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IN THE HIGH COURT OF BOMBAY AT GOA

**CRIMINAL WRIT PETITION NO. 37 OF 2025
WITH
CRIMINAL WRIT PETITION NO. 38 OF 2025**

PATRICIA REITER

...Petitioner

Versus

**SOMNATH SHARAD MANDREKAR AND
ANR**

**...
Respondents**

Mr. Sahil Deshprabhu, Advocate for the Petitioner.

Mr. Deepak Gaonkar with Mr. Akhil Govekar, Advocate for the Respondent No.1.

Mr. Somnath Karpe, Additional Public Prosecutor for Respondent No.2.

CORAM : VALMIKI MENEZES, J.

Reserved on: 15th JULY, 2025

Pronounced on : 21st JULY, 2025.

ORDER:

1. These Petitions are disposed of by common order since the Impugned orders arise from the same proceeding. In Criminal Writ Petition No.242 of 2025, the Petitioner/ Original Accused impugns order dated 01.03.2025, passed by the Court of Judicial Magistrate First Class Pernem, North-Goa in OA/16/2022, on an Application for summoning of a witness, (Police Sub Inspector of Pernem Police station) to produce a case diary; the application is found at Exhibit D-98 of the file of the trial Court. In Criminal Writ Petition No.555 of 2025, the

Petitioner/ Original Accused impugns order dated 03.06.2025, passed by the same Magistrate rejecting an Application for summoning of a witness, (Assistant Director of Tourism) to produce documents; the application is found at Exhibit D-111 of the file of the trial Court. The criminal complaint has been filed by the Respondent/original complainant who has alleged an offence under Section 138 of the Negotiable Instruments Act, 1881 (NI Act, for short) against the Petitioner.

SUBMISSIONS:

2. The Advocate for the Petitioner Mr. Sahil Deshpurabhu advanced the following submissions:

- a. That it is right of the Accused/ Petitioner of a fair trial and is entitled to examine any witness that may shed light on the material facts of the case. He further submitted that, after having being permitted by this Court by its order dated 12.12.2023 in Criminal Writ Petition No.124/2023, to file written statement of defence under sub-Section 5 of Section 313 CrPC, the Petitioner examined herself and one witness, a Bank Manager; he further submitted that the Petitioner wished to lead further evidence to bring on record her defence that the cheques were taken under coercion, and this fact was recorded in the case diary entry at the Pernem Police Station. Hence, the Petitioner sought to examine the concerned Police Sub-Inspector to produce the diary entry. This opportunity had been denied to the Petitioner vide the first impugned order.

- b. He further submitted that the second witness sought to be examined under Exhibit D-111 before the trial Court was an Assistant Director of Tourism Department to prove that the guest house at which the Petitioner /Accused was allowed to stay by the Complainant, during the Covid–19 Pandemic was non-functional and actually shut down. He contends that the denial of examination of this witness would effectively deny, bringing on record the defence taken by the Petitioner, that the cheques were not issued for consideration.
- c. Reliance has been placed on the following judgments:
1. **M/s Sirkar & Sons, V/s Mr.Kushal Sawant** in Criminal Writ Peition No.71/2013 of High Court of Bombay at Goa
 2. **Mrs. Rubina Kausar V/s Mrs. Shaheen Abdul Kadar Shaikh** in Criminal Writ Peition No.393/2023 of High Court of Bombay at Goa
 3. **Som Nath Sapra V/s State and Anr** 2023 SCC OnLine Del 649
 4. **S.N Dhingra V/s State (NCT PF DELHI) and Anr** (2014) 13 SCC 768
 5. **R. Muthu Kumar v/s S. Sitararasu** 2024 SCC OnLine Mad 3788
 6. **P.V Rajalakshmi V/s G V Srinivas Rao and Ors** in Criminal Writ Petition No.5451/2024 of High Court of Andhra Pradesh at Amravati.

3. Countering this submissions Mr. Deepak Gaonkar, learned Advocate for the Respondent submits that the Petitioner not having taken any specific defence in reply to the notice under Section 138 of the NI Act, and having been denied cross-examination in terms of sub-Section 2 of Section 145 of the NI Act, none of the facts sought to be introduced by examining additional witnesses in defence were justified; it was further submitted that perusal of the statement under sub-Section 5 of Section 313 of the CrPC of the Petitioner would also not reveal all these defences that are now sought to be introduced. The Respondent further submits that the Petitioner has literally converted trial of a complaint under Section 138 of the NI Act, to a warrant triable case, which is totally impermissible. He therefore supports the impugned orders.

