IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

CRIMINAL REVISION APPLICATION NO.129 OF 2011

Ram s/o Namdeorao Bhirad,
aged about 39 years,
occupation business,
r/o Shivaji Nagar, Akola,
taluka and district Akola. ….. **Applicant.**

:: **V E R S U S** ::

1. M/s.Madhuri Hotel,
through its Proprietor:
Smt.Lata Vinayak Awachar,
aged about 40 years,
occupation business, r/o old city,
Shivaji Nagar, Near Rathod Panch
Bungalow, Akola, taluka and
district Akola.

2. State of Maharashtra,
through APP. ….. **Non-applicants**.

Shri Mandar Deshpande, Counsel with Shri H.M.Mohta, Advocate for the Applicant.
None for NA No.1

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 15/09/2025
PRONOUNCED ON : 15/09/2025

JUDGMENT

1. By this revision, the applicant has challenged judgment and order dated 7.7.2011 passed by learned Additional Sessions Judge, Akola in Criminal Appeal No.50/2010 whereby judgment and order dated 9.4.2010 passed by learned Judicial Magistrate First Class, Court No.2, Akola in SCC No.394/2009 convicting respondent No.1 (the accused) is reversed and the accused is acquitted of offence under Section 138 of the Negotiable Instruments Act, 1881 (the NIA).

2. Brief facts of the case are as under:

The respondent No.1 is the accused against whom the applicant, who is original complainant, has filed complaint on the contention that he is acquainted with each other. The accused is having her own hotel at Dabki Road, Old City, Akola known as "Madhuri Hotel."

She has given her own hotel on lease for 11 months commencing from 1.2.2008 to 31.12.2008 to the applicant. As per the said agreement, the accused has taken deposit of Rs.2.00 lacs from the applicant. It was agreed that at the end of the period of the agreement, while handing over the possession of the hotel, she would return the said deposit to the applicant. As per the agreement, the applicant handed over the possession of the hotel to the accused in December 2008. Against discharge of legal and enforceable debt, the accused issued Cheque No.0108654 dated 26.12.2008 drawn on Bank of Maharashtra, Branch Dabki Road, Akola of Rs.1,20,000/-. When the said cheque was deposited for encashment on 26.12.2008, the same was returned with endorsement as “Funds Insufficient.” The applicant received the intimation to dishonour of the cheque on 26.12.2008 and, therefore, he issued Notice to the accused on 6.1.2009. The accused, after receipt of the notice on 7.1.2009 also, has not repaid the amount. Therefore, the applicant was constrained to file the complaint under Section 138 of the NIA.

3. In support of the allegations, the applicant examined himself vide Exh.21 and reiterated the entire facts. The sum and substance of the deposition of the applicant was that he entered into an agreement to run the hotel owned by the accused on lease for a period of 1.2.2008 to 31.12.2008. Accordingly, the agreement was executed. At the time of the agreement, the accused obtained deposit of Rs.2.00 lacs from the applicant and it was decided that at the time of handing over the possession, the accused would repay Rs.2.00 lacs to the applicant. Against discharge of the said liability, the accused has issued Cheque No.0108654 dated

26.12.2008 drawn on Bank of Maharashtra, Branch Dabki Road, Akola of Rs.1,20,000/-, which was deposited by the applicant in his bank account. However, the same was returned with endorsement as “Funds Insufficient.”. Therefore, he filed the complaint after issuing notice to the accused as the accused has not repaid the amount after receipt of the notice within 15 days.

4. The applicant was cross examined and during cross examination, it came on record that the applicant was running the hotel owned by the accused. He was not holding any licence to run the said hotel. The cross examination further shows that there was transaction between the applicant and son of the accused Amol Awachar. The applicant admitted that two cheques of the account of the son of the accused are with him and the said were not returned by him. The cross examination

further shows that he has handed over the possession of the hotel on 31.12.2008 after settling the account. He admitted that he has not filed on record any document to show that amount of Rs.1,20,000/- was due from the accused. He further admitted that on 31.12.2008 itself they have settled the accounts. At the relevant time, Electrical Bills, damage caused to the articles of the hotel, and Income Tax of the Hotel were due. The applicant has admitted that the said dues were to be paid by him.

5. Thus, it reveals from the cross examination of the applicant that the accounts were already settled and amount of Rs.80,000/- was due from the applicant to the accused.

6. Besides the evidence of the applicant, the applicant has not examined any other witness.

7. To rebut the presumption, the accused has examined Anil Vincharkar serving in Bank of Maharashtra, Branch Dabki Road, Akola whose evidence shows that the cheque Exh.30 was deposited in the account of the applicant, but it was not honoured. The cross examination of this witness shows that as a part of duty, the bank officials verify contents mentioned on the cheques. There was difference in signature and, therefore, the cheque was dishonoured.

8. By appreciating the evidence, the trial court convicted the accused by observing that the cheque was issued against discharge of legal and enforceable debt, which was dishonoured. The legal notice was issued by the present applicant, which was received and after receipt of the notice also, the amount was not paid. It is further held by the trial court that the evidence on record

sufficiently shows that there was transaction between the applicant and the accused and against the said transaction, the cheque was issued and held the accused guilty and sentenced her to suffer simple imprisonment for 3 months and also directed to pay compensation of Rs.1,70,000/-.

9. Being aggrieved and dissatisfied with the same, the appeal was preferred by the accused before learned Sessions Judge bearing Criminal Appeal No.50/2010 on the ground that the trial court failed to appreciate that there was no transaction as to the legal and enforceable debt and cheque was issued against security, which was misused by the applicant. The cross examination of the applicant shows that the entire accounts were settled and, therefore, possession of the hotel was handed over to the accused.

