

Maria S.

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPEAL NO. 21 OF 2017**

Smt. Umadevi Menon,
R/o. House No.887/23,
Bhgyasshree Soccoro,
Bardez, Goa and,
presently residing at H.No.97/1,
Opp. Dr. Beena Martina House,
Paithana, Salvador-d-Mundo,
Betim, Bardez, Goa.

...Appellant

Versus

1. Shri Anthony Susai,
H.No.2125,
20 Point Programme,
Close to Main Chogm Road,
Near Shantadurga Temple,
Sangolda, Bardez Goa.

2. State of Goa, through,
its Public Prosecutor,
High Court of Bombay
at Goa.

...Respondents

Mr. Pavithran A.V., Advocate for the Appellant.

Mr. Galileo Teles, Advocate for the Respondent No.1.

**Mr. Mahesh Amonkar, Additional Public Prosecutor for the
Respondent No.2.**

CORAM: BHARAT P. DESHPANDE,JJ.

Reserved on : 10th November 2022

Pronounced on: 15th November 2022

JUDGMENT:

The present appeal is filed by the original complainant thereby challenging dismissal of her complaint and acquittal of the respondent by the learned Magistrate at Mapusa for the offence punishable under Section 138 of Negotiable Instruments Act.

2. Heard Mr. Pavithran A.V., learned counsel for the appellant, Mr. Galileo Teles, learned counsel for the respondent no.1 and Mr. Mahesh Amonkar, learned Additional Public Prosecutor for the respondent no.2.

3. With the assistance of the learned counsel appearing for the parties, I perused the record and proceedings of the trial Court, the impugned judgment and more specifically the evidence.

4. The point for determination is as under together with my evidence against it.

Whether the learned Magistrate committed patent error in accepting the so-called evidence of the respondent as rebuttal evidence, to rebut presumption under Section 139 of the Negotiable Instruments Act?

5. In a nutshell, the facts leading to the present proceedings

are as under.

6. The appellant claimed that her deceased husband advanced friendly loan to the respondent to the tune of ₹7,00,000/- by issuing a demand draft, in presence of PW2. In discharge of such loan, respondent no.1 issued cheque bearing No.669919 drawn on South Indian Bank, Porvorim branch amounting to ₹7,00,000/- in favour of the appellant. On presentation of the said cheque, it was returned unpaid for funds insufficient. Legal notice was issued by the appellant demanding amount of cheque, which was received by respondent no.1. A complaint under Section 138 of Negotiable Instruments Act was filed before the learned Magistrate at Mapusa. On issuance of process, respondent no.1 appeared and contested the matter. On completion of trial, learned Magistrate though accepted that cheque bears signature of respondent no.1, observed that respondent no.1 succeeded in proving that there was no loan transaction between him and deceased husband of the complainant, which resulted in dismissal of the complaint and acquitting respondent no.1.

7. Learned counsel Shri Pavithran appearing for the appellant submitted that once it is established that cheque bears signature of respondent no.1 and on presentation, it was returned unpaid, presumption under Section 139 of Negotiable Instruments Act is

required to be drawn. He submitted that legal notice was issued to respondent no.1 which he received but failed to reply and, therefore, at first instance he failed to show any plausible reason or defence in his favour so as to rebut presumption. He then submitted that on receipt of summons from the Magistrate, the respondent no.1 appeared and on explaining substance of accusation, he only denied the said substance but failed to take any specific defence. He then submitted that during cross-examination of complainant and her witness, there are no denials to the averments made in the affidavits and in fact such cross-examination further strengthened the presumption under Section 139 of Negotiable Instruments Act. He further submitted that respondent no.1 failed to examine himself though he desired to do so while answering statement recorded under Section 313 of Cr.P.C. Thus, there is practically no material/cogent evidence so as to rebut presumption under Section 139 of Negotiable Instruments Act.

