



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

CRIMINAL REVISION APPLICATION NO.338 OF 2023

Rajendra s/o Kautikrao Warade,
Age : 46 years, Occu : Agri,
R/o Samarth Nagar, Nalani,
Tq. Bhokardan, Dist. Jalna.

...APPLICANT
(Orig. Accused)

-VERSUS-

1. The State of Maharashtra.
2. Bhaskar s/o Eknath Kafre,
Age : 51 years, Occu : Agri,
R/o Tupewadi, Tq.Badnapur,
Dist. Jalna.

...RESPONDENTS

**WITH
CRIMINAL APPLICATION NO.296 OF 2026
IN
CRIMINAL REVISION APPLICATION NO.338 OF 2023**

Bhaskar s/o Eknath Kafre,
Age : 51 years, Occu : Agri,
R/o Tupewadi, Tq.Badnapur,
Dist. Jalna.

...Applicant
(Orig. Complainant)

VERSUS

Rajendra s/o Kautikrao Warade,
Age : 46 years, Occu : Agri,
R/o Samarth Nagar, Nalani,
Tq. Bhokardan, Dist. Jalna.

...Respondent/ accused

...

Shri Shailendra S. Gangakhedkar, Advocate for the applicant/
accused.

Shri M.A. Aher, APP for respondent No.1/ State.

Shri Yogesh G. Somani, advocate for the complainant.

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CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 01 September 2026

Pronounced on : 07 September 2026

JUDGMENT :-

1. This Criminal Revision Application has been preferred under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') challenging the judgment and order dated 27.10.2023 passed by the learned Additional Sessions Judge-3, Jalna, in Criminal Appeal No.30/2022, whereby the learned Additional Sessions Judge dismissed the appeal and confirmed the judgment and order dated 08.09.2022 passed by the learned Judicial Magistrate First Class, Jalna, in S.C.C. No. 543 of 2018, convicting the applicant for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and sentencing him to suffer simple imprisonment for six months and to pay cheque amount of Rs. 12,00,000/- to the complainant as compensation under Section

357(3) of the CrPC.

2. The brief facts of the complaint case are that the applicant/accused was in need of Rs.12,00,000/- for the expansion of his business. Respondent No.2/ original complainant being a good friend, advanced hand loan to the applicant/ accused. For repayment of the said amount, the applicant/ accused issued cheque bearing No.240907 dated 15.12.2017 for an amount of Rs. 12,00,000/-, drawn on the Gajanand Maharaj Urban Co-operative Bank, Bhokardan Branch. On presentation, the said cheque was dishonoured on the ground of insufficient funds. Consequently, a statutory notice was issued, and upon failure to pay the amount within the stipulated period, a complaint under Section 138 of the Negotiable Instruments Act was filed, which was registered as S.S.C. No. 543 of 2018.

3. During the trial, the complainant examined three witnesses, including himself (PW-1), his son Rameshwar (PW-2), and chartered accountant Ashishkumar Kabra (PW-3), and filed his affidavit-in-lieu of examination-in-chief along with documentary evidence. The statement of the accused under Section 313 of the CrPC was recorded, wherein he took the

defence of total denial, stating that he had never taken loan from the complainant. According to the accused, he had issued several blank signed cheques and other documents to the complainant in connection with financial transactions, and one such cheque had been misused by the respondent-complainant. He had obtained the loan from Neta Agro Financial Institution and in pursuance to the same, he had given blank signed cheques to the respondent-complainant, out of which one cheque is misused by the respondent-complainant.

4. The learned JMFC, after considering the evidence on record, convicted the applicant under Section 138 of the Negotiable Instruments Act and sentenced him as aforesaid. The learned Judicial Magistrate First Class held that the applicant has issued the cheque in discharge of legally enforceable debt and held the applicant guilty for the offence punishable under Section 138 of the Negotiable Instruments Act vide judgment and order dated 08.09.2022.

5. Being aggrieved by the said decision, the applicant challenged the said conviction before the learned Sessions Judge in Criminal Appeal No. 30 of 2022. The learned Sessions Judge,

after hearing the learned counsel for the parties, maintained the order of sentence passed by the learned JMFC and accordingly dismissed the appeal filed by the applicant vide its impugned judgment and order dated 27.10.2023. Hence, the present revision application.

6. Mr. Gangakhedkar, the learned counsel for the applicant/ accused, submits that the learned courts below have not considered that the amount in question could not be called as legally enforceable debt. The said amount is not reflected in the Income Tax returns filed by the complainant. As the said amount is unaccounted, therefore, it is not appropriate to hold that the said cheque was issued towards the discharge of liability to pay the legally enforceable debt.

