IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.62 OF 2025

MRS. KAMAL NILKANTH NAIK
Aged 60 years, Indian National
resident of H. No.106/A, Haveli,
Curti, Ponda, Goa 403401. ..Petitioner

Versus

VPK URBAN CO-OPERATIVE CREDIT SOCIETY
Having its head office at Mardol,
Ponda, Goa, and Branch at Curti,
Ponda, Goa, represented herein by
its authorised officer, Shri. Siddhesh
Thanu Madkaikar, aged 41 years,
Indian National, resident of H. No.
117, Dutale Madkaim, Ponda – Goa. ..Respondent

…

Mr. Vibhav Amonkar with Mr. Omkar Bhave, Advocates for Petitioner.
Mr. Jatin Ramaiya with Mr. Omkar Parab, Advocate for Respondent.

…

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 19th AUGUST, 2026.
PRONOUNCED ON : 11th SEPTEMBER, 2026.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is heard finally at admission stage.

2. The present petitioner impugns order dated 02.05.2023 passed by Judicial Magistrate First Class, 'B' Court at Ponda in Criminal Case No.352/OA/NIA/2020/B, whereby petitioner's application filed under Section 145(2) of Negotiable Instrument Act, 1881 (hereinafter referred as 'N.I. Act') seeking permission to cross-examine complainant came to be rejected.

3. The respondent (orig. complainant) instituted proceeding under Section 138 of N.I. Act alleging that petitioner availed of a loan of Rs.45,00,000/- from respondent and willfully and intentionally defaulted in making repayment as agreed. It is further case of respondent that petitioner had issued Cheque No.152053 for amount of Rs.24,48,000/- dated 04.08.2020 drawn on Canara Bank, Curti Branch as part payment of said loan. The said cheque dishonored on presentation. The petitioner failed to comply demand notice, as such, committed an offence under Section 138 of N.I. Act.

4. The petitioner filed application under Section 145(2) of N.I. Act disclosing specific defences taken by her. The application was contested by respondent. The Trial Court after considering rival submissions, passed impugned order dated 02.05.2023 rejecting petitioner's application. Aggrieved petitioner preferred Criminal Revision Application No.60/2024 before Sessions Court. However, same has been rejected vide order dated 23.05.2025 observing that it is not maintainable.

5. Mr. Vibhav Amonkar, learned Advocate appearing for petitioner would submit that Section 145(2) of N.I. Act requires accused to demonstrate probable grounds of defence. The petitioner has disclosed sufficient grounds of probable defences in her application. However, Trial Court failed to appreciate probable grounds of defences as well as

prepositions of law flowing from series of judgment of Supreme Court as well as this Court. He would, therefore, urge to allow Writ Petition by setting aside impugned order and permit petitioner to conduct cross-examination of complainant and/or his witnesses. In support of his contentions, he relies upon observations of Supreme Court as well as High Court in cases of ***Indian Bank Association and Ors. Vs. Union of India & Ors.***[1], ***M/s. Meters and Instruments Private Limited & Anr. Vs. Kanchan Mehta***[2], ***Nizam Shamshuddin Ladji Vs. VPK Urban Co-operative Credit Society Ltd.***[3], ***Rakesh Singh Vs. Anil Madanmohan Gulati & Anr.*** (***Criminal Writ Petitions No.34 and 35 of 2023 decided on 09.05.2023***), ***Mr. Kishor Biradmal Bhandari Vs. Mr. Chandrakant Krishna Gawas*** (***Criminal Writ Petition No.54/2023*** decided on ***23.08.2023***), ***Mandvi Cooperative Bank Ltd. Vs. Nimesh B. Thakore***[4], ***K. Narsimulu Vs. Naguesh C. Dandi***[5].

6. Per contra, Mr. Jatin Ramaiya, learned Advocate appearing for respondent/complainant justifies impugned order. He would submit that it is well settled that only when accused demonstrates probable defence before Magistrate, which he wants to put forth before by way of cross-examination of complainant and Magistrate records his satisfaction about availability of defence, opportunity to cross-examine complainant can be given. However, in present case petitioner's application does not

1 **2014 5 SCC 590.**
2 **(2018) 1 SCC 560.**
3 **2024 SCC OnLine Bom 4850.**
4 **AIR 2010 Supreme Court 1402.**
5 **2010 Mh.L.J. (4) 220.**

disclose any probable defence. The application is full of vague and bald statements without crystallizing nature of defence to be put into service. The Trial Court has applied mind to averments in application and found no substance in application under Section 45(2) N.I Act. The Trial Court has further observed that Bank Cheque Return Memo gives only reason as 'insufficient funds'. The signatures on cheques were never doubted. In support of his contentions he relies upon observations of Supreme Court in cases of ***Mandvi Cooperative Bank Ltd.*** and ***Meters and Instruments Private Limited & Anr.*** (supra).

