IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 11 OF 2010

SNEHA NITIN CHAVAN
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Date: 2026.09.30 20:11:37 +0530

Mr. Manoj Punamchand Oswal,
Age – 28 years, Occupation – Business,
Residing at Anand Park, Meera Society,
Flat No. 24, Building No.4, Shankarshet Road,
Pune. ...Applicant

Versus

1. Shri. Vijay Omkarmal Gandhi
Age – 42 years, Occupation – Business,
Residing at – C/45, Adinath Society,
Pune Satara Road, Pune – 411 037.

2. State of Maharashtra ...Respondents

WITH
INTERIM APPLICATION NO. 146 OF 2026
IN
CRIMINAL APPLICATION NO. 9 OF 2010
IN
CRIMINAL REVISION APPLICATION NO. 11 OF 2010

Shri. Vijay Omkar Gandhi ...Applicant
V/s.
Shri. Manoj Punamchand Oswal and Anr. ...Respondents

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Mr. R. N. Sanghavi for the Applicant.
Mr. Shubhankar Kulkarni for Respondent No.1 and for Applicant in IA.
Ms. Rashmi Tendulkar, APP for Respondent No.1/State.

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CORAM : M.M. SATHAYE, J.
RESERVED ON : 06th MAY, 2026
PRONOUNCED ON : 30th SEPTEMBER 2026

JUDGMENT :

1. Invoking Section 397 read with Section 401 of Code of

Criminal Procedure, 1973 ('CrPC' for short), the Revision Applicant is challenging the Judgment and Order dated 11.01.2010 passed by the Ad-Hoc Additional Sessions Judge, Pune in Criminal Appeal No. 438 of 2005, thereby dismissing the appeal and confirming the Judgment and Order dated 15.11.2005 passed by the Judicial Magistrate First Class, Pune in CC No. 733 of 2002, convicting the Revision Applicant for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act' for short) and sentencing him to suffer simple imprisonment for 18 months and to pay compensation of Rs.10,00,000/- and in default of payment of compensation to suffer simple imprisonment of 3 months.

BACKGROUND

2. Applicant is the Accused and Respondent No.1 is the Complainant.

3. According to the Complainant, both the Complainant and Accused are businessmen, acquainted with each other for last many years. The complainant carried on business of supplying building material whereas Accused has a shop of selling woods, timber, plywood etc. In second week of November, 2001, the Accused approached the Complainant and demanded hand-loan of Rs.8,50,000/- for business. The Complainant made arrangements and paid the said amount on 24.11.2001 in cash by way of hand-loan. Against the said amount, the Accused issued cheque dated 04.02.2002 drawn on Muslim Co.Operative Bank Ltd., Pune for Rs.8,50,000/- in favour of the Complainant. When the Complainant deposited the said cheque in his bank, it was dishonoured on 13.02.2002 with remark 'refer to drawer'. The Complainant thereafter issued demand notice on 28.02.2002. The

Accused did not make payment and issued false reply and complaint was filed.

4. The Complainant examined himself and produced documentary evidence in the form of original cheque, counter deposit slip, cheque return memo, copy of demand notice, acknowledgment and notice reply.

5. The Revision Applicant/Accused examined himself and his brother and an Income Tax Officer and one more witness.

6. The Accused has not denied the signature on the cheque. In short, the defence of the Accused is that he has not taken the loan; that he is not having any business; that he is without any service and he is maintained by his family.

7. Learned Magistrate who heard and tried the said case convicted the Revision Applicant and sentenced him as stated above. The Revision Applicant filed said appeal challenging the conviction and sentence, which is dismissed under impugned order.

8. In these circumstances, the Revision Applicant has filed present Revision Application.

9. Record shows that on 21.04.2011, this Court suspended the sentence as well as order of compensation by way of interim relief. The Revision Application is admitted on 22.12.2011 and it is recorded that the Applicant has already deposited an amount of Rs.7.5 lakh in the Trial Court and the Appellate Court in addition to furnishing bank

guarantee of Rs.2.5 lakh. Hence, the interim relief granted earlier, was continued till final disposal.

SUBMISSIONS

10. Learned Counsel for the Applicant submitted as under.

10.1. That this is a case of jurisdictional failure and there is complete absence of foundational ingredients of Section 138 of the NI Act.

10.2. That the Complainant's version has been blindly accepted by the Courts below.

10.3. That the cheque admittedly was drawn in the name of Vijay O. Gandhi, but it was deposited in the account of Vijay Industries and dishonour memo is also in the name of Vijay Industries and therefore the statutory chain is broken. Therefore, there is no dishonour in the eyes of law. That payee as well as presenter are different and therefore the prosecution is fundamentally defective. That there is no return memo in the name of payee (Vijay O. Gandhi). That there cannot be presumption under Section 118 read with Section 139 of the NI Act in absence of foundational facts.

