



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

1 CRIMINAL REVISION APPLICATION NO. 106 OF 2024

Ajay Ramchandra Kagde

VERSUS

1. The State Of Maharashtra,
2. Usha d/o Trimbak Saraf.

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Advocate for Applicant : Mr. Manoj R. Khutwad h/f Mr. Machave Sandeep
Subhash

APP for Respondents: Mr. S. P. Sonpawale

Advocate for Respondent No.2 : Mr. N. R. Shaikh (Appointed through Legal
Aid)

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**WITH
CRIMINAL APPLICATION NO. 1599 OF 2024
IN REVN/106/2024**

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CORAM : ARUN R. PEDNEKER, J.

Reserved On : 01/04/2025

Pronounced on : 07/04/2025

ORDER : -

1. Heard the learned Counsel for the applicant, the learned APP for the respondent-State, and the learned Counsel for respondent No.2.

2. The applicant challenges the order dated 20/01/2024, passed by the Additional Sessions Judge, Aurangabad, in Criminal Appeal No. 104 of 2022, dismissing the appeal and upholding the conviction recorded on 04/05/2022 in S.C.C. No. 9404 of 2018 by the Judicial Magistrate First Class, Aurangabad. However, the appellate Court has modified the sentence as follows : -

"1. Appeal is dismissed.

2. The judgment passed by Judicial magistrate, First Class, (Court No.12), Aurangabad, dated 04/05/2022, in S.C.C.No. 9404 of 2018,

thereby convicting the accused for the offence punishable under Section 138 of N.I.Act, is hereby confirmed. However, the sentence imposed by trial court is partially modified as follows :

‘The accused shall suffer simple imprisonment for one month for the offence punishable under section 138 of N.I.Act and shall pay fine of Rs.2,60,000/- (Rupees Two lacs and sixty thousand only) and the entire fine amount shall be paid to complainant as compensation under Section 357(1) of Cr.P.C. In default of payment of fine, the accused shall further suffer simple imprisonment for 10 days’.”

3. The accused/appellant is a goldsmith engaged in the jewellery business. The complainant entrusted him with 560 grams of silver and 32.05 grams of gold for the preparation of ornaments. However, the accused failed to return the ornaments.

4. To discharge his liability towards the complainant, the accused issued a cheque bearing No. 542931 dated 26/02/2017 for Rs. 97,500/-. The cheque was dishonoured. Subsequently, the accused issued a letter to the complainant, tendering an apology, and later issued another cheque No.629120, drawn on United Bank of India, Kolhapur Branch, dated 15/08/2018, for Rs. 1,30,000/-, including interest.

5. The complainant deposited this cheque in her account at Malkapur Urban Co-operative Bank, Aurangabad Branch, on 14/08/2018. However, it was dishonoured on 16/08/2018. She issued a notice to the accused on

12/09/2018. In response, the accused requested her to re-present the cheque for encashment. Accordingly, the complainant presented the cheque again on 21/09/2018, but it was once more dishonoured on 24/09/2018 due to "Funds Insufficient."

6. The complainant issued another notice to the accused on 09/10/2018, but the accused failed to make the payment. Consequently, the complaint was filed on 31/10/2018.

7. During the trial, the complainant examined herself as a witness at Exhibit 21. The accused did not adduce any evidence.

8. The documentary evidence included a cheque for Rs. 97,500/- (Exhibit 27), an apology letter (Exhibit 28), and another cheque for Rs. 1,30,000/- (Exhibit 22), which was dishonoured twice on 16/08/2018 and 24/09/2018.

9. After considering the evidence on record, the Judicial Magistrate First Class, Aurangabad, convicted the accused/present applicant and passed the following order : -

"1. The accused is convicted for an offence punishable under Section 138 of the N.I.Act vide Section 255 (2) of the Cr.P.C. and sentenced to suffer simple imprisonment for 6 months.

2. *The accused is directed to pay fine of Rs.2,60,000/- (Rupees Two Lac Sixty Thousand only) and if the accused pays the said fine, entire amount be paid to the complainant as compensation under Section 357(1) of the Cr.P.C. in default to pay fine amount suffer simple imprisonment for one month....."*

10. Thereafter, the accused preferred an appeal before the Sessions Court, which was dismissed. However, the appellate Court modified the sentence, as noted in paragraph No. 2 of this order. Aggrieved by this, present Revision Application is filed.

