

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 200 OF 2025

Vinodkumar K. Pise
V/s. ...Appellant.
The State of Maharashtra & Anr. ...Respondents.

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Mr. Adwait Bhonde a/w. Ms Vilasini Balasubramanian and
Mr. Anurag Mishra for the Appellant.
Mr. V.N. Sagare, APP for the Respondent/State.
Mr. Sanjay Kulkarni for Respondent No.2.
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CORAM : N.R. BORKAR, J.
DATE : 08.10.2026.

ORAL JUDGMENT :

1. This appeal takes exception to the judgment and order dated 9.8.2019 passed by the learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai, in C.C. No. 1663/SS/2017.
2. The appellant herein had filed a complaint case against respondent No.2 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. By the impugned judgment and order, the learned Magistrate has acquitted respondent No.2 herein of the said offence.
3. The appellant-complainant and respondent No.2/accused were known to each other. According to the appellant, respondent No. 2 approached him with a request to provide financial

assistance to the extent of Rs. 12,50,000/- for the purpose of completion of his under-construction project of M/s. Jai Mata Jivdani Builders at Kargil Nagar, Virar (E), District Thane. At that time, respondent No. 2 represented that he would repay the said amount within a period of 15 months to the appellant. In view of the friendly relations between them on 15.9.2015, the appellant gave him a sum of Rs.2,50,000/- in cash. Thereafter, on 14.10.2015, the appellant gave him a cheque of Rs.10,00,000/-. According to the appellant, respondent No.2 executed Promissory Notes dated 15.9.2015 and 14.10.2015 in respect of the said amount. According to the appellant, towards the repayment of the said amount respondent No. 2 issued a cheque dated 08.06.2017, for an amount of Rs.12,50,000/-, drawn on Ajara Urban Co-operative Bank Ltd., Ajara.

4. According to the appellant, he deposited the said cheque for encashment through his account in Indian Overseas Bank, however, the same was returned unpaid with the remark "*Funds Insufficient*". Thereafter, he issued a statutory demand notice dated 23.06.2017. According to the appellant, respondent No.2 replied to the said notice vide reply dated 17.07.2017 and disputed the liability. Thus, the complaint under Section 138 of the N.I. Act was filed.

5. I have heard the learned counsel appearing for the appellant and the learned counsel appearing for the contesting respondent No.2.

6. The learned counsel for the appellant submits that the learned trial Court by ignoring the oral as well as documentary evidence on record erred in arriving at a finding that the appellant failed to prove his financial capacity to advance the said amount. It is submitted that the learned trial Court failed to appreciate that the sum of Rs. 10,00,000/- was duly paid through cheque. It is submitted that respondent No. 2 did not dispute the issuance of the cheque or his signature thereon. It is submitted that in absence of such challenge, the statutory presumptions under Section 139 of the N.I. Act would attract in the present case. Learned counsel for the appellant submits that the learned trial Court thus erred in acquitting respondent No.2. The learned counsel for the appellant has relied upon the decision of the Hon'ble Supreme Court in ***Sanjabij Tari v. Kishore Borcar and anr.***¹ to submit that once the execution of the cheque is admitted, the presumptions under Section 118 and 139 of N.I. Act arise against the accused, and the onus to rebut them lies on the accused. It is submitted that respondent No.2 has not rebutted the said presumptions.

7. On the other hand, the learned counsel appearing for respondent No. 2 supports the impugned judgment and order of acquittal. It is submitted that the appellant has not produced on record any documents to prove his financial capacity to advance the alleged amount of Rs.12,50,000/-. It is submitted that in absence of such documents, the trial Court has rightly acquitted the respondent No.2. It is submitted that according to the

1 2025 SCC OnLine SC 2069

appellant only one cheque for Rs.12,50,000/- was issued, however, the loan agreement at Exhibit-14 relied upon by the appellant in respect of his case falsifies the said claim.