8. Learned counsel Shri Pavithran then submitted that at one stage during cross-examination of the complainant, a suggestion was given to her as to whether she knows that accused repaid amount of ₹7,00,000/- to her deceased husband during his lifetime in cash, to which she showed ignorance. According to

learned counsel Shri Pavithran, it is not just a suggestion but a specific defence and two things emerge from it. Firstly, by asking such question to complainant, accused admit that first of all he obtained loan of ₹ 7,00,000/- from the deceased husband of the complainant and that he paid it in cash. Therefore, learned counsel Shri Pavithran submitted that once accused admit to taking loan from the husband of the complainant, it further confirms the case of the complainant that cheque was issued towards legally enforceable debt. Secondly, he claimed that so-called evidence of the accused that he repaid said loan in cash, ought to have been proved by him in his defence by leading evidence as burden shifts on him to prove it. In absence of any such proof or evidence, the debt remained unpaid and, therefore, cheque issued by respondent no.1 in favour of the complainant has to be presumed as towards discharge of legal enforceable debt, which learned Magistrate failed to consider and thereby coming to erroneous findings. He finally submitted that observations of the learned trial Court are clearly perverse and against settled proposition of law and, therefore, this Court, in appeal, is required to interfere by setting aside the impugned order/judgment and thereby convicting respondent no.1 for the said offence.

9. Learned counsel Shri Pavithran relied upon the following decisions of the apex Court:-

- (i) *Rangapa v/s. Sri Mohan*¹
- (ii) *Bir Singh v/s. Mukesh Kumar*²

10. Learned counsel Shri Galileo Teles appearing for respondent no.1 submitted that the scope of this Court in an appeal challenging acquittal is very limited and only on the parameters that the findings of the trial Court suffer from the vice of irrationality or considered to be perverse thereby ignoring or excluding relevant material or by taking into consideration irrelevant and inadmissible material. Learned counsel Shri Teles appearing for respondent no.1 then submitted that it is not necessary for the accused to examine himself in defence to rebut presumption under Section 139 of Negotiable Instruments Act as onus on him is by showing preponderance of probability which he can show or demonstrate from the evidence of the complainant and their witnesses. If the accused succeeds in showing inconsistencies or improbabilities in the case of the complainant from the evidence and cross-examination of the complainant and their witnesses, the Court has to consider such presumption as rebutted.

1 (2010) 11 SCC 441

2 (2019) 4 SCC 197

11. Learned counsel Shri Teles then submitted that cross-examination of PW1 and PW2 alongwith the documents clearly show that such presumption stands rebutted and the learned trial Court has rightly accepted it in favour of respondent no.1.

12. Learned counsel Shri Teles placed reliance on the following decisions:

- (i) *Geeta Devi v/s. State of U.P and Others*³.
- (ii) *Kumar Exports v/s. Sharma Carpets*⁴.

13. Admittedly, present matter is an appeal challenging acquittal and therefore parameters laid down by the apex Court for deciding appeal challenging acquittal must be taken into account.

14. In the case of *Geeta Devi* (supra), the Supreme Court while considering the powers of this Court in reversing the findings of acquittal into conviction, considered most of the earlier decisions of the apex Court from paragraph 7 onwards.

15. In the case of *Chandrappa & Ors v/s. State of Karnataka*⁵, the legal position with regard to appeal under

3 (2022) SCC OnLine SC 57

4 (2009) 2 SCC 513

5 (2007) 4 SCC 415

Section 178 of Cr.P.C is found enumerated in paragraph 42 as under:-

“42. ... (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasize the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

16. Keeping in mind the above settled legal position in connection with appeal under Section 178 of Cr.P.C., evidence in the matter needs to be reviewed/re-appreciated and reconsidered.

17. In the case of *Kalamani Tex And Anr. V/s. V.P. Balasubramanian*⁶, the Supreme Court observed in paragraph 11 that the High Court is justified in invoking powers under Section 378 of Cr.P.C. If the trial Court, had inter alia, committed a patent error of law or grave miscarriage of justice or had arrived at perverse findings of fact.

