

**IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL APPEAL NO.34 OF 2016**

Sri Hanumant Eshwar Pirankar
Son of late Eshwar Pirankar,
Aged 55 years, Business, married,
Resident of H.No.74,
Naibag, Pernem. ...Appellant

Versus

Shri Devidas Nilkanth Kalangutkar
Son of Nilkanth Kalangutkar,
Major, Businessman,
Residing at Sateli, Sawantwadi,
Sindhudurg, Maharashtra. ... Respondent

Mr Parimal Redkar, Advocate for the Appellant.

Mr Shivan Desai with Ms M. Viegas, Ms. Riya Amonkar and Ms
A. Thorat, Advocates for the Respondent.

CORAM : ASHISH S. CHAVAN, J.

Reserved on : 4th MAY 2026
Pronounced on : 18th MAY 2026

JUDGMENT :

1. By way of the present Appeal, the Appellant (original Complainant) has challenged the acquittal of the Respondent (original Accused) arising out of proceedings under the Negotiable Instruments Act ('NI Act', for short) vide order dated 15.07.2015 passed by the learned JMFC, Pernem (hereinafter referred to as the learned Trial Court). The parties are hereinafter referred to

as Complainant and Accused, respectively, as per their nomenclature in the complaint.

2. On 27.06.2013, the Complainant filed a complaint under Section 138 of NI Act before the learned Trial Court against the Accused for the offence punishable under Section 138 of NI Act arising out of the dishonour of cheques dated 15.02.2013 for Rs.50,000/- (Rupees Fifty Thousand only) and 15.04.2013 for Rs.50,000/- (Rupees Fifty Thousand only), both drawn on HDFC Bank, Pernem Branch. Upon dishonour of the said cheques, the Complainant issued a legal notice calling upon the Accused to make the payment of the amount equivalent to the amount of the dishonoured cheques. The Accused replied to the legal notice, however, failed to make the payment and hence the Complainant filed a complaint bearing No.108 of 2013 before the learned Trial Court.

3. The learned Trial Court, after issuing process, stated the substance of the accusation to the Accused, who pleaded not guilty and claimed to be tried. After recording evidence, the learned Trial Court acquitted the Accused vide impugned judgment dated 15.07.2015. Aggrieved by the acquittal, the Complainant has preferred the present Appeal against acquittal.

4. This Court granted the Complainant leave to Appeal vide order dated 16.06.2016.

5. Heard Mr Parimal Redkar, learned Counsel for the Appellant and Mr Shivan Desai, learned Counsel for the Respondent. With the assistance of the learned Counsel for the parties, perused the records.

6. On behalf of the Complainant, the impugned order was assailed on several grounds.

Firstly, that the learned Trial Court has failed to appreciate that the Agreement at Exhibit C-29 records 'outstanding Rs.7,00,000/-' and refers to the cheques in question. The Accused has identified his signature on the said Agreement.

Secondly, that Bank records and cross-examination of the Complainant show that three other cheques of the same series were honoured, corroborating the case of the Complainant that the subject cheques were issued towards the sale consideration of the vehicle, i.e. Tipper.

Thirdly, that the reply to the statutory notice sent on behalf of the Accused does not deny the demand of the Complainant and requests for three months' time to pay the amount of Rs.1,00,0000/- (Rupees One Lakh only). There is no allegation of issuance of blank cheques or denial of liability in the reply.

Fourthly, the factual foundation has been laid by the Complainant to invoke the statutory presumptions under Sections 118 and 139 of the NI Act. The signature on the subject cheques is admitted by the Accused and hence the onus to rebut the aforesaid statutory presumption was on the shoulders of the Accused. However, the Accused has failed to rebut the presumption.

Fifthly, that the RTO records, which are treated as conclusive proof by the learned Trial Court that there was never any transaction between the Complainant and the Accused, only show the legal owner of the vehicle. Even though the RTO record shows that the vehicle was registered in someone else's name, that by itself does not negate the fact that the Accused owed money to the Complainant and subject cheques were issued by him towards that liability. The question as to whether the cheques in question were issued by the Accused in discharge of a legally enforceable liability has nothing to do with the ownership of the vehicle.