8. Learned counsel for the respondent No.2 submits that no Certificate under Section 65B of the Indian Evidence Act was produced on record in respect of the bank memo evidencing dishonour of the cheque. It is thus submitted that in absence of such Certificate, the bank memo at Exhibit-16 cannot be relied upon to prove that the cheque was presented for encashment and the same was dishonoured for “*funds insufficient*”. In support of the said submission, the learned counsel for the respondent No.2 has relied upon the decision of this Court in ***Vandana Pandey vs. Abhilasha Pande***² .

9. Learned counsel for the respondent No.2 further submits that in an appeal against acquittal, the appellate Court ought not to interfere unless the learned trial Court's view is perverse or based on an erroneous view of law. In support of the said submission, learned counsel for respondent No.2 has placed reliance upon the judgment of this Court in ***T.A. N. Moorthy vs. C.K. Narayan & ors.***³.

10. I have perused the evidence on record. The appellant in support of his case that he had advanced an amount of Rs.12,50,000/- to the respondent No.2, out of which an amount of

² 2018(4) Bom. C.r. (Cri.) 774

³ Criminal Appeal No.561 of 2018 decided on 2.1.2025

Rs.2,50,000/- in cash and an amount of Rs. 10 Lakh through cheque, has relied upon the Promissory Notes dated 15.9.2015 and 14.10.2015 at Exhibit - 12 and 13 and the Loan Agreement dated 19.10.2015 at Exhibit-14. The trial Court has not accepted the defense of the respondent No.2 in respect of the said documents that they were not executed by the respondent No.2 and the same are forged and fabricated documents. The learned trial Court has, however, acquitted respondent No.2 on the ground that the appellant has not placed on record any documents in the form of bank statement etc. to prove that he had the financial capacity to pay the said amount. The learned trial Court has, however, while arriving at the said finding, ignored the fact that the amount of Rs. 10,00,000/- was paid through cheque. Furthermore, respondent No. 2 has failed to show against which transaction the said amount of Rs.10,00,000/- was received by him from the appellant, if not in respect of the alleged transaction in question.

11. The trial Court has further not accepted the case of the respondent No.2, that cheque in question does not bear his signature and it was not issued by him. In such circumstances, presumption under Section 139 of the N.I. Act would attract in the present case and it will have to be presumed that the cheque in question was issued for the discharge of a debt or other legally enforceable liability. Admittedly, respondent No.2 has not examined himself to rebut the said presumption. Nothing is elicited in the cross-examination of the appellant on the basis of

which it can be said that respondent No.2 has rebutted the said presumption.

12. The submission in respect of non production of Certificate under Section 65B of the Evidence Act cannot be considered as the same was not raised before the trial Court. Apart from it, no objection was taken in that respect when the cheque return memo at Exhibit16 was admitted in evidence. Furthermore, the cheque at Exhibit-15 bears the stamp of the bank in relation to the presentation of the cheque for encashment. The decision relied upon by the learned counsel for respondent No. 2 in *Vandana vs. Abhilasha* (supra) therefore would be of no assistance to respondent No.2.

13. Considering the overall facts and circumstances, the impugned judgment and order cannot be allowed to stand as the same is perverse.

14. At this stage, the learned counsel for respondent No. 2 submits that respondent No. 2, who is present in the Court, is aged about 69 years old. It is submitted that considering the said fact, leniency be shown to him.

15. On the other hand, the learned counsel for the appellant submits that respondent No.2/accused is a builder by profession.

16. Considering the overall facts and circumstances of the case, the following order is passed:

ORDER

- a] The Appeal is allowed.
- b] The impugned judgment and order is quashed and set aside.
- c] Respondent No.2 is hereby convicted for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced to suffer Simple Imprisonment (S.I.) for three months and to pay a fine of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs), and in default of payment of fine, to suffer Simple Imprisonment (S.I.) for three months.
- d] Out of the fine amount, if deposited, an amount of Rs.20,00,000/- (Rupees Twenty Lakhs) shall be paid to the appellant towards compensation.

17. The Appeal is disposed of in the aforesaid terms.

18. At the request of the learned counsel for respondent No. 2, to enable Respondent No. 2 to approach the Hon'ble Supreme Court against the present judgment and order, the operation of the present judgment and order is kept in abeyance for a period of four weeks.

[N.R.BORKAR, J.]