FACTS:

4. It is necessary, for deciding the rival contentions, to refer to certain undisputed facts, which are borne from the record of the case.

The Complainant, Respondent herein filed a complaint dated 19.03.2022 against the Petitioner, under Section 138 r/w 142 of the NI Act before the JMFC, Pernem. It is the Complainant's case that two cheques which were dishonoured dated 15.10.2021 and 31.10.2021, together amounting to Rs.8,74,200/- were issued by the petitioner towards the payment of rent due for use of the Respondent's premises

during the Covis-19 pandemic. The cheques bounced due to insufficient funds on 11.01.2022, pursuant to which notice was issued to the Petitioner on 09.02.2022, and owing to no reply being filed, the complaint was lodged before the Magistrate.

5. After verification of the Complaint and receiving summons, the Accused filed an application on 14.12.2022, in terms of Section 145 (2) of NI Act, seeking cross examination of the Complainant which was allowed by the trial Court on the same day. However the Respondent challenged the said order in Wp.No 90/2023 before this Court on 03.02.2023 and the same was allowed by this Court vide its order dated 28.02.2023, setting aside the order dated 14.12.2022 of the Magistrate; this Court held that before the Accused is granted permission to cross-examine the Complainant, she had to set out a specific defence in the Application filed under Section 145(2) of the Negotiable Instruments Act, 1881 as held in the case law quoted therein (i) *Indian Bank Association & Others Vs Union of India & Others [(2014) 5 SCC 590]* and (ii) *Meters & Instruments Private Limited & Another Vs. Kanchan Mehta [(2018) 1 SCC 560]*. This Court further held that the Petitioner had pleaded absolutely no defence in the Application for justifying cross-examination of the Complainant, and since the order of the Magistrate granting leave to defend under Section 145(2) of the NI Act, was contrary to law laid down by the Hon'ble Supreme Court the order of the Magistrate was quashed and set aside directing the trial court to proceed with the trial expeditiously.

6. On 09.06.2023, the JMFC recorded the statement of the Accused under Section 313 CrPC, in which, under sub-Section 5 of Section 313, the Accused preferred to file a detailed written statement. The Petitioner filed an application praying for such opportunity which was dismissed by order dated 07.07.2023, which was, in Criminal Writ Petition No.124 of 2023 allowed by this Court on 12.12.2023, holding that the Accused ought to be given an opportunity to explain in detail, her defence. In the Compliance with the order dated 07.07.2023, the petitioner filed her written statement on 18.12.2023. In this written statement, there is a defence taken that the Petitioner was coerced into issuing the cheques but there was no defence that the Petitioner attempted to file a police complaint before Pernem Police Station to complain of such coercion. The statement denies that the agreed rent for the use of the Complainant's hotel was Rs.4,200/- per night but states that the rent was fixed at Rs.2,000/- per night.

7. After applying for waiver of her right, in terms of proviso to sub-Section 1 of Section 315 of CrPC, on 23.02.2024 the Petitioner stepped into the witness box for Defence Evidence and her cross-examination was completed on 18.03.2024. The examination-in-chief of the Complainant does not state that the Accused had approached the Police Station to lodge a complaint against the Respondent of forcibly taking the two cheques in question, under coercion. There is also no statement in the examination-in-chief as to the fact that the guest house in which the Accused was stayed was not registered with the Tourism Department at the relevant time.

8. On 18.03.2024 itself, after being cross-examined, the Accused sought to be re-examined to explain, according to her the ambiguity in certain statements with regard to two disputed cheques. This opportunity for re-examination of the Petitioner was denied vide order dated 18.03.2024; this order dated 18.03.2024 was challenged in this Court in Criminal Writ Petition No 337 of 2024(F) on 06.04.2024 and same was set aside vide order dated 23.07.2024 allowing the Petitioner to re-examine herself only on the question as to which cheque she was referring to in furtherance of her payment towards disputed cheque.