10.4. That there is no clearing stamp or bank endorsement and the bank witness has admitted uncertainty.

10.5. That the Complainant has not proved his financial capacity as there is no proof of income-source and no income tax records, rendering the transaction inherently doubtful. That the Respondent/Complainant was not even in a position to repay small amount of Rs.1,00,000/- to a third party in the proceedings under Section 138 of NI Act that was initiated in 2001. That therefore the claim is inherently improbable.

10.6. That there is contradiction/inconsistency about the purpose for which the alleged loan was advanced. That considering the age gap between the parties, they cannot be called as friends.

10.7. That there is violation of Income Tax law and hand loan is based

on illegal cash transaction; therefore, it is not legal debt. That there is no document in support of loan transaction.

10.8. That the Accused has established probable defence that blank signed cheque was lost and it was misused by the Complainant and this is sufficient to rebut the presumption.

10.9. That a dispute of civil nature has been converted into criminal prosecution and the Courts below have convicted the Revision Applicant in mechanical manner.

10.10. That cheque is not deposited on the same day and there is no explanation for the same. He relied on following Judgments in support of his case.

(i) Rajendraprasad Gangabishen Porwal V/s. Santoshkumar Parasmal Saklecha and Anr. 2008(1) Bom. C.R. (Cri.) 647.

(ii) M.S. Narayana Menon alias Mani V/s. State of Kerala and Anr. (2006) 6 SCC 39.

(iii) Milind Shripad Chandurkar V/s. Kalim M. Khan and Anr. 2011(4) Mh. L.J. 96.

(iv) Xavier William V/s. Cochin Acids & Chemicals Pvt. Ltd. And Ors. 2014 0 Supreme(Ker) 90.

11. On the other hand, learned Counsel for the Respondent No. 1 – the Complainant submitted as under.

11.1. That the Accused has not denied the signature and has adopted changing stands about his residence with father and being separated from father and being maintained on interest of the deposit kept by father. Therefore, the Accused is untrustworthy. That even testimony of brother of Accused is inconsistent as he has claimed the Accused to be his employee while showing ignorance about his business activities.

11.2. That the stand about cheque book is also not clear because, in one breath he says the cheque book is lost and in another, he says the cheque is stolen by the Accused.

11.3. That the cheque is drawn in the name of Vijay O. Gandhi, demand notice is issued by Vijay O. Gandhi who is payee and the bank witness has stated that cheque was credited in the account of Vijay O. Gandhi and not in the account of Vijay Industries. Hence nothing is fundamentally wrong as alleged. That presumption in favour of the Complainant is not sufficiently rebutted.

11.4. That complaint regarding alleged theft of cheque did not even result in issue of process.

11.5. That the intimation to police about alleged stolen cheque was given late.

11.6. That financial capacity of the Complainant has been already considered by the Courts below and some stray act of giving hand-loan cannot be considered as money-lending.

11.7. That in absence of perversity, concurrent findings may not be disturbed in revisional jurisdiction.

11.8. That dishonour of cheque due to 'refer to drawer' is also dishonour punishable under Section 138 of the NI Act.

11.9. That advancing hand-loan in cash exceeding Rs. 20,000/- by itself will not make the debt illegal.

11.10. That allegation of stolen cheque being misused is not proved and allegation of collusion with bank is nothing but a biased statement. He relied on following Judgments in support of his case.

1. **Oriental Bank of Commerce Vs. Prabodh Kumar Tewari 2022 SCC OnLine SC 1089.**
2. **Tedhi Singh Vs. Narayan Dass Mahant (2022) 6 SCC 735.**
3. **Basalingappa Vs. Mudibasappa (2019) 5 SCC 418.**

4. Bir Singh Vs. Mukesh Kumar (2019) 4 SCC 197.

5. Kishan Rao Vs. Shankargouda (2018) 8 SCC 165.

6. Laxmi Dyechem Vs. State of Gujarat and Others (2012) 13 SCC 375.

7. Rangappa Vs. Sri Mohan (2010) 11 SCC 441.

8. Gajanan Vs. Appasaheb Siddamallappa Kaveri [High Court of Karnataka, Dharwad Bench, CR. Revision Petition No. 2011 of 2013 dated 18.11.2022].

