

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

**933 CRIMINAL REVISION APPLICATION NO.163 OF 2016
WITH REVN/168/2016
WITH REVN/167/2016
WITH REVN/171/2016
WITH REVN/170/2016
WITH REVN/165/2016 IN APPLN/3899/2016
WITH REVN/169/2016
WITH REVN/172/2016
WITH REVN/166/2016**

**SHRI RADHYESHAM GANESHLAL DHOOT
VERSUS
SHRI VISHNUKUMAR BANSILAL KALANTRI AND ANR**

...
Advocate for Applicant : Mr. V.D. Sapkal (Senior Counsel) i/by
Mr.Sapkal Sandip R., Mr.Kulkarni Mukul S. and Mr.Chormal Ajit B.,
Advocate for Respondent No. 1 : Mr. Deshpande C.R. & Mr.C.C.
Deshpande
APP for Respondent No. 2-State : Mr.S.B.Narwade
...

CORAM : M. G. SEWLIKAR, J.

DATE : 11th MARCH, 2022.

PER COURT :

1. The applicant was convicted by the learned Judicial Magistrate, First Class, Latur, District Latur, by her order dated 09th May, 2014, thereby, convicting the applicant under Section 138 of the Negotiable Instruments Act (for short "N.I.Act") and sentenced to suffer Simple Imprisonment for six months and the applicant was directed to pay amount of Rs. 6,00,000/- to respondent No. 1, within a period of three months, as compensation under Section 357 (3) of

the Code of Criminal Procedure (for short "Cr.P.C.").

2. The applicant has preferred appeals against the said conviction and sentence bearing Criminal Appeal No. 92 of 2014. The learned Additional Sessions Judge, Latur dismissed the appeal and passed the judgment and order dated 11th July, 2016. This order is impugned in these revisions.

3. At the outset, it needs to be mentioned here that the applicant had issued nine cheques. Against dis-honour of these cheques, nine complaints were filed by complainant. The learned Magistrate disposed of all these complaints by one judgment. The learned appellate Court has also followed the same course. The applicant has preferred nine revisions and they can be disposed of by Criminal Revision No. 163 of 2016.

4. The facts in all these revisions are same, except variations in the amount of cheques and the dates of issuance of cheques.

5. Facts leading to these revisions are that the complainant was doing transaction of sale and purchase of shares through accused since last thirteen years. The accused/applicant is a broker

and runs his business named and styled as “Radhika Investements”, at Latur.

6. On the instructions of the applicant, the respondent opened a De-Mat account bearing 1201370000054854 with Mehta Equities Ltd., Mumbai and at the instance of the applicant, respondent No. 1 had transferred shares of Reliance Industries Ltd and State Bank of India in the De-mat account of the applicant bearing No. 10216689 of IDBI Bank during the period from 08th December, 2008 to 09th April 2009. The applicant had sold the said shares and received amount of Rs. 1,10,00,000/-. However, the applicant did not pay the said amount to respondent No.1. The applicant kept on avoiding the payment of amount to respondent No. 1 citing his continuously worsening economic condition. The applicant had promised to pay said amount in installments. After negotiations, the schedule and mode of payment was agreed between the applicant and the complainant in the presence of mediators and witnesses namely Ashok Bhutada, Hukumchand Kalantri and Shrenik Gandhi. Accordingly on 11.01.2010 the applicant had executed a memorandum of understanding (for short “M.O.U.”) in the presence of these witnesses in favour of respondent No. 1. This M.O.U. was notarized before a Notary. As per terms and conditions of M.O.U., the applicant agreed to pay an amount of Rs. 1,10,00,000/-

to the Complainant/respondent No. 1 herein, in suitable installments. Pursuant to that the applicant issued post dated cheques in favour of respondent No. 1. Details of those cheques are thus :

Sr. Cheque No. Number	Date	Amount in Rupees	Name of Bank
1. 194837	30.06.2010	Rs.6,00,000/-	State Bank of Hyderabad
2. 194838	30.09.2010	Rs.6,00,000/-	State Bank of Hyderabad
3. 194839	30.12.2020	Rs.6,00,000/-	State Bank of Hyderabad
4. 194840	31.03.2011	Rs.6,00,000/-	State Bank of Hyderabad
5. 194841	30.06.2011	Rs.6,00,000/-	State Bank of Hyderabad
6. 194842	30.09.2011	Rs.6,00,000/-	State Bank of Hyderabad

7. When respondent No. 1 presented these cheques for encashment, they were dishonoured. Therefore, respondent No. 1 issued notice, calling upon the applicant to pay the amounts of cheques. The applicant replied to the notice. Since the amounts were not paid within the specified time, respondent No. 1 presented the complaints in all nine cases of dishonour of cheques.