18. Section 138 of Negotiable Instruments Act introduced in Chapter XVII by Act 66 of 1998 w.e.f. 01.04.1989 is basically to give more strength to the bank transaction by using Negotiable Instruments. Object and purpose of introducing said Chapter has been discussed by the Supreme Court in many decisions and it is well settled now that the object is to streamline and to give more sanctity to the transaction through the negotiable instruments. The purpose of Section 138 of Negotiable Instruments Act is twofold. Firstly, it shows that even if on any count the negotiable instrument is not honoured by the bank, notice is mandatory to be given to the drawer of the cheque by the payee or the holder about reasons of dishonouring of the

⁶ (2021) 5 SCC 283

cheque and alongwith it, calling upon such drawer by way of demand for payment of the amount of money mentioned in the cheque.

19. The purpose of issuing such notice in writing demanding the amount mentioned in the cheque serves dual purpose. Firstly, it gives opportunity to the drawer of the cheque to make arrangement of the money in his account so as to pay the said amounts to the payee or the holder of cheque and intimate the payee or the holder of cheque to re-present the said cheque. Alternatively, it also gives an opportunity to the drawer of the cheque to pay the said amount mentioned in the cheque by any other mode, if he is liable to make such payments. However, the second effect of such notice is, giving an opportunity to the drawer of the cheque to explain, in case he is not liable to pay the amount mentioned in the cheque to the payee. It needs to be noted that till the period mentioned in Section 138 (1) (b) is not over, there is no criminal liability fastened upon the drawer of the cheque. Only if he fails to make the payment mentioned in the cheque within the stipulated period, provision in clause (c) of Section 138 gets attracted. In case, drawer of such cheque fails to make payment of the amount mentioned in the cheque to the payee as the case may be, within 15 days from the date of receipt of the notice, the payee/holder of cheque is entitled to lodge

complaint under Section 138(1) of Negotiable Instruments Act where it provides a criminal liability. Till expiry of such period, it is only a civil liability. Thus, the very purpose of issuing notice is to give opportunity to the drawer of the cheque either to arrange the payment within a period of 15 days from the date of receipt of notice and to intimate the payee or the holder of the cheque in due course or to raise his probable defence that he is not liable to pay such amount.

20. Keeping in mind above provisions and the purpose of issuance of notice, failure on the part of drawer to comply with the said notice on either way must be considered strictly as such failure is going to affect the drawer in the matter filed under Section 138 of Negotiable Instruments Act. It is so because, Section 138 of Negotiable Instruments Act draws a presumption in favour of the payee or the holder in due course that such cheque was issued for the discharge in whole or in part of any debt or other liability, unless contrary is proved. Such presumption is necessarily to be drawn once it is found that the cheque is issued by the drawer. The words “unless contrary is proved” comes into play only during trial and not at the stage of pre-trial proceedings. The reference to the word “proved” has to be read with the definition of such word as found in the Evidence Act as follows:

'Proved.—A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.'

Therefore, when a complaint is lodged under Section 138 of Negotiable Instruments Act and complainant/holder of the cheque produces the material before the Court that such cheque was drawn/signed by the accused, presented within its validity and dishonoured for the reasons stated in the memo issued by the bank and that in spite of issuing notice to the accused, he failed to pay the amount mentioned in the cheque, the Court is bound to draw presumption under Section 139 of Negotiable Instruments Act in favour of the complainant. Only then the accused is required to prove contrary in order to rebut such presumption.

21. In the present matter, admittedly, complainant issued legal notice which is produced at Exhibit 29 dated 02.02.2013 alongwith the AD card from the Department of Posts at Exhibit 30-Colly. This notice was addressed to the registered address of the accused and it was delivered by the postal department on that address. The postal acknowledgment bears signature who received the notice at the registered address of the accused. It is not necessary that the accused himself has to sign the postal

acknowledgment. It is sufficient that any member of his family signs the acknowledgment.

22. Once such notice is addressed and received by the accused, he was having two options as discussed earlier. The accused failed to opt both the options. Thus, he even failed to raise his probable defence against the contentions raised in the legal notice and, more specifically, the amount mentioned in the cheque. Therefore, it is very clear at the time of filing of the complaint and even during trial that the accused was not having any specific defence. This is evident from the cross-examination of the complainant and her witness.

