

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.36 OF 2015

NAVNATH  
SITARAM  
WAGHMARE

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Jafar Babu Shaikh, )  
Age 51 Years, Occupation : Business )  
R/at New Era Co-operative Housing Society,) ...Applicant  
Plot No.40, Survey No. 588/2/3, Flat No.4, ) ( Orig. Accused/  
Bibwewadi, Pune- 411 037. ) Appellant )

Versus

1. The State of Maharashtra )  
2.Abdul Bari Shaikh, )  
Adult, Occupation: Business )  
R/at ChandipuraPeth, Tal. Junnar, Dist: Pune ) ...Respondents

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Mr. Sudyumna Nargolkar a/w Ms. Shreevidya Nargolkar for the  
Applicant.

Ms. Rashmi S. Tendulkar, APP for Respondent No.1/State.

Mr. Sachin Thorat for Respondent No.2.

**CORAM : M.M. SATHAYE, J.**

**RESERVED ON : 06<sup>th</sup> MAY, 2026**

**PRONOUNCED ON : 23<sup>rd</sup> SEPTEMBER, 2026.**

**JUDGMENT :**

1. Invoking Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 ('CrPC' for short), the Revision Applicant ('the Accused' for short), in proceedings arising out of Section 138 of the Negotiable Instruments Act, 1881 ('NI Act', for short), is challenging Judgment and Order dated 24.12.2014 passed in Criminal Appeal No.61/2014 by the Learned Additional Sessions Judge, Khed, Rajgurunagar, Pune dismissing the appeal and confirming the Judgment and Order of conviction dated 26.04.2012 passed by Judicial Magistrate First Class, Junnar, in S.C.C. No. 303 of 2008. The net effect of the impugned orders is that the Applicant is convicted for offence

punishable under Section 138 of NI Act and is sentenced to suffer simple imprisonment (SI) of 6 months and pay compensation of Rs.4,70,250/-and in default thereof, to undergo SI of 2 months.

### **BRIEF BACKGROUND**

2. According to the Complainant, he had friendly relationship with the Accused. The Accused was in need of money for his business, therefore, he had demanded Rs. 4,70,250/- from the Complainant as hand loan and agreed to repay it within 4 to 5 months. The Complainant paid Rs. 4,70,250/- to the Accused. After expiry of said period, the Complainant demanded the money back, when the Accused issued a cheque dated 08.07.2008 for said amount to complainant. When the Complainant deposited the subject cheque in his bank, it bounced and returned unpaid for the reason 'Insufficient funds'. On 21.08.2008, the Complainant issued legal notice through his advocate to the Accused and demanded amount, which was received by the Accused on 02.09.2008, but the Accused neither replied to the notice nor paid amount of cheque to the Complainant. As a result, complaint is filed.

3. The defence of the Applicant as emerging from the cross-examination and from the statement under Section 313 of CrPC is that he had issued subject cheque to Reddy Investment Finance Company and he is not aware as to how the Complainant had received subject cheque. According to the Accused, the Complainant filled in the subject cheque and falsely implicated the Accused. The Accused has denied any liability towards the Complainant.

4. In order to substantiate the charge, the Complainant examined himself and Mr. Nizamkhan Yakub Inamdar. The complainant had also

produced documents on record such as subject cheque, bank memos, postal acknowledgment alongwith receipt. UPC receipt and office copy of demand notice. The Accused examined himself in support of his defence.

5. The learned Magistrate who heard and tried the criminal case, convicted the Applicant by order dated 26.04.2012. The Applicant filed the said appeal which got dismissed under impugned order.

6. In these circumstances, the Applicant filed present revision application. Record shows that under the order of the Court on 29.01.2015, the Applicant has deposited Rs. 1,18,000/- as against compensation amount of Rs. 4,70,250/- and view thereof, Applicant was released on Bail. Record further shows that, Rule was granted (admitting the revision) on 17.06.2015.

### **SUBMISSIONS**

7. Learned counsel for the Revision Applicant submitted as under:

7.1. That the presumption under Section 139 of the NI Act is rebutted as a result of various statements made by Respondent No.2 - Complainant himself.

7.2. That the alleged loan transaction is suspicious because though the amount was given allegedly for upgrading the garage however, odd amount has been allegedly lent (Rs. 4,70,250/-). That exact amount required for upgrading of garage could not have been available unless upgrade was complete. That Respondent No.2 -Complainant has not given any source of funds. That no details such as names of partners or place of business is given by Respondent No.2-Complainant. That no independent PAN Number, Income Tax record is available, no books of

account are maintained and there is no money lending licence available with Respondent No.2.