REASONS AND CONCLUSION

12. I have considered the rival submissions and perused the record.

13. It is necessary to note at the outset that revisional jurisdiction is invoked challenging the concurrent findings of fact. In revisional jurisdiction under Section 397 read with Section 401 of CrPC, re-appreciation of evidence for coming to a contrary conclusion is not permitted as clarified in **State Vs. Manimaran (2019) 13 SCC 670,** where the Hon'ble Supreme Court has held as under:

> "16. As held in State of Kerala V. Puttumana Illath Jathavedan Namboodiri (1999) 2 SCC 452, ordinarily it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as by the Sessions Court in appeal. When the courts below recorded the concurrent findings of fact, in our view, the High Court was not right in interfering with the concurrent findings of fact arrived at by the courts below and the impugned order cannot be sustained."
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> (emphasis supplied)

14. Admittedly, the Revision Applicant has not denied the signature on the disputed cheque. Therefore, the presumption under Section 118 read with Section 139 of NI Act applies with full force. The presumption is rebuttable by considering preponderance of probabilities. Useful reference can be made to **Basalingappa Vs. Mudibasppa** (Supra), where Hon'ble Supreme Court has observed as under.

> "25. We having noticed the ratio laid down by this Court in the above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:
>
> 25.1. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.
>
> 25.2. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.
>
> 25.3. xxx
>
> 25.4. xxx
>
> 25.5. xxx"
>
> (emphasis supplied)

15. Star argument of learned counsel for Revision Applicant is that the ingredients of Section 138 are not fulfilled inasmuch as the cheque was issued in the name of Vijay O. Gandhi but it was deposited in the

account of Vijay Industries and dishonour memo is in the name of Vijay Industries and therefore the statutory chain is broken. Record shows that cheque was drawn in favour of Vijay O. Gandhi. In this respect, the Complainant has examined the bank employee of the concerned bank (Mr. Mushtakali M. Sayyad) who is serving as Junior Manager in the concerned Bank. This witness has stated that the reason for dishonour is mentioned in the memo as 'referred to drawer'. This witness has specifically stated in the cross-examination (which is obviously at the instance of question asked by Advocate of the Accused) that the cheque in question was credited in the account of Vijay Gandhi and not in the account of Vijay Industry. This aspect is considered by the learned Magistrate. It is held that the cheque was deposited in the account of the complainant Vijay Gandhi who is payee and demand notice is also issued by complainant Vijay Gandhi i.e. payee of the cheque. It is important to note that the Accused himself has brought on record (by asking question to the Complainant in cross-examination) that the transaction relating to the cheque was in the name of Vijay Industries. If that be so then this argument needs no further consideration.

16. So far as the submission that the Complainant has no financial capacity because he himself faced an action under Section 138 of NI Act for dishonour of cheque of Rs.1,00,000/- issued in favour of a third party (Dhananjay Modak), it is necessary to note that during cross-examination, the Accused himself by asking question, has brought it on record that the said case was withdrawn by the said third party. In cross-examination, the Accused himself by asking question to Complainant has brought this on record that Rs.2,50,000 was already with him at house and amount of Rs.3,50,000 to Rs.4,00,000 was obtained from brother and remaining amount was withdrawn from the

bank. This evidence of the Complainant has been considered by the Courts below to reject the argument about financial capacity. In that view of the matter, I see no merit in the argument about Complainant not having financial capacity. Just because a third party had filed proceedings under Section 138 against the Complainant for a small amount, which complaint was withdrawn, there is no reason to doubt financial capacity. In this respect, in **Ashok Singh V/s. State of Uttar Pradesh and another 2025 SCC OnLine SC 706.** The Hon'ble Supreme Court, while considering the case under Section 138 of NI Act, has held that onus is not on the Complainant 'at the threshold' to prove his financial capacity. However if objection is raised then the complainant would have to bring material in support of his financial capacity. I have perused the notice reply issued on behalf of the Revision Applicant-Accused (Exh. 42). In the said notice reply, no objections was raised about financial capacity. Nothing is brought to the notice of this Court that such objection about financial capacity was specifically raised in the notice reply.

17. So far as the argument of there is no clearing stamp of the bank and no bank endorsement, I have perused the copy of Cheque Exh. 22, return memo issued by the Bank Exh. 24, which clearly indicates that the memo is issued using printed bank slip having signature of the chequer/Asst. Accountant issued on 13.02.2002. In that view of the matter, submissions about bank endorsements, which are clearly in the realm of re-appreciation of evidence, cannot be considered.

18. So far as the argument that 'uncertainty has been admitted by the witness about their being no clearing stamp or bank endorsement',

it is material to note that the Bank witness has not admitted such uncertainty. Admission, if at all, is given by the Complainant. The complainant can not either confirm or reject about bank clearing stamps and endorsements. Once the bank employee has supported the case of cheque dishonour, the argument about such alleged uncertainty, cannot be held as fatal.