11. The applicant has undergone approximately 28 days of the sentence before being enlarged on bail. He has also deposited Rs. 50,000/- in this Court, which has been withdrawn by the complainant. In the background of above facts and circumstances, this Court heard the learned Counsel appearing for the respective parties.

12. The learned Counsel for the applicant/accused first contended that the accused is from Kolhapur, and there was no occasion or reason for the complainant/respondent No.2 to entrust gold to him. Therefore, there was no liability to be discharged, and the cheques issued in favor of the complainant were not towards legally enforceable debt.

13. The second submission of the learned Counsel for the applicant/accused is that the cheque in question was issued in Kolhapur in

favor of the complainant (present respondent No.2), and since the transaction took place in Kolhapur, the complaint filed at Aurangabad was not maintainable.

14. The learned Counsel for the applicant relies on the judgment of the Hon'ble Apex Court in case of ***Krishna Janardhan Bhat vs. Dattatraya G. Hegde, reported in (2008) 4 SCC 54.***

15 The learned Counsel for the complainant/respondent No.2 submits that the concurrent findings of the Courts below, affirming that the cheque was issued in discharge of liability, ought not to be disturbed in revisional jurisdiction. He relies on the judgment in case of ***Malkeet Singh Gil vs. State of Chhattisgarh, reported in (2022) 8 SCC 204.*** He further contends that the complainant/respondent No.2 is a resident of Aurangabad, and since the cheque was presented before a bank in Aurangabad, the Aurangabad Court has jurisdiction to entertain the complaint.

16. Considering the rival submissions, it is to be noted that the applicant/accused has not stepped into the witness box. Additionally, the record includes two apology letters issued by the accused, along with cheques given towards the gold entrusted to him for making jewellery. It is undisputed that the applicant is engaged in the jewellery business. In view

of these aspects, the findings of the Trial Court confirmed by the Appellate Court do not suffer from any illegality.

17. As regards the issue of jurisdiction, the cheque was presented before a Court in Aurangabad, forming part of the cause of action that arose in Aurangabad. In view of the judgment in the case of **Bridgestone India Private Limited Vs. Inderpal Singh** reported in **[2016] 2 SCC 75**, after considering the amendment made to Section 142 of the Negotiable Instruments Act, 1881, the Hon'ble Supreme Court at para no.15 observed as under :

15. We are satisfied, that Section 142 (2) (a), amended through the Negotiable Instruments (Amendment) Second Ordinance, 2015, vests jurisdiction for initiating proceedings for the offence under Section 138 of the Negotiable Instruments Act, inter alia, in the territorial jurisdiction of the court, where the cheque is delivered for collection (through an account of the branch of the bank where the payee or holder in due course maintains an account). We are also satisfied, based on Section 142-A (1) to the effect, that the judgment rendered by this Court in Dashrath Rupsingh Rathod case, would not stand in the way of the appellant, insofar as the territorial jurisdiction for initiating proceedings emerging from the dishonour of the cheque in the present case arises.

18. In view of the above, no case is made out for interfering with the findings of the Additional Sessions Judge, Aurangabad, dismissing Criminal Appeal No. 104 of 2022 by order dated 20/01/2024. Accordingly, both applications stand dismissed.

19. Mr.N.R.Shaikh, learned counsel is appointed by the High Court Legal Aid Services Sub-Committee, Aurangabad, to represent the cause of respondent no.2, shall be paid fees as per Rules. Mr.N.R.Shaikh, appointed learned counsel submits that the High Court Legal Aid Services Sub Committee, Aurangabad be directed to issue the cheque of aforesaid amount in favour of the Advocates Association of Bombay High Court at Aurangabad.

20. In view of request of the learned counsel appointed for the respondent no.2, the High Court Legal Aid Services Sub Committee, Aurangabad is directed to issue the cheque of aforesaid amount in favour of the Advocates Association of Bombay High Court at Aurangabad.

(ARUN R. PEDNEKER, J.)

vj gawade/-.