

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

**CRIMINAL APPLICATION (APPA) NO.190 OF 2022**

**IN**

**CRIMINAL APPEAL (ST) NO.1777 OF 2022**

(M/s Sai Auto Agencies, Amravati .**Vs.** Hemant Ambadas Bajad)

---

*Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders.*

*Court's or Judge's order*

---

Shri. N. S. Badhe, Advocate for Applicant/Appellant.

Ms. G. Diwe h/f Shri. P. R. Agrawal, Advocate for Non-Applicant.

**CORAM : AVINASH G. GHAROTE, J.**

**DATE : 21<sup>st</sup> JUNE, 2022.**

. Heard Mr. N. S. Badhe, learned Counsel for Applicant and Ms. Diwe, learned Counsel holding for Mr. P. R. Agrawal, learned Counsel for Non-Applicant on the question of leave.

2. Certain facts are undisputed that the cheque of Rs.14,72,799/- drawn on the Axis Bank Ltd., Pune bearing Cheque No.215535 dated 16.06.2011 was issued by the Non-Applicant in favour of the Applicant (Page 96) which when presented, was dishonored on account of payment having been stopped by the Non-Applicant, as per the Cheque Return Memo issued by the Bankers of the Applicant namely State Bank of India dated 13.07.2011. The Non-Applicant thereafter on 03.08.2011 tendered an amount of Rs.40,500/-, to the complainant, the receipt of which is not disputed. Thereafter, a notice of demand was issued on 11.08.2011 in which, there is mention about the receipt of the aforesaid amount (Page 102). A reply was received by the complainant on 17.09.2011. Complaint

was filed on 23.09.2011 subsequent to which, part amount of Rs.3,90,000/- has been received by the complainant, which also is not disputed. The Trial Court by its judgment dated 18.01.2018 convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, “the said Act”) and sentenced him to suffer Simple Imprisonment for three months and pay a compensation of Rs.10,50,000/- in default of payment of compensation to suffer Simple Imprisonment for one moth.

3. The Appellate Court by the impugned judgment dated 05.01.2022 on the premise, that since it was an admitted position that amounts had been received by the complainant after the dishonor of the cheque and prior to issuance of a notice and also consequently filing of the complaint, was of the opinion, that the amount stated in the cheque could no longer be termed as being one for legal debt and liability, as part of the amount was also already received by the complainant and allowed the appeal dismissing the complaint.

4. Ms. Diwe h/f Mr. P. R. Agrawal, learned Counsel for Non-Applicant relies upon M/s. Alliance Infrastructure Project Pvt. Ltd. and Ors. .Vs.. Vinay Mittal, 2010 (2) Crims 672 to contend, that pursuant to the receipt of part of the cheque amount, the amount of money due would not be what is mentioned in the cheque, and therefore, the cheque would not be presentable at the behest of the complainant, which also

considers Section 56 of the said Act and supports the impugned judgment. In my considered opinion, a question of law based upon the peculiar facts as to whether upon receipt of the part cheque amount, the legal debt or liability stands extinguished in as much as, the complainant becomes ineligible to present the cheque arises for consideration, and therefore, leave is granted.

5. Office to register the Appeal.
6. Ms. Diwe h/f Mr. P. R. Agrawal waives notice on merits.
7. Call Record and Proceedings.
8. List the matter on **06.07.2022** for final hearing.

**JUDGE**

..AT..

ASHISH  
ASHOKRAO  
TAMBE

Digitally signed by  
ASHISH  
ASHOKRAO TAMBE  
Date: 2022.06.22  
16:44:54 +0530