant in support of hand loan to the tune of Rs.3,75,000/-, which was allegedly given to accused. Even learned trial Court failed to appreciate this aspect which the First Appellate Court seems to have dealt with.

12. In the considered opinion of this Court, the salient feature of this case is that, cheque in question (Exhibit 24) is of Adarsha Mahila Nagari Sahakari Bank Limited and it is of the account of Prerana Bachat Gat of which accused is said to be an office bearer in the

capacity of President. Here, admitted position and very complainant's case itself is that due to cordial and long standing relations, hand loan was extended. It necessarily implies that it was for personal need of accused and her husband as in the very complaint, there is averment that, accused was facing domestic issues and was therefore in need of funds. Consequently, there was no transaction with Prerana Bachat Gat. If this was the fact situation, then obviously there ought to have been cheque of an account maintained by accused personally. However, here it is of the said Women Self Help Group namely "Prerana Bachat Gat" with which there is no transaction of complainant of any nature whatsoever.

13. Section 138 of the N.I. Act is reproduced below for ready reference.

138. Dishonour of cheque for insufficiency, etc., of funds in the account.—

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended

to two years, or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless—(a)the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;(b)the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and(c)the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Therefore, what above provision contemplates is issuance of cheque by a person on an account maintained by him in the bank for payment of any amount for discharge of full or part liability.

14. It is fairly settled position that unless and until essential ingredients of Section 138 of the N.I.Act are available, offence cannot be said to be attracted. It is the primary and fundamental requirement that a person must have drawn a cheque “**on an account maintained by him**” which is handed over for discharge of legally enforceable debt. Here, apparently cheque in question is not drawn on personal account of accused, rather it is a cheque drawn on the account of above referred Prerana Bachat Gat. Respondent No.1/accused has

adduced evidence of DW1 Balaji, Bank official of Adarsha Mahila Nagari Sahakari Bank Ltd., at Exhibit 52 and he has identified and endorsed account so maintained. Therefore, when the primary and fundamental requirement was not met, complainant's case itself gets hit at the bottom.

The Hon'ble Apex Court in the case ***Alka Khandu Avhad v. Amar Shyamprasad Mishra and Another***, (2021) 4 SCC 675 observed as under :

"Held, it is only the person, who is signatory to cheque and cheque is drawn by that person on account maintained him (emphasis laid) and cheque has been issued for discharge, in whole or in part, of any debt or other liability and said cheque has been returned by bank unpaid, prosecuted under Section 138 of the N.I.Act."

Similar views are also expressed in the Judgment of ***P.J. Agro Tech Limited and Others v. Water Base Limited***, (2010) 12 SCC 146, wherein it is held as under :

"From a reading of Section 138, it is very clear that in order to attract the provisions thereof, a cheque which is dishonoured will have to be drawn by a person on an account maintained by him for payment of any amount of money to another person from out of that account for discharge, in whole or in part of any debt or other liability. It is only such a cheque which is dishonoured which would attract provisions of Section 138 of the above Act against drawer of

the cheque."

15. Both sides were also heard to be hotly contesting on the issue of service of legal notice. Record shows that mere envelop was placed before learned trial Court. Though it was "unclaimed" and even if it is considered to be a good service i.e. by invoking Section 27 of General Clauses Act, it appears that complete legal notice is not part of record and there is a single page which is silent about very demand. Demand by way of legal notice is *sine qua non* and it has to be unambiguous and in clear terms so put forth. But complete notice is not part of record and therefore, it cannot be assumed to be a demand notice as required under the law which was despatched to the accused.

16. The ratio laid down by the Hon'ble Apex Court in the above referred cases relied by the learned counsel for the appellant is as under :

In the case of *Dhanasingh Prabhu (supra)*, it is held that "*In a prosecution under Section 138 involving a partnership firm, the fact that the partnership firm was not arraigned as an accused or that statutory notice was not issued to the firm does not, by itself, make the complaint maintainable against the partners. The Supreme Court held that the partners could be proceeded against in the*

circumstances of that case.”

In the case of *Ashok Singh* (supra) it is held that “*The complainant has no obligation to prove his financial capacity at the threshold. However, once the accused challenges the complainant’s financial capacity to advance the alleged loan, the complainant may be required to place cogent material before the Court to establish that he had the financial capacity and had actually advanced the amount as a loan. The Court also considered the fact that the complainant had specifically stated that he had withdrawn the amount from his bank account.*”

17. I have gone through the above referred Judgments of the Hon’ble Apex Court. However, the facts in the above cases and the case in hand are distinct.

18. To sum up, here, very essential ingredient of cheque in question to be not drawn on account maintained by accused, the rigors of Section 138 of the N.I. Act, cannot be said to be attracted.

19. Yet another feature of this case, which emerges on re-appreciation of evidence is that, alleged cheque in question (Exhibit 24) is dated 23-12-2009, however, said hand loan transaction is said to be of 02-10-2008. It cannot be comprehended that inspite of receiving a cheque from accused, till receiving bank memo, complainant did not notice that the cheque has not been drawn on

personal account of accused but on account maintained by Prerana Bachat Gat. Therefore, reasonable doubt arises on the complainant's case in that context too.

20. On complete perusal of impugned judgment, it is noticed that, evidence of both the parties has been properly appreciated by the learned First Appellate Court. Law taken support by each of the side is also dealt with and discussed. Therefore, in the considered opinion of this Court, there is no perversity or illegality on the part of learned First Appellate Court in overturning the Judgment of the trial Court and acquitting the accused. Accordingly, following order is passed :

ORDER

The Criminal Appeal is dismissed.

[ABHAY S. WAGHWASE, J.]