7.3. That date of advancing loan is not mentioned and there is no document or deed in support of loan transaction.

7.4. That according to Revision Applicant, the cheque was given to one Mr. Pedri Mannar Reddy of 'Reddy Investment Finance Company' and it is not known how the Respondent No. 2 got the said cheque.

7.5. That Respondent No.2- Complainant stated that he earns Rs.5000/- to Rs.8,000/-p.m. and his expenses are about Rs. 3,000/- to Rs.4,000/- p.m., and has stated that he has conducted the business for 8 years. Going by his calculations, for advancing loan of Rs.4,70,250/- the Complainant would be required to give away his entire earning of 10 years which is not probable at all.

7.6. That Respondent No.2-Complainant has admitted that he does not know the location of garage or residence of the Accused and had no relationship with the Accused. Therefore, the theory of hand loan is not believable at all.

7.7. That the Respondent No.2 has given fatal admissions about handwriting on the cheque and return memo.

7.8. That in view of these statements and admissions, presumption is sufficiently rebutted that the impugned order is arbitrary and passed in ignorance of evidence on record. He relied on following judgments in support of his case:

(i) Basalingappa Vs. Mudibasappa (2019) 5 SCC 418.

(ii) Dattatraya Vs. Sharanappa (2024) 8 SCC 573.

(iii) Mahendra Gulabchand Kochar Vs. Sakharam Ramdas Patil  
2009 SCC OnLine Bom 493.

8. On the other hand, learned counsel for the Respondent No.2 -  
Complainant submitted as under:

8.1. That there is presumption in favour of the Complainant being  
holder of the cheque which is not sufficiently rebutted.

8.2. That nobody from alleged Reddy Investment Finance  
Company or Mr. Pedri Mannar Reddy has been examined by the  
Accused to rebut the presumption.

8.3. That demand notice has not been replied.

8.4. That Complainant has examined witness indicating that the  
efforts for settlement was undertaken and if there was no monetary  
transaction, then there is no reason for settlement efforts being made.

8.5. That there is no reason to interfere in concurrent finding and  
evidence may not be re-appreciated.

### **REASONS AND CONCLUSIONS**

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

10. Admittedly, according to the Complainant, the loan has been  
advanced in cash and demand notice has not been replied by the  
Accused.

11. So far as the reliance placed on **Basalingappa (Supra)**,  
**Dattatraya (Supra)** and **Mahendra Gulabchand Kochar (Supra)** are  
concerned there is no doubt that according to settled position of law,  
the Accused in proceeding under Section 138 of the NI Act need not

enter witness box and he can use the evidence led by the Complainant himself to rebut the presumption. It is also settled position of law that presumption under Section 139 of the NI Act, is rebuttable and the consideration is based on preponderance of probabilities.

12. The Respondent No.2 -Complainant has examined Mr. Nizamkhan as CW-2 who has stated that he knows both Complainant as well as the Accused. He has stated that brother of the Accused (Rajubhai) is known to him and he had approached the said witness for settlement about the dispute arising out of the said cheque and the Accused had informed about the transaction and had offered to pay Rs. 8,000/- p.m. for settlement. This witness has also stated that on the request of the Accused, he had tried to settle the dispute between the parties. Suggestions given to this witness about not knowing the Accused or his brother are denied. Even in cross-examination, this witness has mentioned that the Complainant had informed him about the transaction being of Rs. 4 to 4.5 Lakh. In cross-examination, he has maintained that he knows brother of the Accused for 15 years and having close relation with him.

13. Admittedly, the Revision Applicant/ Accused has not examined Mr. Pedri Mannar Reddy or anybody on behalf of Reddy Investment Finance Company, to whom the cheque was allegedly given. Therefore, the said defence is of no consequence as it is only based on interested words of the Accused.

14. The Revision Applicant/Accused has admitted that his in-laws' place is at Chandipura Peth, Village-Junnar, District- Pune and Respondent No.2- Complainant is also permanent resident of the said area. He has also admitted that he has received the demand notice sent

by Respondent No.2-Complainant but he has not replied to the same. Parties seem to have common connection from Chandipura Peth, Village Junnar and therefore, it is not believable that the Complainant and the Accused did not know each other.