8. Process was issued and the presence of the applicant was secured. Respondent No. 1 tendered his evidence i.e. the evidence of his Chartered Accountant and the evidence of his Munim.

9. Substance of accusations were framed and read over to the applicant. He pleaded not guilty and claimed to be tried. He took a defence that he had paid the entire amount of sale proceeds of shares to respondent No. 1. The M.O.U. was executed in respect of the earlier transactions. The learned Magistrate did not accept this defence of the applicant and recorded conviction as stated above. Appeal preferred by the applicant came to be dismissed. Hence these revisions.

10. Heard Mr. Sapkal, the learned Senior Counsel for the applicant and Mr. Chaitanya Deshpande, the learned counsel for respondent No. 1.

11. Mr. Sapkal, the learned Senior Counsel for the applicant submits that both the learned Magistrate and learned Additional Sessions Judge failed to appreciate that the M.O.U. was not executed for the sale proceeds of the shares but it was executed for earlier transactions. The applicant gave all the details of this transaction and respondent No. 1 was cross-examined, his Munim was also cross-examined on those aspects. He further submits that the M.O.U. was not properly proved. The learned trial Court and the learned appellate Court as well, erroneously held that the M.O.U. was properly proved. He submits that serious prejudice is caused to the

applicant because of erroneous appreciation of evidence by the learned trial Court and the learned appellate Court. He took me through the entire evidence and submits that there was no debt, much less, legally enforceable debt. These cheques were issued as security for the black money of the respondent No. 1. He, therefore, prays for allowing the revision applications.

12. Learned counsel Mr. Chaitanya Deshpande for respondent No. 1 supports the judgment of the learned trial Court and the learned appellate Court.

13. So far as, the issuance of cheques are concerned, the applicant admits that he had issued those cheques. Section 139 of the N. I. Act. mandates drawing of a presumption that the holder of cheque issued cheque as referred in Section 138 of N.I. Act, for discharge of any debt or other liability. It is for the drawer of the cheque to prove that it was not issued for any debt or other liability.

14. The M.O.U. has been placed on record at Exh. 49 in the record of the trial Court. It shows that the applicant admitted that an amount of Rs. 1,10,00,000/- is due from him to respondent No. 1, on account of sale proceeds for the sale of shares. This M.O.U. has been properly proved by respondent No. 1 in the trial Courts. During

arguments, he raised an objection regarding the mode of proof of M.O.U. The learned trial Court rejected the said objection and rightly held that the applicant did not take the objection at the appropriate stage. Therefore, this objection was rightly rejected by the learned trial Court as well as by the appellate Court.

15. Another limb of argument of Mr. Sapkal, learned Senior Counsel for the applicant is that the cheques were issued for the earlier transactions and for black money of respondent No. 1. Respondent No. 1 and his witnesses have been extensively cross-examined by the applicant. All the witnesses remained unshaken and nothing could be elucidated from their cross-examination. The learned trial Court and the learned Appellate court recorded findings that these earlier transactions have no relevance with the execution of the M.O.U. Had there been any relation of earlier transactions with the execution of M.O.U. in all probability the M.O.U. would have had a reference of all these earlier transactions. Therefore, this argument was rightly rejected by both the Courts.

16. The revisional Court is not expected to re-appreciate evidence, unless it is shown that the findings of the Courts below are perverse. Learned Senior Counsel Mr. Sapkal, for the applicant had taken me through the judgments of the learned Judicial Magistrate

First Class and the learned Additional Sessions Judge, I do not find any perversity in their findings. All the revisions are therefore devoid of substance, hence dismissed, with no order as to costs.

17. At this stage, the learned Senior counsel Mr. Sapkal, for the applicant submits that Rs.20,00,000/- (Rupees Twenty Lakhs Only) have been deposited while admitting these revisions. The learned counsel Mr. Chaitenya Deshpande for respondent No. 2 seeks leave to withdraw this amount.

18. Mr. Sapkal, learned senior counsel for the applicant objects for the withdrawal of amount by respondent No. 1.

19. Respondent No. 1 is permitted to withdraw the said amount of Rs. 20,00,000/- (Rupees Twenty Lakhs Only).

20. The applicant to surrender before the trial Court.

(M. G. SEWLIKAR, J.)