9. The Petitioner then re-examined herself on 21.08.2024 and clarified that the said payment was made towards cheque dated 15.10.2021. Thereafter the Accused examined a Bank Manager whose evidence was recorded by the Magistrate on 29.11.2024. The Manager produced a loan application form filed by the Accused stating that without the letter of the complainant, introducing the Accused with the Bank, the Bank could not open a Bank Account in the name of the Accused. The Bank Manager also deposes in cross-examination that the account still runs today and transactions are done by the Accused on that account even till date.

10. On 07.12.2024, the Petitioner filed an application for production of document and summoning of a witness, PSI Praful Giri to produce case diary in the trial court; the application states that the Accused had visited the police station on 04.11.2021 upon receiving a call letter from the

aforementioned Officer, during the meeting at the police station, the Accused had informed the police that the cheques were forcefully taken from her and were deposited without the authority of the Accused. The application was opposed by the Respondent vide its reply dated 16.12.2024, contending that it was an attempt to protract the matter since the document and the witness sought to be produced was irrelevant and unnecessary. The said application was dismissed by the trial court vide its order dated 01.03.2025, impugned herein, holding that the evidence sought to be produced by the accused is apparently not relevant /essential to the just decision of the case.

11. The second application came to be filed on 26.03.2025 seeking permission to examine a witness (Assistant Director of Tourism) which was vehemently opposed by the Respondent vide its reply dated 09.04.2025 and was dismissed by the Magistrate vide its order dated 03.06.2025 on the ground that the evidence to be produced by the Accused is not relevant to the just decision of this case. This order is impugned in Criminal Writ Petition No.555/2025.

12. The complaints filed under Section 138 of the NI Act, are required to be tried summarily; Section 143 of the NI Act mandates that the trial in such cases, so far as practicable shall be continued from day to day until its conclusion. It also mandates that every trial shall be conducted as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of filing of the complaint. The

procedure to be followed is provided under Section 262 t 265 of the Code.

13. In *Indian Bank Association and others v/s. Union of India and others [(2014) 5 SCC 590]*, and in *Meters and Instruments Private Limited and Another V/s Kanchan Mehta [(2018) 1 SCC 560]* the Supreme Court while dealing with these provisions and addressing the issue of delay in trials of cheque bouncing cases, after considering the object of 2002 amendment to Sections 143 to 147 of the NI Act; In *Indian Bank Association* (supra), the Supreme Court has made the following observations:

11. *We have indicated.....*

4. Keeping in view the recommendations of the Standing Committee on Finance and other representations, it has been decided to bring out, inter alia, the following amendments in the Negotiable Instruments Act, 1881, namely-

(i) to increase the punishment as prescribed under the Act from one year to two years;

(ii) to increase the period for issue of notice by the payee to the drawer from 15 days to 30 days:

(iii) to provifle discretion to the court to waive the period of one month, which has been prescribed for taking cognizance of the case under the Act;

(iv) to prescribe procedure for dispensing with preliminary evidence of the complainant;

(v) to prescribe procedure for servicing of summons to the accused or witness by the court through speed post or empanelled private couriers.

(vi) to provide for summary trial of the cases under the Act with a view to speeding up disposal of cases:

(vii) to make the offences under the Act compoundable;

(viii) to exempt those directors from prosecution under Section 141 of the Act who are nominated as directors of a company by virtue of their holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government, or the State Government as the case may be.

(ix) to provide that the Magistrate trying an offence shall have power to pass sentence of imprisonment for a term exceeding one year and amount of fine exceeding five thousand rupees

(x) to make the Information Technology Act, 2000 applicable to the Negotiable Instruments Act, 1881 in relation to electronic cheques and truncated cheques subject to such modifications and amendments as the Central Government, in consultation with the Reserve Bank of India, considers necessary for carrying out the purposes of the Act, by notification in the Official Gazette, and

(a) to amend definitions of bankers books and certified copy given in the Bankers Books Evidence Act. 1891

14. After making reference to the afore quoted paras of **Indian Bank Association** (*supra*), the Supreme Court in

Meters and Instruments Private Limited (supra)

considered the manner in which the stages of service of summons in cheque bouncing cases should be curtailed and the steps to be taken by Magistrate to record the statement of the Accused immediately on his appearance to ascertain his defence, in line with the summary procedure provided under Section 143 to 147 of the NI Act. In this regard, the following observations were made therein.