7. Having considered submissions advanced by learned Advocates appearing for respective parties, in light of exposition of law on the point of right of accused to cross-examine complainant or his witnesses in terms of Section 145(2) of N.I. Act, this Court finds that Section 145 of N.I. Act provides that evidence of complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding. The sub-clause (2) of Section 145 stipulates that Court may, if it thinks fit, and shall, on application of the prosecution or accused, summon and examine any person giving evidence on affidavit as to facts contained therein. The aforesaid provision has been interpreted in catena of decision rendered by Supreme Court as well as this Court.

8. In case of ***Mandvi Cooperative Bank Ltd.*** (supra), Supreme Court observed in paragraph no.16 as under:

> *"Section 143 makes it possible for the complaints under Section 138 of the Act to be tried in the summary manner, except, of course, for the relatively small number of cases where the Magistrate feels that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily. It is, however, significant that the procedure of summary trials is adopted under Section 143 subject to the qualification "as far as possible", thus, leaving sufficient flexibility so as not to affect the quick flow of the trial process. Even while following the procedure of summary trials, the non-obstante clause and the expression "as far as possible" used in Section 143 coupled with the non-obstante clause in Section 145 allows for the evidence of the complainant to be given on affidavit, that is, in the absence of the accused. This would have been impermissible (even in a summary trial under the Code of Criminal Procedure) in view of Section 251 and 254 and especially Section 273 of the Code.* ***The accused, however, is fully protected, as under Sub-section (2) of Section 145 he has the absolute and unqualified right to have the complainant and any or all of his witnesses summoned for cross-examination.****"*

9. Similarly, in case of ***Rakesh Singh*** (supra), this Court while elaborating exposition of law laid down by Supreme Court in case of ***Mandvi Cooperative Bank Ltd.*** (supra) further observed that:

> *"The trial Court, in my opinion, committed error in observing that the petitioner is silent on the specific ground of defence or point on which he wishes to cross examine the complainant. It may be that the petitioner has an opportunity to lead defence evidence and rebut the presumption if any, however, that does not mean that the valuable right of the petitioner to cross examine the complainant which he is entitled to under Section 145(2) of the NI Act can be lightly brushed aside."*

10. Thereafter in case of ***Narayan Shivdas Kadam s/o Shivdas Kadam Vs. Shriram Transport Finance Company Limited***[6], this Court observed that accused has an absolute and unqualified right to have complainant and his witness summoned for cross-examination. It is not necessary for Court to delve deep into merits of defence which is set up by accused. The purpose of disclosing defence is not to find out whether any details are given or to reject it at the threshold thereby curtailing such right of accused. In paragraph no.34, it has been observed that main intention of legislature incorporated under Section 145(2) of N.I. Act is to grant an opportunity to accused, in desirable cases, wherein he shows or demonstrates before the Magistrate that there is probable defence which he wants to produce before Court by way of cross-examination of complainant. Such opportunity cannot be taken away from accused if he satisfies Magistrate about probable defence.

11. In case of ***K. Narsimulu*** (supra) this Court in reference to law down in case of ***Mandvi Cooperative Bank Ltd.*** (supra) observed that Section 145(2) of N.I. Act protects right of accused to have complainant and his witnesses cross-examine and he has absolute and unqualified right to have complainant and any or all of his witnesses summoned for cross-examination.

6 **2024 (2) Mh.L.J. 147.**

12. In case of ***Apolonius Francisco Luis Vs. Sahajanand Investments Pvt. Ltd.*** (***Criminal Writ Petition No.838/2021*** decided on ***12.09.2022***), this Court found that cryptic and casual defence was employed in application filed by accused and, therefore, he was declined opportunity to cross-examination.

13. In light of aforesaid exposition of law, in present case, if contents of petitioner's application filed under Section 145(2) of N.I. Act are scrutinized, it is discernible that petitioner has disputed signature and writing on cheque alleging that same is misused by complainant and cannot be enforced against accused as per document titled as agreement for loan. According to petitioner, there is no legally enforceable debt. The complainant illegally possessed cheque in dispute which is required to be sent for handwriting expert opinion under Section 45 of Indian Evidence Act. The aforesaid statements of defence appearing in petitioner's application would be normally sufficient to make out probable defence. However, impugned order records otherwise.

14. This Court finds that Trial Court as well as Sessions Court cannot be justified in holding that defences put forth by petitioner are not sufficient to make out case to grant permission of cross-examination of complainant or his witnesses. This Court observes that Trial Court unnecessarily delved deep into defence while testing its credibility in light of material tendered by complainant and made erroneous

observation that there is no denial of signature on cheques or legally enforceable debt. The Court may be justified in rejecting prayer under Section 145(2) of Act, only when material on record is sufficient to hold that issuance of cheque, signatures thereon and legally enforceable debt cannot be disputed by accused and application of accused seeking permission for cross-examination is too vague to make out plausible defence to be put forth by way of effective cross-examination during trial. In light of aforesaid legal and factual backdrop, this Court finds that impugned orders cannot be sustained in law.

15. In result, Writ Petition succeeds and allowed in terms of prayer Clause (A).

16. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/September-2026

Signed by: TARI AMRUT NAGESH
Designation: Private Secretary
Date: 12/09/2026 13:11:26