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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.213 OF 2004

Valmik s/o. Namdeo Magare,
Age: 55 Years, Occu. Service,
R/o Plot No.10/03, N-5
Gulmohar Colony, Cidco,
Aurangabad.

..Applicant

Versus

1. The State of Maharashtra.
(Copy to be served on G.P.
of High Court bench
At Aurangabad).

2. Tukaram s/o. Vitthalrao Sanap,
Age: 43 years, Occu. Pensioner,
R/o. 243, Nandanwan Colony,
Aurangabad.

..Respondents

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Mr. S. S. Panale, Advocate for Petitioner.
Mr. S. P. Deshmukh, APP for the State.
Mr. P. S. Pawar for Respondent No. 2.

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CORAM : P.R. BORA, J.

DATED : 26th NOVEMBER, 2018.

JUDGMENT: -

. Heard Shri Panale, the learned counsel appearing for the revisional applicant, the learned APP Shri Deshmukh for the State and Shri Pawar, the learned counsel appearing for the respondent No. 2.

2. The present respondent had filed a

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complaint under Section 138 of the Negotiable Instruments Act against the present applicant in the Court of J.M.F.C. at Aurangabad. The learned J.M.F.C. after having considered the evidence on record convicted the applicant for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to suffer simple imprisonment and to pay the fine of Rs.15,000/- in default to suffer S.I. for next three months. The amount of Rs.10,000/- if fine amount is recovered was directed to be paid to the complainant. The applicant though preferred Criminal Appeal No.77 of 2003 before the Sessions Court at Aurangabad, the same came to be dismissed vide judgment and order passed on 14.05.2004 by the First Adhoc Additional Judge at Aurangabad. Aggrieved by, the applicant has preferred the present revision application.

3. It was the contention of the complainant in the Trial Court that the present applicant had obtained an amount of Rs.1,00,000/- from him for the purpose of repaying the bills of the expenses which were incurred by him at the time of the marriage of his daughter. It was the further

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contention of the original complainant that towards repayment of the said amount, subject cheque was issued by the present applicant in his favour and when he tendered the same for collection, the said cheque was dishonoured with remark 'referred to drawer'. It was further contended that though the amount of cheque was demanded by him by sending the statutory notice to the present applicant as provided under the provisions of the Negotiable Instruments Act, the applicant did not pay the amount of the said cheque and as such he was constrained to file the complaint against him.

4. The material on record shows that original complainant deposed before the Court and also filed on record the relevant documents. The material on record further reveals that it was sufficiently proved by the original complainant that the cheque in question was given by the present applicant to him duly signed by him for the amount of Rs.1,00,000/- towards repayment of the amount which he had borrowed from him by way of hand loan from him.

5. The defences of the applicant before the

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Trial Court was that the cheque in question was handed over to the complainant towards security and the respondent was not expected to submit it for collection. It was further contended that prima facie burden was also not discharged by the complainant to prove that the amount of cheque was a illegally enforcible debt. The learned counsel submitted that it is unbelievable that such a huge amount of Rs.1,00,000/- was paid by the respondent for the purpose of repaying the bills of the expenses incurred by the present applicant at the time of her marriage, which was admittedly taken place in the year 2000. The learned counsel further submitted that the defence so raised was erroneously turned down by the learned Magistrate and the applicant was held guilty for the offences under Section 138 of the Negotiable Instruments Act. The same objections were raised by the applicant before the Sessions Court in criminal appeal filed by him. However, the Sessions Court also did not cause interference in the order of conviction passed by the Trial Court.

6. Shri Panale, the learned counsel appearing

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for the applicant submitted that the Courts below have utterly failed in appreciating the defence raised by the applicant. The learned counsel submitted that sufficient material was brought on record by the applicant in the cross-examination of the original complainant that the applicant was indebted to the respondent only for the amount of Rs.10,000/- and the subject blank cheque was given towards the security of the repayment of the said amount.

7. As against it, the learned counsel appearing for the respondent has supported the judgment passed by the Courts below. The learned counsel submitted that the Courts below had passed well reasoned orders and no interference is required in the judgments and orders so passed.

8. I have given due consideration to the submissions made by the learned counsel appearing for the respective parties. I have perused the judgments passed by the Courts below. The learned Magistrate in Para 10 and 11 of the judgment has elaborately discussed the evidence adduced by the

complainant and the defences raised by the present applicant i.e. original accused. The learned Trial Court has unambiguously recorded a finding that the presumption as was raised in favour of the applicant could not be rebutted by the applicant and no such evidence was brought on record by the present applicant i.e. original accused, so as to take any contrary view. The learned Trial Court therefore, held the present applicant guilty for the offences punishable under Section 138 of the Negotiable Instruments Act.

9. The learned Sessions Judge has confirmed the findings recorded by the learned Magistrate. The defences as were raised by the applicant are discarded by the Sessions Court by recording reasons therefor. On perusal of the discussions made by the Sessions Court, it does not appear to me that any error has been committed by the said Court in confirming the judgment delivered by the Trial Court. Though the defence raised by the present applicant that the cheque in question was not given towards refund or repayment of any enforceable debt but was for the purpose of

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security, the applicant has utterly failed in substantiating the said defence. After having considered the submissions and the material on record, it does not appear to me that any interference is required in the judgment and order so passed by the Trial Court which has been confirmed by the Sessions Court. The revision application being devoid of any substance deserves to be rejected and is accordingly rejected.

(P.R. BORA, J.)

Mujaheed//