23. In the case of ***Kumar Exports*** (supra), the Supreme Court observed in paragraphs 20 and 21 as under:-

'20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not

insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act.'

'21. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having

regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, thereafter, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue.'

24. In the case of ***Bir Singh*** (supra), all the earlier decisions were considered and it is observed in paragraphs 20, 21 and 22 as under:-

'20. Section 139 introduces an exception to the general rule as to the burden of proof and shifts the onus on the accused. The presumption under Section 139 of the Negotiable Instruments Act is a presumption of law, as distinguished from presumption of facts. Presumptions are rules of evidence and do not conflict with the presumption of innocence, which requires the prosecution to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law and presumptions of fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact as held in Hiten P. Dalal [Hiten P. Dalal v. Bratindranath Banerjee, (2001) 6 SCC 16 : 2001 SCC (Cri) 960]'

'21. Presumption of innocence is undoubtedly a human right as contended on behalf of the respondent-accused, relying on the judgments of this Court in Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 and Rajesh Ranjan Yadav v. CBI [Rajesh Ranjan Yadav v. CBI,

(2007) 1 SCC 70. However the guilt may be established by recourse to presumptions in law and presumptions in facts, as observed above.'

'22. In Laxmi Dyechem v. State of Gujarat [Laxmi Dyechem v. State of Gujarat, (2012) 13 SCC 375, this Court reiterated that in view of Section 139, it has to be presumed that a cheque was issued in discharge of a debt or other liability but the presumption could be rebutted by adducing evidence. The burden of proof was however on the person who wanted to rebut the presumption. This Court held "however, this presumption coupled with the object of Chapter XVII of the Act leads to the conclusion that by countermending payment of a post-dated cheque, a party should not be allowed to get away from the penal provision of Section 138 of the Act".'

25. In ***Kalamani Tex*** (supra), the Supreme Court (3 Judges Bench) observed in paragraph 15 as under:-

'15. No doubt, and as correctly argued by the Senior Counsel for the appellants, the presumptions raised under Section 118 and Section 139 are rebuttable in nature. As held in M.S. Narayana Menon v. State of Kerala [M.S. Narayana Menon v. State of Kerala, (2006) 6 SCC 39, para 32, which was relied upon in Basalingappa [Basalingappa v. Mudibasappa, (2019) 5 SCC 418, a probable defence needs to be raised, which must meet the standard of "preponderance of probability", and not mere possibility. These principles were also affirmed in Kumar Exports [Kumar Exports v. Sharma Carpets, (2009) 2 SCC 513, wherein it was further held that a bare denial of passing of consideration would not aid the case of the accused.

26. In the case of **Rangappa** (supra) (3 Judge Bench) the Supreme Court observed in paragraphs 26, 27, 28 and 29 as under:-

'26. In light of these extracts, we are in agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat [(2008) 4 SCC 54 may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.'

'27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of

proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard or proof.'

'28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of "preponderance of probabilities". Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.'

'29. Coming back to the facts in the present case, we are in agreement with the High Court's view that the accused did not raise a probable defence. As noted earlier, the defence of the loss of a blank cheque was taken up belatedly and the accused had mentioned a different date in the "stop payment" instructions to his Bank. Furthermore, the instructions to "stop payment" had not even mentioned that the cheque had been lost. A perusal of the trial record also shows that the accused appeared to be aware of the fact that the cheque was with the complainant. Furthermore, the very fact that the accused had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version. Apart from not raising a probable defence, the appellant-accused was not able to contest the existence

of a legally enforceable debt or liability.'

27. The observations of the Supreme Court as quoted above and more particularly in the case of **Rangappa** (supra) wherein it has been observed in paragraph 29 that, the very fact that accused failed to reply to the stipulated notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version, comes to the aid of the complainant in the present matter since no reply was sent by the accused to the said legal notice probalising his defence. It further leads to the inference that the accused had no probable defence to be taken in the matter.

