



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

**CRIMINAL APPLICATION (APPA) NO.926 OF 2023**  
**IN**  
**CRIMINAL APPEAL STAMP NO.6026 OF 2023**

Ganga Om Steel, through its Proprietor Gopal Omprakash Agrawal  
Vs.  
Parinita Chandramani Meshram

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

Court's or Judge's orders

Mr. D. S. Jagyasi, Counsel for the applicant/appellant.  
Mr. N. R. Bhishikar, Counsel for the respondent.

**CORAM : URMILA JOSHI-PHALKE, J.**  
**DATED : 29/11/2024**

1. By this application, the applicant/appellant is seeking leave to prefer an appeal against acquittal.

2. Heard learned Counsel for the appellant who submitted that the complainant is the appellant who is dealing with the business of trading in steel and iron bars and there was a transaction between the accused and the complainant. Out of that transaction, the accused has issued a cheque of Rs.3,66,863/- which was dishonoured and returned with an endorsement "funds insufficient". Therefore after issuing the notice, he filed the complaint under Section 138 of the Negotiable Instruments Act and proceeded with the complaint. After recording the evidence, the trial Court held that presumption under

Section 146 of the N.I. Act would not be helpful to the complainant. The burden lies on the complainant to prove that after the presentation of cheque, it was dishonoured for the reason mentioned in the complaint, but the cheque return memo do not bear the official mark of the bank authority and acquitted the accused.

3. Learned Counsel for the appellant submitted that the learned trial Court acquitted the accused only on the ground that the cheque return memo did not bear the official mark of the bank and held that it could not be executed during the examination-in-chief of the complainant, which is an erroneous observation. In support of his contention, he placed reliance on the decision of the Delhi High Court in **Guneet Bhasin Vs. State of NCT of Delhi in Criminal M.C.4100/2022** and **Criminal M.A. 16919/2022**, wherein it is held by the Delhi High Court that the Section 138 of the NI Act does not mandate any particular form of cheque return memo which is nothing but a mere information given by the Banker of the due holder of a cheque that the cheque has been returned as unpaid. If the cheque return memo is not bearing any official stamp of the bank, it does not render the cheque return memo as invalid or illegal. The cheque return memo is not a document which is not required to be covered under Section 4 of the Bankers Book (Evidence) Act, 1891. If there is any infirmity in the cheque return memo, it does not

render entire trial under Section 138 of the NI Act as nullity.

4. He further submitted that the appellant has many arguable points in the present appeal, but the point which is raised in the appeal is that the learned trial Court has erroneously held that the presumption is not applicable. In view of that, the leave be granted.

5. Learned Counsel for the respondent strongly opposed the application on the ground that the cheque return memo neither bears the official seal nor bear the signature and therefore, the learned trial Court has rightly held that the presumption will not attract and therefore, no ground is made out to grant leave.

6. After hearing both the sides and on perusal of the impugned judgment, it reveals that in para No.47 learned trial Court extensively dealt with presumption under Section 46 of the NI Act. Considering the observation of the Delhi High Court and decision of this Court is also in the case of **Ronald Rao vs. Dhanraj Shravanji Korde** reported in **2021 All MR (Cri) 1649**. The appellant has made out a case to grant leave. In view of that, leave is granted.

7. The appeal be registered.

8. The application is disposed of.

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1. In the meantime, the record and proceeding be called.

2. Appeal be listed for the final disposal, after receipt of the record and proceeding.

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