16. It is, thus, clear that the trials under Chapter XVII of the Act are expected normally to be summary trial. Once the complaint is filed which is accompanied by the dishonoured cheque and the bank's slip and the affidavit, the court ought to issue summons. The service of summons can be by post/e-mail/courier and ought to be properly monitored. The summons ought to indicate that the accused could make specified payment by deposit in a particular account before the specified date and inform the court and the complainant by e-mail. In such a situation, he may not be required to appear if the court is satisfied that the payment has not been duly made and if the complainant has no valid objection. If the accused is required to appear, his statement ought to be recorded forthwith and the case fixed for defence evidence, unless the complainant's witnesses are recalled for examination.

17. Having regard to magnitude of challenge posed by cases filed under Section 138 of the Act, which constitute about 20% of the total number of cases filed in the courts (as per 213th Report of the Law Commission) and earlier directions of this Court in this regard, it appears to be necessary that the situation is reviewed by the High Courts and updated directions are issued. Interactions, action plans and monitoring are continuing steps mandated by Articles 39-A and 21 of the Constitution to achieve the goal of access to justice²⁹. Use of modern technology needs to be considered not only for paperless courts but also to reduce overcrowding of courts. There appears to be need to consider categories of cases which can be partly or entirely concluded "online" without physical presence of the parties by simplifying procedures where seriously disputed questions are not required to be adjudicated. Traffic challans may perhaps be one such category. At least some number of Section 138 cases can be decided online. If complaint with affidavits and documents can be filed online, process issued online and the accused pays the specified amount online, it may obviate the need for personal appearance of the complainant or the accused. Only if the accused contests, need for appearance of parties may arise which may be through counsel and wherever viable, Videoconferencing can be used: Personal

appearances can be dispensed with on suitable self-operating conditions. This is a matter to be considered by the High Courts and wherever viable, appropriate directions can be issued .

18. From the above discussion the following aspects emerge

18.1. Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on the accused in view of presumption under Section 139 but the standard of such proof is "preponderance of probabilities" The same has to be normally tried summarily as per provisions of summary trial under CrPC but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 CrPC will apply and the court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

18.2. The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the court.

18.3. Though compounding requires consent of both parties, even in absence of such consent, the court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.

18.4. Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the court has jurisdiction under Section 357(3) CrPC to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 CrPC. With this approach, prison sentence of more than one year may not be required in all cases.

18.5. Since evidence of the complaint can be given on affidavit, subject to the court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonour of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as

evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 CrPC. The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances.

19. In view of the above, we hold that where the cheque amount with interest and cost as assessed by the court is paid by a specified date, the court is entitled to close the proceedings in exercise of its powers under Section 143 of the Act read with Section 258 CrPC. As already observed, normal rule for trial of cases under Chapter XVII of the Act is to follow the summary procedure and summons trial procedure can be followed where sentence exceeding one year may be necessary taking into account the fact that compensation under Section 357(3) CrPC with sentence of less than one year will not be adequate, having regard to the amount of cheque, conduct of the accused and other circumstances.

15. The provisions of Section 254 of the Code, enabling the Accused to produce evidence, and rely upon documents would necessarily have to be curtailed in view of the provisions of sub Section 2 of Section 145 of the NI Act and the fact that Section 143 thereof mandates summary procedure in trials to be followed by following the course specified in Sections 262 to 265 of the Code. The Magistrate dealing with such cases, is not permitted to convert a summary trial to a summons triable case, much less in to a warrant triable case. Looking at the conduct of the Accused/Petitioner, in the present case, she has literally sought to convert her summary trial to a warrant trial, by attempting to examine witnesses, who are not only irrelevant, but without even raising the defences sought to be raised to the examination of such witnesses.

16. Keeping in mind the mandate of the Supreme Court in the aforesaid judgment and considering the provision of Section 143 of the NI Act, which requires the trial to be a summary trial, to be completed in six months, one would have to examine the two applications for examination a witnesses rejected by the impugned orders, in the light of the defence raised by the Accused.

The Accused has been denied the opportunity of a cross-examining the Complainant under Section 145, by an order of this Court, on a specific finding that the application raised no defence of whatsoever nature. Despite this fact, the Accused, having been given an opportunity to file a written statement under Section 313, filed such a statement where no defence has

been raised to the effect that the complainant had attempted to file a complaint before the police, with regard to the cheques have been obtained under coercion. Even in her own evidence led under Section 315 of the Code, no such defence is taken. The learned Magistrate has taken this fact into consideration whilst passing the first impugned order dated 01.03.2025, and correctly dismissed the application.

