



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1873 OF 2025

Shamim Fatima Sayyad Khaled Ali
Age: 40 years, Occu.: Household,
R/o Maskat Valley, Jatwada Road,
Aurangabad

..APPLICANT

VERSUS

1. State of Maharashtra
2. Vishwakalyan Multistate Credit Society Ltd.,
Aurangabad, Branch Gulmandi,
Through Branch Manager,
Recovery Officer Ravindra Namdeo Jiri

..RESPONDENTS

....
Mr. Mohsin Khan Pathan, Advocate for the applicant
Mr. D.B. Bhange, A.PP for respondent no.1 – State
Mr. I.D. Maniyar, Advocate for respondent no.2
....

CORAM : ABHAY J. MANTRI, J.
DATE : 19th NOVEMBER, 2025

ORAL JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith and heard finally by consent of the learned counsel for the respective parties at the admission stage.
2. The applicant assails the judgment and order dated 03rd February, 2025, passed by the learned Additional Sessions Judge, Aurangabad, in Criminal Revision No. 92 of 2024, thereby confirming the order of issuance of

process dated 20th February, 2020, passed by the learned J.M.F.C., Aurangabad, below Exhibit 1 in S.C.C. No. 707 of 2021. Hence, this application.

3. The thrust of the argument of learned counsel for the petitioner is that the second notice, which was issued by Respondent No.2 – Society, is beyond the period of thirty days. Therefore, the learned Magistrate's order for the issuance of process is illegal. He drew my attention to page no.13 and submitted that in the first paragraph of the complaint, the Respondent No.2 has not mentioned the issuance of a second notice for clarification in respect of paragraph no.4 of the first notice, and therefore, the impugned order cannot be sustained. In support of his argument, he relied on the judgment of the Hon'ble Apex Court in *Kaveri Plastics Vs. Mahdoo Bawa Bahrudeen Noorul AIR Online 2025 SC 886*, and drew my attention to paragraph nos.8.2, 9 and 10 and submitted that in view of the ratio laid down in the said judgment, the typographical error could hardly be accepted and notice be declared as invalid. Accordingly, he urged that the application be allowed.

4. On the contrary, learned counsel for the respondent submitted that passing of the impugned judgment and order is just and proper and no interference is required in the writ jurisdiction, and therefore, urged for dismissal of the application.

5. It is pertinent to note that learned counsel for the petitioner does not dispute that the petitioner is the borrower of the Respondent No.2 –

Society and obtained the loan. He also does not dispute that the Society's first notice was issued within thirty days and was within the period of limitation. His only grievance is that the second notice was issued beyond the period of limitation and, therefore, the order is illegal.

6. Perused the impugned notice dated 04th December, 2020 (pg. no.34). In paragraph nos. 1 and 3 of the notice the respondent has categorically averred that the petitioner is a borrower and obtained the loan and in pursuance of the repayment of the loan or dues, he has issued a cheque dated 06th November, 2020 for the amount of Rs.3,04,00,000/-. It is also pertinent to note that the applicant does not dispute the issuance of the cheque and the signature thereon. The said averments indicate that the ingredients of Section 138 of the Negotiable Instruments Act are attracted.

7. However, in paragraph no.4, it was mentioned that she stood as guarantor to one Amjad Khan, and therefore, issued the cheque. For clarification, the Respondent No. 2 – Society issued another notice on 11th December, 2020, thereby correcting the earlier notice. Even assuming his contention that the said cheque was issued by the petitioner towards repayment of the loan, whether as a borrower or as a guarantor, in either case, she is liable to comply with the notice, and non-compliance with the notice could attract Section 138 of the N.I. Act, and therefore, I do not find substance in his contention in that regard.

8. Perused the judgment of the Apex Court in *Kaveri Plastics* (supra), wherein the facts were that in the notice, the amount was incorrectly mentioned. Therefore, the Hon'ble Apex Court held that the defence of inadvertent or typographical error is not permissible and the notice was held invalid. However, in the case at hand, the facts differ from those in the above-cited case. In the case at hand, paragraph nos. 1 and 3 of the notice dated 04th December, 2020 clearly indicate that the applicant, as a borrower, obtained loan and towards repayment of loan, has issued cheque dated 06th November, 2020 to Respondent No.2 – Society, which was dishonoured and that being so, it emerges that the ingredients of Section 138 of the N.I. Acts are attracted in the case at hand. Even for the sake of argument, paragraph 4 of the notice is not taken into consideration. In that case, it cannot also be said that the passing of the order is illegal. As such, in my view, the observations made in the above-referred judgment are hardly of any assistance to the petitioner in support of his contention, and I do not find substance in his contention to interfere in the writ jurisdiction.

9. Perused the impugned judgment and orders of the learned Magistrate and the learned Additional Sessions Judge. Both the Courts have considered the facts of the case in their proper perspective and passed the impugned judgment and orders. However, learned counsel for the petitioner failed to point out illegality and perversity in the said judgments and orders. On the contrary, the same appears just and proper, and therefore, in my view,

no interference is required in the writ jurisdiction. The filing of the present application prima facie shows that the applicant tried to protract the trial and deprive the respondent of having the proceeding finally decided.

10. As a result, the present application being bereft of merits, stands dismissed with cost of Rs. 10,000/- (Rupees Ten Thousand) payable to the High Court Legal Services Sub-Committee, Aurangabad within a period of six weeks from today, failing which the applicant's right to contest the application will be forfeited.

11. Needless to clarify that since 2021, the complaint has been filed, and as per the mandate of Section 138 of the N.I. Act, it had to be decided within six months, which period has already elapsed. In view of the foregoing, the learned Magistrate is directed to decide the complaint at the earliest, preferably within six months from today. The parties are directed to cooperate with the learned Judge.

(ABHAY J. MANTRI, J.)

SSD