19. The alleged inconsistency about purpose of loan (for business or for bungalow) is not fatal for the purpose of considering rebuttal of presumption. Assuming that the cheque is issued for any purpose, the same still remains legal debt for the purpose of Section 138 of NI.

20. The argument about Trial/Appellate Court not applying judicial mind and passing order in mechanical manner is misconceived. Perusal of the judgments of the learned Magistrate as well as learned Sessions Judge, indicates that the material on record has been considered properly.

21. The argument about delay in deposit of cheque is irrelevant. Cheque has a validity period and in present case, cheque dated 04.02.2002 is deposited on 12.02.2002. Therefore it has no material bearing on the issue at hand. What is relevant is Petitioner/Accused himself has lodged complaint on 13.02.2002 about alleged loss of cheque on 10.02.2002.

22. The argument about violation of Income Tax law and illegal cash transaction needs no further consideration because it is no more *res integra*. The Division Bench in **Prakash Madhukarrao Desai Versus Dattatraya Sheshrao Desai (2023) 5 Mh.L.J.709** (Chandurkar & Joshi

JJ) held that :

> "18. In view of the aforesaid discussion, it is held that a transaction not reflected in the books of account and/or Income-tax returns of the holder of the cheque in due course can be permitted to be enforced by instituting proceedings under section 138 of the Act of 1881 in view of the presumption under section 139 of the Act of 1881 that such cheque was issued by the drawer for the discharge of any debt or other liability, execution of the cheque being admitted. Violation of section 269SS and/or section 271AAD of the Act of 1961 would not render the transaction unenforceable under section 138 of the Act of 1881."

(emphasis supplied)

23. The Judgment of **M.S. Narayana Menon (Supra)** is relied upon contending that the Accused has discharged the burden and therefore, the the Complainant must prove the case. Perusal of the said judgment clearly indicates that the Hon'ble Supreme Court has considered relevant sections of The Indian Evidence Act and has clarified that for rebuttal of presumption under NI Act, what is needed is to raise a probable defence. The Hon'ble Supreme Court has also clarified that if the defence is proved to have discharged initial onus showing that existence of consideration is improbable or doubtful, then the onus would shift upon the complainant. In the present case, the defence raised by the Accused is not consistent in the first place. In one breath, the Applicant Accused has taken a stand that said cheque was lost and in another breath, he has said that the cheque was stolen and misused by the Complainant. Therefore, the said judgment will not apply in

principle, because the Applicant/Accused has not proved the probable defence in the present case.

24. In **Milind Shripad Chandurkar (Supra),** relied upon by the Petitioner, the Hon'ble Supreme Court has held that the complainant cannot claim to be payee of the cheque, nor holder in due course unless he establishes that cheque has been issued to him or in his favour or that he is sole proprietor of the firm.

In the facts of the present case, it has come on record that cheque in question was credited in account of payee Mr. Vijay Gandhi, which is so admitted by the Bank witness. Also the Accused himself has brought on record by asking question to the Complainant in the cross-examination that the transaction relating to the cheque was in the name of Vijay Industries. In that view of the matter, sufficient nexus is proved between the payee and the firm. Therefore, the said judgment will also not apply in principle. For the same reason, even the judgment of **Xavier William (Supra)** will not apply to the facts of the present case.

25. In the facts of **Rajendraprasad Porwal (Supra)** is relied upon by the Petitioner, the cheque was dishonoured due to stoppage of payment and not due to deficiency of funds. In the peculiar facts of that case, learned Single Judge of this Court has set aside the conviction and the complaint was dismissed. In this respect, it is material to note that the Hon'ble Supreme Court in **Laxmi Dyechem (Supra)** has clearly held that the contingencies envisaged under Section 138 of the NI Act, must be interpreted strictly or literally. It is also held that insufficiency of funds is ‘a genus’ and reasons such as ‘account closed, payment stopped

or refer to drawer' are only species of that genus. In that view of the matter, **Rajendraprasad Porwal (Supra)** will not help the Petitioner.

26. In the aforesaid facts and circumstances and for the reasons indicated above, no perversity is found in the impugned order. The view taken by the Courts below is the most probable view. There is no reason to interfere.

27. **The Revision Application is accordingly dismissed.** Rule is discharged. The Applicant's bail bond/surety, if any, stands cancelled. Applicant is granted 3 weeks' time to surrender.

28. After 3 weeks, the Respondent/ Complainant is at liberty to realize bank guarantee and withdraw amounts deposited by the Applicant either in this Court or in the concerned Session Court or in the concerned Magistrate Court, along with accrued interest, if any. Pending Interim Application is disposed of in above terms.

29. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J.)