7. On behalf of the Accused (Respondent), supporting the impugned judgment of acquittal, it is submitted that the fulcrum of the dispute in respect of which the cheques in question were allegedly issued is the Agreement for Transfer of Vehicle. No such Agreement has been placed on record by the Accused. The only purported Agreement, which is on record, is at Exhibit C-29 and this document does not even remotely make a reference to the transfer of any vehicle. Exhibit C-40, which is the information received from the Directorate of Transport, Government of Goa, clearly indicates that the transfer of the vehicle was in favour of one Sanjay Arolkar and not the Accused, which is indicated from the material on record. Thus, the case of the Complainant that the cheques were issued by the Accused towards consideration for the sale of a vehicle, i.e. Tipper, by the Complainant to the Accused, is demolished by the documents, which clearly show that the vehicle was not sold by the Complainant to the Accused. Respondent further argued that even considering the reply given by the Accused to the statutory legal

notice wherein an assurance of payment of Rs1,00,000/- (Rupees One Lakh only) was given, at the highest, indicates that there is some liability that the Accused owed to the Complainant and the same cannot, by any stretch of imagination, be linked to the transaction as claimed by the Complainant. Lastly, it was sought to be argued that insofar as the parameters of interference with the appeal against acquittal are concerned, it is a settled position of law that the Appellate Court cannot reverse the order of acquittal only because another view could have been possibly taken based on the evidence on record. Reliance is placed on the judgments of the Hon'ble Supreme Court in the matter of *Susheela Yogish Bungle and Anr. V/s. M/s. V.T. Impex Ltd. and Anr.*¹, *K. Prakashan V/s. P.K. Surenderan*² and *M/s. Narayana Menon V/s. State of Kerala*³.

8. Appreciating the rival submissions at the Bar, the following facts emerge distinctly. It is the case of the Complainant, as borne out by the complaint and evidence on record, that he had sold a vehicle, namely, Eicher Tipper, bearing registration No.GA-07-F-0540 to the Accused. Towards part payment of the consideration of the said sale, the Accused had voluntarily issued the subject cheques, both drawn on HDFC Bank, Pernem Branch. The Complainant presented the subject cheques for encashment, however, they were returned by the Banker of the Accused with the reason '*insufficient funds*'. The Complainant, thereafter, issued statutory notice dated

¹ SLP No.12862-12863/2022

² (2008) 1 SCC 258

³ (2006) 6 SCC 39

21.05.2013. The Accused replied to the aforesaid notice on 30.05.2013, however, he failed to make the payment equivalent to the cheque amount within the statutory period. Hence, the Complainant filed the complaint and initiated proceedings against the Accused for offence punishable under Section 138 of the NI Act. It is pertinent to note that the Complainant did not examine any other witness except himself. The Accused examined himself in support of his defence.

9. In support of his case, the Complainant proved the subject cheques, the Bank Memos, the statutory notice, reply thereto and a document purportedly entitled 'Agreement'. During the defence evidence, the Accused produced certain information obtained by him under RTI from the Office of the Assistant Director of Transport pertaining to the aforesaid vehicle. The information is in the form of the vehicle NOC details and registration details pertaining to the aforesaid vehicle issued by the Department of Transport. The said NOC details clearly mention the name of one Sanjay Arolkar as the buyer of the vehicle and not the name of the Accused, although the owner of the vehicle is shown to be the Complainant. This fact is further corroborated by the vehicle registration details, which also form part of the information sought under RTI, which clearly indicate that the name of the owner of the vehicle is Sanjay Arolkar and not the Accused. In other words, the information obtained from the Department of Transport under RTI clearly shows that the vehicle was never sold to the Accused, as falsely claimed by the Complainant. In this context, Exhibit C-29 has been relied upon as an Agreement of Sale of the vehicle by the Complainant. However, even a bare

perusal of the aforesaid document would be sufficient to reveal that it nowhere states that it is executed in respect of the sale of the vehicle of the Complainant. Dealing with the argument of the learned Advocate for the Accused (Respondent) that the document refers to the subject cheques and also the name of the Complainant and the Accused are reflected therein, it must be noted that the case set up by the Complainant in his complaint and affidavit of evidence is not of 'any' debt or liability but of a 'specific' debt against the sale of vehicle by the Complainant to the Accused. The aforesaid document purporting to be an Agreement is the only document that the Complainant has relied upon to demonstrate the aforesaid liability. However, as the aforesaid document nowhere states that it is executed in respect of the sale of the vehicle of the Complainant. Thus, the purported Agreement does not establish any enforceable liability against the subject cheques and, therefore, does not take the case of the Complainant any further. The Complainant thus has not been able to establish that the cheques were issued towards the consideration of the sale of the vehicle. Therefore, the Complainant has failed in laying the factual foundation necessary to invoke the statutory presumption under Sections 118 and 139 of the NI Act.