15. So far as the argument that the Complainant has admitted that he does not file income tax returns or pay income tax and therefore amount advanced by such person cannot be considered as legal debt, the said argument is without merit, in view of **Prakash Madhukarrao Desai Vs. Dattatraya Sheshrao Desai (2023) 5 Mh.L.J. 709**, where Division Bench of this Court has clearly held as under :

“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)

16. Considering the material on record, the presumption in favour of Respondent No.2/Complainant is not sufficiently rebutted.

17. So far as the aspect of financial capacity of Respondent

No.2/ Complainant is concerned, it is important to note that onus is not on the Complainant 'at the threshold' to prove his financial capacity or wherewithal to make the payment. Only if objection is raised that Complainant is not in financial position, then the Complainant will be required to bring material before the Court. Useful reference can be made to paragraph 22 of **Ashok Singh Vs. State of Uttar Pradesh 2025 SCC OnLine SC 706** where Hon'ble Supreme Court has observed as under:

"22. The High Court while allowing the criminal revision has primarily proceeded on the presumption that it was obligatory on the part of the complainant to establish his case on the basis of evidence by giving the details of the bank account as well as the date and time of the withdrawal of the said amount which was given to the accused and also the date and time of the payment made to the accused, including the date and time of receiving of the cheque, which has not been done in the present case. Pausing here, such presumption on the complainant, by the High Court, appears to be erroneous. The onus is not on the complainant at the threshold to prove his capacity/financial wherewithal to make the payment in discharge of which the cheque is alleged to have been issued in his favour. Only if an objection is raised that the complainant was not in a financial position to pay the amount so claimed by him to have been given as a loan to the accused, only then the complainant would have to bring before the Court cogent material to indicate that he had the financial capacity and had actually advanced the amount in question by way of loan. In the case at hand, the appellant had

categorically stated in his deposition and reiterated in the cross-examination that he had withdrawn the amount from the bank in Faizabad (Typed Copy of his deposition in the paperbook wrongly mentions this as 'Firozabad"). The Court ought not to have summarily rejected such stand, more so when respondent no. 2 did not make any serious attempt to dispel/negate such stand/statement of the appellant. Thus, on the one hand, the statement made before the Court, both in examination-in-chief and cross-examination, by the appellant with regard to withdrawing the money from the bank for giving it to the accused has been disbelieved whereas the argument on behalf of the accused that he had not received any payment of any loan amount has been accepted."

(emphasis supplied)

17.1. Further in **Tedhi Singh Vs. Narayan Dass Mahant (2022) 6 SCC 735** the Hon'ble Supreme Court has held that proceedings under Section 138 of the NI Act is not a civil suit and unless a case is set up in the reply notice by the Accused that complainant did not have financial capacity or wherewithal, it cannot be expected from the complainant to lead evidence about financial capacity. Useful reference can be made to Paragraph No. 10 of the **Tedhi Singh (Supra)**.

"10. The trial court and the first appellate court have noted that in the case under Section 138 of the NI Act the complainant need not show in the first instance that he had the capacity. The proceedings under Section 138 of the NI Act is not a civil suit. At the

time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence."

(emphasis supplied)

18. In the present case, admittedly, the Revision Applicant has not even replied to the demand notice. As such there is no question of any case being set up about the financial capacity. In that view of the matter, the argument of learned counsel for the Revision Applicant

about lack of financial capacity cannot be considered in revisional jurisdiction. Also in this respect, it is material to note that the concerned Magistrate in its judgment has held that the Complainant has produced withdrawal receipts of recurring deposit which are on record at Exh.58 to 61. Though a feeble attempt was made by learned counsel for the Revision Applicant that said receipts are not produced, such omnibus argument can not be entertained in the teeth of exhibit numbers recorded by the Magistrate.

19. Remaining arguments, if any, requesting detail consideration of evidence on record would amount to re-appreciation of evidence for coming to contrary finding, which is not permitted in revisional jurisdiction, as held by the Hon'ble Supreme Court in **State Vs. Manimaran (2019) 13 SCC 670**, 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."

(emphasis supplied)

20. In the aforesaid facts and circumstances and for reasons indicated above, there is no reason to interfere.

21. **Criminal Revision Application is dismissed. Rule is discharged.**

22. Respondent No. 2 / Complainant is at liberty to withdraw the amount of Rs. 1,18,000/- with accrued interest, if any, deposited by the Applicant in concerned Sessions Court, Khed, Rajgurunagar, District- Pune.

23. Applicant's bail-bond / surety, if any, stand canceled. Applicant is given 4 weeks' time to surrender before the concerned police station.

**(M. M. SATHAYE J)**