10. Learned Additional Sessions Judge appreciated the evidence and held that once the applicant has admitted that the accounts between him and the accused are settled on 31.12.2008, then only difference can be drawn is that there was no legal and enforceable debt and there was no reason for the accused to issue cheque. It has also been observed that legal and enforceable debt was there and the cheque was issued against the said legal and enforceable debt itself is improbable and the cheque was dated 26.12.2008 and same was deposited on 26.12.2008. The admission of the applicant, that on settling the accounts, the possession of the hotel was handed over to the accused, is sufficient to show that no dues were due on 31.12.2008. The presumption is rebutted by the accused on the basis of the the cross examination.

11. Perusal of the entire evidence on record shows that the entire case revolves around the fact that as per the case of the applicant, he entered into an agreement with the accused to run hotel on lease and the accused has obtained deposit of Rs.2.00 lacs. As per the agreement, the said deposit is to be repaid to the applicant by the accused at the end of the lease period i.e. on 31.12.2008. The applicant has adduced the evidence and it came on record that accused has issued Cheque No.0108654 dated 26.12.2008 drawn on Bank of Maharashtra, Branch Dabki Road, Akola of Rs.1,20,000/- and on the same day the said cheque was deposited and it was returned on 26.12.2012. Thereafter, the notice was issued on 6.1.2009.

12. Thus, it appears form the evidence that prior to 31.12.2008, the cheque was dishonoured and returned to

the applicant. Thus, on 31.12.2008, it was within the knowledge of the applicant that cheque is dishonoured.

13. In the light of the above facts, the admission of the applicant, that while handing over the possession of the hotel, accounts were settled, assumes importance.

14. It is vehemently submitted by learned counsel for the applicant that there was legal and enforceable debt and against the same the cheque was issued, which was dishonoured.

15. The Explanation to Section 138 of the NIA clear indicates that, "debt or other liability means a legally enforceable debt or other liability."

16. Merely because the cheque is drawn for discharge in whole or in part of the debt or other liability, Section 138 of the NIA will not be attracted. The

provisions will apply provided debt or other liability is legally enforceable.

17. Thus, Section 138 of the NIA will not apply to cheque drawn in discharge of the debt from liability, which is not legally enforceable. There may be several categories of debts or other liability, which are not legally enforceable. A debt or liability is legally enforceable if the same can be lawfully recovered by adopting due process of law.

18. As far as the present case is concerned, there is no dispute that there was transaction between the applicant and the accused and agreement was entered into by them. The applicant has paid deposit of Rs.2.00 lacs and agreement period was from 1.2.2008 to 31.12.2008.

19. The cheque was issued by the accused against discharge of legal and enforceable debt on 26.12.2008 i.e. prior to handing over the possession of the hotel. The cheque was also dishonoured on 26.12.2008 itself. Thus, before handing over the possession of the hotel, the cheques was dishonoured.

20. In the light of the above facts, if the cross examination of the applicant is taken into consideration, the applicant specially admitted that as per agreement, he has handed over the possession of the hotel to the accused on 31.12.2008 and the accounts were settled on on 31.12.2008.

21. Now, considering these admissions of the applicant on record, it is crystal clear that after setting the accounts, in view of the agreement, the possession of the hotel was handed over to the accused. The applicant has

admitted that the accounts between him and the accused are settled on 31.12.2008 and, therefore, inference can be drawn that after dishonouring of the cheque, the accounts were settled and no legal and enforceable debt was there, but the cheque was issued prior to 31.12.2008, which was in possession of the applicant and the same was used by him.

22. The law is well settled that the accused has to rebut the presumption on the basis of preponderance of probabilities. The standard of proof evidently is preponderance of probability, which can be drawn from material on record as well as by reference to the circumstances.

23. In the present case, through cross examination, the accused has already rebutted the presumption.

24. Considering the scope of revision, re-appreciation of the evidence is not permissible. The only thing this court has to see is, whether any illegality or error is committed by the court while allowing the appeal.

25. In view of Section 397 of the CrPC, this Court or the Sessions Court is empowered to call for and examine record of any proceeding before any inferior criminal court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

26. Thus, the scope of the revision is very limited only to see as to the correctness, legality or propriety of any finding, and sentence or order. Learned Sessions Judge has recorded the finding on the basis of the evidence recorded before the trial court and acquitted the accused.

27. While exercising the revisional powers, especially while dealing with the orders of acquittal, cardinal principle to be kept in mind is that there is presumption of innocence in favour of the accused unless the accused is proved to be guilty. The presumption continues and finally culminates into fact a fact when the case ends in acquittal. The possibility of two views in criminal cases is not an extraordinary phenomenon while considering orders of acquittal. A fact cannot be lost sight that the appellate court has appreciated the entire

evidence and reversed the order of the trial court into acquittal. Admittedly, the order of the acquittal passed by the Appellate Court is not mere on the existence of different views or due to difference of opinion, but the Appellate Court while exercising appellate jurisdiction appreciated the evidence and also appreciated whether decision of the trial court is correct or incorrect on law of facts.

28. Thus, the order passed by the Fist Appellate Court is on the basis of a possible view taken by the Appellate Court.

29. After considering the record, the view taken by the Appellate Court is a possible view and, therefore, this Court cannot over turn acquittal only on the ground that after considering the record, it came to the conclusion

that the guilt of the accused was established beyond reasonable doubt.

30. In the light of the above principles, I do not find any error committed by the Appellate Court while acquitting the accused. There is no perversity in the order passed by the Appellate Court and, therefore, the revision being devoid of merits is liable to be dismissed and the same is **dismissed**.

Revision stands **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!