10. In his defence evidence, the Accused has examined himself and has categorically deposed that the Complainant has never sold his vehicle to him and further deposed that the said vehicle was sold to one Korgaonkar. Although, there may be a discrepancy between the RTO records, which indicate the name of the buyer of the vehicle as one Sanjay Arolkar, and the deposition of the Accused that the Complainant sold the vehicle to Prajyot

Korgaonkar, it is crystal clear that in any event the vehicle was not sold to the Accused by the Complainant. The issue before the learned Trial Court was whether there was any enforceable liability against the subject cheques and not to undertake an exercise to find out who was the ultimate purchaser of the vehicle. Insofar as the contention of the Complainant that the Accused has admitted his liability in the reply to the statutory notice, I find force in the submission of the learned Counsel for the Accused (Respondent) that, at the highest, the assurance in the reply can be construed to mean that there is some liability that the Accused (Respondent) owed to the Complainant. However, the same cannot be linked to the transaction claimed by the Complainant in respect of the subject cheques. The statutory presumptions under Sections 118 and 139 are raised in favour of the Complainant only when the Complainant lays the factual foundation to establish the liability against the subject cheques. However, in this case, the Complainant has failed to establish the liability as pleaded in the complaint and hence the presumptions under Sections 118 and 139 do not arise in the favour of the Complainant. In the absence of the statutory presumptions in favour of the Complainant, the edifice of his entire case fails and the defence of the Accused that the subject cheques were not towards the liability in respect of transfer of the vehicle is probalised.

11. At this stage, a profitable reference can be made to the pronouncements of the Apex Court in the matter of *C. Antony v/s.*

*Raghavan Nair*⁴, *K. Prakashan v/s. P. K. Surendran*⁵ and *State of Goa v/s. Sanjay Thakran*⁶. The principles that can be culled out from the aforesaid judgments are that while dealing with appeals against acquittal, the Appellate Court must bear in mind that there is a presumption of innocence in favour of the accused person and such presumption is strengthened by the order of acquittal passed in his favour by the Trial Court. The accused person is entitled to the benefit of a reasonable doubt when it deals with the merit of the appeal against acquittal. Unless the conclusions reached by the Trial Court are palpably wrong or based on an erroneous view of the law, or if such conclusions allowed to stand are likely to result in grave injustice, the Appellate Court should be reluctant to interfere with such conclusions. Merely because the Appellate Court, on re-appreciation and re-evaluation of the evidence, is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the Trial Court is a possible view.

12. Examining the impugned judgment in the light of the aforesaid parameters, the learned Sessions Judge has observed that in the light of the fact that the case of the Complainant was that he had sold a vehicle to the Accused and the subject cheques were towards the part payment of the consideration of the same, the documents produced by the Accused during his defence

⁴ (2003) 1 SCC 1

⁵ (2008) 1 SCC 258

⁶ (2007) 3 SCC 755

evidence obtained by him under RTI from the Department of Transport need to be examined meticulously. Observing that the vehicle registration details and the NOC details, which form part of the information under RTI, clearly show the name of the owner as one Sanjay Arolkar and not the Accused, the learned Trial Court proceeds to hold that the specific case of the Complainant that the subject cheques were issued towards repayment of the consideration of the vehicle stands disproved. He further holds that since the foundation of the Complainant's case falls, the entire case must fail.

13. Dealing with the argument of the Complainant that the Accused has admitted his liability in the reply to the legal notice, the learned Trial Court observes that by examining himself, the Accused has indirectly withdrawn the admission made by him in the reply. At the highest, such an assurance by the Accused would indicate that there is some liability that the Accused owes to the Complainant, but the same cannot be linked to the specific case of the Complainant regarding the sale of the vehicle. Observing that even if it is assumed that the statutory presumptions under Sections 118 and 139 of the NI Act have been raised by the Complainant, the Accused has certainly rebutted these presumptions on the touchstone of preponderance of probabilities, the learned Trial Court proceeds to acquit the Accused. This Court finds that the reasoning of the learned Sessions Judge does not suffer from any infirmity. The reasoning in the impugned order is in consonance with the correct position of law and the presumption of innocence that has now reinforced in favour of the Respondent.

- 14.** In the wake of the aforesaid discussion, the impugned order of acquittal does not require to be interfered with by this Court. In view thereof, the Appeal is dismissed.
- 15.** Criminal Appeal No.34/2016 is disposed of in the aforesaid terms.

ASHISH S. CHAVAN, J.