28. Coming back to the averments in the complaint, it shows that the complainant clearly mentioned that accused approached her late husband for financial assistance as a hand-loan in order to pay his debt. Accordingly, her late husband handed over an amount of ₹7,00,000/- as hand-loan by a demand draft. Accused issued cheque dated 22.01.2013 for an amount of ₹7,00,000/- in discharge of the said cheque liability.

29. All these averments are found in the affidavit-in-verification and also affidavit-in-evidence of the complainant. The cross-examination is cryptic and it even does not deny of obtaining

loan from the husband of the complainant as well as receiving such amount by way of demand draft.

30. As rightly pointed out by the learned counsel Shri Pavithran that the accused clearly admitted to obtaining loan when he asked the question in the cross-examination to PW1. The answer to it is as under:-

'I do not know whether the accused had already paid the amount of ₹7,00,000/- in cash to my late husband.'

31. This answer of the complainant in the cross-examination is not in the form of suggestion put to her. It pre-supposes that she was specifically asked as to whether she knows that the accused repaid the said loan of ₹7,00,000/- during the lifetime of her late husband, who expired somewhere in the year 2012. Thus, by asking the witness as to whether she knew about repayment, clear inference needs to be drawn that first of all the accused admits of obtaining loan of ₹7,00,000/- from her husband and that he claims to have paid such amount in cash. The latter part that accused paid the said amount of ₹7,00,000/- in cash is required to be established by the accused himself. It needs to be noted that no such defence was ever raised when accused received legal notice. It is for the first time that such aspect was brought on record during the course of examination of the complainant.

Therefore, the presumption under Section 139 of Negotiable Instruments Act in favour of complainant gets more strength and the accused was required to rebut with plausible material and not by mere probability.

32. The reasoning of the learned trial Court are totally tangent to the presumptive value of section 139 of Negotiable Instruments Act. There is no observation in the entire judgment that the complainant is entitled to draw such presumption though a decision in the case of *Rangappa*(supra) is cited. Instead of putting the onus on accused to discharge the burden, the learned trial Court directly assessed the defence and jumped to the conclusion that the complainant failed to prove that her late husband advanced loan of ₹7,00,000/- to the accused. By doing so, the learned trial Court completely ignored settled proposition of law as laid down in the decisions referred above. The so-called defence raised by the accused during cross-examination of the complainant and her witness, specifically in absence of any reply to the legal notice, cannot be considered as probable defence and certainly not a defence showing preponderance of probability in favour of the accused so as to rebut statutory presumption. Therefore, such findings of the trial Court which clearly come within the category of committing patent error of law and causing grave miscarriage of justice as also arriving at perverse

finding of fact, as held in the case of *Kalamani Tex* (supra) in paragraph 11. Thus, such findings cannot be sustained in the eyes of law and need to be interfered with under the provisions of Section 378 of Cr.P.C.

33. In the light of above findings, the appeal must succeed and, hence, allowed. The appeal stands allowed. The impugned judgment dated 30.11.2016 in Other Act Criminal Case No.67/NIA/2013/C is hereby quashed and set aside.

34. The accused/respondent herein is found guilty for the offence punishable under Section 138 of the Negotiable Instruments Act.

35. The matter is placed for hearing the accused on the point of sentence.

BHARAT P. DESHPANDE, J

JUDGMENT CONTINUED ON 16.11.2022

36. Heard learned counsel for the respondent No.1. The amount mentioned in the cheque is ₹7,00,000/-. The matter is of the year 2013. Therefore, considering the above facts, the respondent No.1/accused needs to be awarded punishment appropriate to the offence committed.

37. Respondent No.1/accused who is found guilty for offence punishable under Section 138 of the Negotiable Instruments Act is hereby sentenced to undergo simple imprisonment for a period of one month and to pay compensation to the tune of double the amount of cheque, i.e. ₹14,00,000/-, within a period of one month, failing which, accused shall undergo simple imprisonment for a period of 15 days.

38. Respondent No.1/accused shall surrender before the learned Magistrate within 2 weeks from today to undergo the sentence. In case of failure of the accused to surrender, learned Magistrate shall issue warrant in order to comply with the orders of this Court regarding sentence.

BHARAT P. DESHPANDE, J