7. Mr. Gangakhedkar took this Court to the documents pertaining to the Income Tax returns filed by the respondent-complainant for the year 2015-2016. The said Income Tax returns of the complainant and his son disclose no such amount alleged to be given as hand loan to the applicant-accused. He further submitted that the obligation is on the prosecution which can be discharged with the help of presumption of law and/or the facts

unless the accused adduces the evidence showing the reasonable possibility of non-existence of presumed fact. According to him, the complainant failed to prove his financial capacity coupled with the existence of debt having reflected in the Income Tax returns. He further vehemently argued that the learned courts below erred in holding that accused has not rebutted the presumption under Section 139 of the Act.

8. Mr. Gangakhedkar also submitted that the evidence brought by the prosecution on record is itself not cogent and satisfactory. The prosecution has, therefore, failed to prove that the applicant-accused has issued the cheque in discharge of any liability. He further submitted that the version of the complainant PW-1 and his son PW-2 creates doubt as their seeds and fertilizer shop was closed in the next financial year i.e. 2017-18. As such, the complainant cannot be said to have handed over such huge amount in cash in absence of any documentary evidence. The said cash amount was handed over that too without executing any agreement, cannot be believed. Therefore, such evidence does not inspire confidence. The learned lower courts have assumed and presumed that the existence of legally enforceable debt is

also one of the presumptions incorporated under Section 139 of the Negotiable Instruments Act. The said view is totally incorrect as the existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act. It merely raises presumption in favour of holder of the cheque that same has been issued for discharge of any debt or other liability. As to the source of the amount of Rupees 12 Lakhs and the same is not reflecting in the Income Tax returns, the applicant cannot be held responsible or liable to pay the said amount. He, therefore, prayed for quashing and setting aside the impugned judgment and order passed by the subordinate courts.

9. *Per contra*, Mr. Somani, learned counsel for the complainant, strongly opposed the instant revision application and the submissions of Mr. Gangakhedkar. According to him, the learned courts below have properly appreciated the evidence brought before it and accordingly held the applicant-accused responsible and liable for the payment of cheque and also convicted him for the offence punishable under Section 138 of the Negotiable Instruments Act. During the course of hearing, he also took this Court through the Income Tax returns filed for the

year 2017-18 in which it is disclosed that the hand loan of Rupees 12 Lakhs was given to the applicant/ accused. The balance sheet discloses the amount which is given to the applicant/ accused.

10. Mr. Somani submits that the learned counsel for the applicant is misleading this Court as he is not pointing out the evidence in proper manner and relying upon the Income Tax returns of the year 2015-16 when the cheque itself is given on date 15.12.2017, therefore, the amount of Rupees 12 Lakhs will naturally reflect in the said financial year i.e. 2017-18. He further submitted that the applicant is trying to take the defence only on the ground that the complainant was not in financial position to lend such huge amount to the applicant/ accused. Apart from this, the applicant has not raised any other ground challenging the impugned conviction orders.

11. Mr. Somani further submitted that though the applicant is relying upon the story that he had obtained the loan from one private Neta Financial Institution, however, nobody from the said firm came to be examined. So also, no document from the said financial institution regarding the said loan has

been put on record. Therefore, the story put forth by the applicant/ accused is not probable and as such, the applicant/ accused failed to rebut the presumption. As such, the learned courts below have rightly convicted the applicant/ accused on proper consideration of the evidence before it. He, therefore, submits that there is no error or mistake in the judgments delivered by the learned subordinate courts and same are required to be maintained and as such, the instant Criminal Revision Application is liable to be dismissed.

12. The learned APP strongly supported the concurrent findings recorded by both the courts below and also supported the argument of the learned advocate for the complainant. It was contended that the signature on the cheque and the issuance of the cheque from the bank account maintained by the applicant are not disputed. Once the execution of the cheque is admitted, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act operate in favour of the holder of the cheque, and the applicant miserably failed to rebut the said presumptions by bringing any cogent or probable evidence on record. Both the trial Court and the appellate Court have

meticulously appreciated the oral and documentary evidence, and there is no perversity or illegality in the impugned judgments warranting interference in revisional jurisdiction.

13. After hearing the arguments of the learned counsel for the respective parties and going through the record placed before this Court, it is clear that the respondent-complainant has issued cheque on 15.12.2017 of amount of Rupees 12 Lakhs to the applicant-accused. According to the respondent-complainant, he had given the hand loan of Rupees 12 Lakhs in the month of September 2017 for the period of three months. The applicant-accused was supposed to refund the said amount within period of three months. Since he could not refund the said amount, therefore the applicant-accused issued cheque dated 15.12.2017 of Rupees 12 Lakhs to the respondent-complainant. After presenting the said cheque, same was dishonoured. Therefore, the respondent-complainant issued statutory notice to the applicant-accused. Since the applicant-accused could not pay the aforesaid amount, therefore, the respondent-complainant instituted complaint under Section 138 of the Negotiable Instruments Act before the learned Judicial Magistrate First Class.