17. The second application, seeking examination of a witness to prove that the hotel of the Complainant was not operational at the relevant time is totally irrelevant to the subject matter of the complaint, as it was the defence of the accused herself that the agreed sum to be paid per day of use of the hotel room was Rs.2,000/- and not Rs.4,200/-, as claimed by the Complainant. The question of whether the hotel was not operational due to Covid restrictions was not a consideration at all, nor a relevant defence, in the light of the specific statement made by the Petitioner in her examination-in-chief, recorded under Section 315 of the Code. Perusing the second impugned order dated 03.06.2025, the Magistrate has rightly concluded that the further evidence sought to be introduced was only to delay the trial. The trial Court has also considered, after considering all the defences taken and earlier orders of this Court that the Accused had been restricted, whilst giving evidence under Section 315 only to explain the discrepancy in the cheques and the amounts. The reasoning suffers from no perversity whatsoever, and the order has been passed after considering all the relevant record. The order therefore does

not call for any interference of this Court in its supervisory jurisdiction under Article 227 of the Constitution of India.

18. The provision of Section 254 of the Code, in the specific facts of this case cannot be pressed into action, as no such defence, now sought to be introduced was ever raised by the Accused. This is more so to be considered, in the light of the fact that complaints under Section 138 of the NI Act are to be tried summarily and the Magistrates are under mandate, preferably to complete the trial within six months. In the present case, the Accused has, without any defence being raised in reply to the original notice, and after being denied opportunity to cross-examine since no defence was stated in her application under Section 145 of the Act, is attempting to convert the trial into a warrant case. Such a procedure is not countenance by the amended provision of Sections 143 to 147 of the NI Act.

19. The judgments relied upon by the Petitioners are all on facts, and are not applicable to the present case. ***M/s Sirkar & Sons*** (supra) was a case where immediately after issuance of process and Substance of Accusation was explained to the Accused, the complainant filed an application under Section 254 of the Code for relying upon additional documents. This is not the case in the present petition. Here, the Accused has invoked Section 254 much after leading her own evidence, and that too without referring either the document sought to be relied upon or even the facts relating to the document in her own evidence.

20. *Mrs. Rubina Kausar* (supra), with respect, does not laydown any ration and only state that the order set aside by this Court therein, was a non-speaking order; it also states that the relevancy of a document at the time of its production may be kept open for a stage, when the witness actually tenders the document.

21. *Som Nath Sapra* (supra), Judgment of the single Judge of the Delhi High Court holds that Section 254 mandates that if the Magistrate does not convict the Accused, he has option to issue summons to any witness, however, on application of the prosecution or the Accused. That Judgment, was set aside in Appeal before the Supreme Court in ***S. N. Dhingra*** (supra), hence need not be referred to.

22. In ***R. Muthu Kumar*** (supra), the Madras High Court does not laydown any ruling, but only holds that no prejudice should be caused in a cheque bouncing case, if the Court allows the Accused an opportunity to examine the witnesses referred to therein. The entire Judgment is based upon facts.

23. In ***P.V. Rajlakshmi*** (supra), the High Court of Andhra Pradesh was considering a similar case to ***M/s Sirkar & Sons*** where the complainant during the course of his evidence sought to rely upon additional documents under Section 254 of Code. Though in that case, the view taken was that Section 254 was applicable in all proceedings under Section 138 of the NI Act, the broad view taken is without considering the mandate set down by the Supreme Court in *Indian Bank* (supra) and *Meters*

(supra). The principles laid down in the aforementioned Judgments of the Supreme Court has not be considered by the Andhra Pradesh High Court.

24. For all the above reasons, there is no case made out for interference in the supervisory writ jurisdiction of this Court under Article 227 of the Constitution of India with both the impugned order dated 01.03.2025 and 03.06.2025, passed by the learned JMFC, Pernem. Both orders are well reasoned and passed after considering the relevant provisions of law and considering the record, more specifically, the denial to cross examine by an order of this Court and lack of specific defence in relation to the witnesses now sought to be examined and documents sought to be produced.

25. Both the Writ Petitions are therefore rejected with no costs.

VALMIKI MENEZES,J.