14. The evidence brought by the respondent-complainant before the learned Trial Court discloses that he has issued the cheque since the applicant-accused failed to repay the loan amount. The books of account as reflecting in the Income Tax returns of the respondent-complainant discloses the entry of Rupees 12 Lakhs. Naturally, the said entry will occur in the next financial year or in the same financial year and therefore, it occurred in the financial year of 2017-18. Therefore, the submissions of learned counsel for the applicant that the said amount is not disclosed in the year 2016-17 is not at all correct.

15. The applicant-accused having not examined anybody from the Neta Farm Agro Financial Institution to prove that the respondent-complainant was working as agent of the said firm / institution and since he had obtained the loan amount from the said firm, he had issued certain cheques to the respondent-complainant and out of the said cheques, one of the cheque has been misused by the respondent-complainant. There is also nothing or record to suggest that the applicant-accused has made complaint as regards misusing the cheques. The applicant is required to rebut the presumption on the basis of preponderance

of probabilities. He deposes that he has given 15 blank cheques and six bond papers and certain documents to the respondent-complainant. It is alleged that the respondent-complainant has misused the said cheque. Sections 138 and 139 of the Negotiable Instruments Act make it mandatory for the Court that unless the contrary is proved, it has to be presumed that the holder of the cheque is responsible for discharge in whole or in part of debt or other liability of the drawer. The said presumption admittedly is not rebutted by the applicant. His defence does not appear to be probable that 15 blank cheques were given to the respondent-complainant. The applicant has failed to discharge the initial presumption by raising probable and acceptable defence.

16. After reading both the judgments passed by the learned subordinate courts, I find that there is no illegality or even remote irregularity to exercise jurisdiction under Section 397 of the CrPC. Though Mr. Gangakhedkar relied upon the judgments in *Devender Kumar vs. Khem Chand*, 2016(1) DCR 147 (Delhi High Court), *Sajidur Rehman vs. Rajiv Kashyap and others*, 2017 (3) DCR 461 (Delhi High Court), *Basalingappa vs. Mudibasappa*, (2019) 5 SCC 418 and *M/s Rajco Steel*

Enterprises vs. Kavita Saraff and another, AIR 2024 SC 2105, however, the ratio of the said judgments cannot be made applicable to the instant case for the simple reason that the record of the instant matter *prima facie* discloses the offence under Section 138 of the Negotiable Instruments Act. Moreover, the facts and circumstances of the said cases are totally different and therefore, the ratio laid down in the said judgments cannot be made applicable to the case in hand.

17. Mr. Somani has rightly placed reliance upon the judgment of this Court in *Krishna P. Morajkar vs. Joe Ferrao, AIR BOMR 2013 5 294 : ALL MR (CRI) 2013 0 4129*, to contend that even if the amount is not shown in the income tax returns, one cannot jump to the conclusion that the presumption under Section 139 stands rebutted.

18. It is a well-settled principle of law that the revisional jurisdiction under Section 397 read with Section 401 of the CrPC is supervisory in nature and is restricted to correcting manifest errors of law, gross procedural irregularities or perversity resulting in a miscarriage of justice. This Court does not act as a second appellate court to re-weigh the evidence where two views

are possible or where the concurrent findings of the courts below are soundly based on the material on record. The applicant has failed to point out any perversity or patent illegality in the appreciation of evidence by the courts below. In the case in hand, it is nowhere found that the learned courts below have committed any error or mistake while passing the impugned judgments and orders. Hence, I pass the following order:-

ORDER

- (a) The Criminal Revision Application is dismissed.
- (b) Both the Judgments and Orders passed by the Courts below, are confirmed.
- (c) The applicant/ accused shall surrender before the Trial Court within four weeks from today to undergo the remaining sentence, if any, failing which the Trial Court shall take appropriate steps in accordance with law to execute the sentence.
- (d) Record and proceedings be sent back to the Trial Court along with a copy of this judgment for information and compliance.

19. In view of dismissal of the Criminal Revision Application filed by the applicant/ accused, Criminal Application No.296/2026 filed by the complainant is allowed. The complainant is permitted to withdraw the amount deposited by the accused in this Court along with accrued interest.

kps

(SUSHIL M. GHODESWAR, J.)