



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

CRIMINAL REVISION APPLICATION NO. 30 OF 2024

Shri Nitin s/o Suresh Bhoyar

aged about 40 years, Occ.: Business,
R/o. Itawa Ward, Pusad, Tq. Pusad,
District : Yavatmal

... Applicant

Versus

1. The State of Maharashtra,

Through its Police Station Officer,
Police Station Pusad,
District – Yavatmal.

2. Umakant s/o Dattatraya Chakkarwar

aged about 69 years, Occ. : Retired,
R/o. Shrirampur, Tq. Pusad,
District – Yavatmal.

... Non-applicants

Mr. Hariom V. Dhage, Advocate for applicant.

Mr. Piyush P. Pendke, APP for non-applicant No.1/State.

Mr. Vishwa Gadbaile, Advocate h/f Mr. K.S. Narwade, Advocate for non-applicant No.2/original accused.

CORAM : RAJNISH R. VYAS, J.
DATE : 23.09.2025.

ORAL JUDGMENT:

Heard.

(2) **Admit.** Taken up for final disposal with the consent of
learned counsel for the parties.

(3) The applicant, before this Court is the original complainant. The non-applicant No.2 is the original accused. The proceedings were initiated by the complainant under Section 138 of the Negotiable Instrument Act, 1881 (for short 'the N. I. Act'), before which statutory notice was issued to the accused. The accused did not claim the notice and consequently did not reply it. During the course of the proceedings, in order to prove the case, the complainant/applicant examined himself. Whereas, in order to prove the defence the accused has also entered the witness box. After appreciation of evidence and questioning the accused under Section 313 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.'), the trial Court convicted the accused for commission of offence punishable under Section 138 of the N. I. Act and sentenced him to undergo simple imprisonment for six months and to pay compensation of Rs.1,70,000/-. The default sentenced was also imposed upon him.

(4) The accused has challenged said judgment by preferring Criminal Appeal No.19 of 2019 before the Additional Sessions Judge, Pusa, District – Yavatmal and vide judgment dated 18.10.2023, appeal was allowed and accused was acquitted.

(5) Being aggrieved by the aforesaid judgment dated

18.10.2023, the complainant has approached this Court by preferring present criminal revision application.

(6) Heard Mr. Dhage, learned counsel for the applicant/original complainant and Mr. Gadbaile, holding for Advocate Mr. K.S. Narwade, learned counsel for non-applicant No.2/original accused. I have also heard Mr. Piyush Pendke, learned Assistant Public Prosecutor for non-applicant No.1/State.

(7) It is contended by the learned counsel for complainant/applicant that the appellate Court did not take into consideration various aspects including the fact that there is a presumption, which is in his favour by virtue of provisions of N. I. Act. He further contends that the accused had never replied the notice and therefore, the plea taken by the accused is not at all convincing. According to him, the appellate Court should not have taken the evidence into consideration by ignoring the mandate of N. I. Act, more particularly, presumption prescribed therein.

(8) Per contra, the learned counsel for non-applicant No.2/original accused submits that the judgment delivered by the appellate Court is just and proper. According to him, story advanced by the complainant is not

convincing as he was not even known to the complainant. According to him, financial capacity to lend the amount was not proved during the trial and considering all these factors the appellate Court rightly passed order setting aside his conviction.

(9) I have perused the documents on record and I am of the opinion that judgment passed by the appellate Court is contrary to the law for following reasons.

(10) In the instant matter there are two cheques which are involved. The amount of each cheque is of Rs.80,000/-. Both the cheques were dishonoured and consequently, statutory notice was issued by the complainant to the accused. The accused did not claim the said notice and replied the notice.

(11) Argument that cheques were misused is not convincing since no attempt has been made by the accused either to lodge a complaint about misuse of the cheques by the complainant or issue any communication to the bank requesting for stoppage of payment. The conduct of accused, therefore, is not that of man of ordinary prudence. It is further necessary to mention here that the accused in the cross-examination of the complainant has nowhere suggested that blank cheques were given to the complainant. It is for the first time, when he entered the witness box, he advanced a story of

handing over of three blank cheques and misuse of same by the complainant.

(12) In his evidence, the accused has further stated that initially amount of Rs. 40,000/- was taken by him from the complainant which was duly returned in presence of friend of the accused by name Uttam Rathod. There is absolutely no reason coming forward as to why said Uttam Rathod was not examined. Thus, best evidence was not produced before the Court. It is further necessary to mention that though suggestion has been put in cross-examination to the complainant that Exhibit 43 and 44 (cheques in question) are not in handwriting of the accused but no attempt was made by the accused to refer the disputed handwriting to the handwriting expert.

(13) Learned counsel for the accused has pointed out that when the plea was recorded the details of only one cheque were put to him and there is absolutely no reference to the second cheque in the plea recorded on 27.01.2016. Learned counsel for the accused is right in saying so but the manner in which cross-examination has been done and evidence has been lead before the Court would clearly reveal that no prejudice has been caused to the accused. The accused has never challenged order of recording plea on 27.01.2016 before any Court. Thus, it cannot be said that any prejudice had been caused to the accused.

(14) The accused has relied upon judgment in case of *Basalingappa Vs. Mudibasappa*, reported in, (2019) 5 SCC 418 and contended that capacity to pay the amount is required to be looked into while considering the prosecution under Section 138 of the N. I. Act. He has also relied upon judgment delivered by the High Court of Telangana in the case of *Sunil Kumar Jain Vs. Dinesh Kumar Jain and others* in Criminal R.C. No.41/2013 in order to support his contention.

(15) I have gone through both the judgments. So far as judgment delivered by the Hon'ble Apex Court is concerned, it deals with the presumptions which are required to be raised under the Negotiable Instrument Act. It further says that the accused in order to rebut the presumption is required to lead his defence or point out his defence on the basis of material and the test would be preponderance of probability. There cannot be a dispute about the law laid down by the Hon'ble Apex Court, but in the instant case, nothing has been brought on record which would give an opportunity to this Court to arrive at the conclusion that by way of preponderance of probability the accused has rebutted the presumption. So far as judgment delivered by Telangana High Court is concerned, the amount which was paid in cash was Rs.32,00,000/- and therefore, the aforesaid judgment is on totally different part.

(16) Learned counsel for the complainant has relied upon judgment of the Hon'ble Apex Court in the case of *Celestium Financial .vs. A. Gnanasekaran Etc.*, reported in, *2025 SCC OnLine SC 1320*. In the said judgment, the Hon'ble Apex Court has dealt with the scope of Section 372 of the Code of Criminal Procedure, 1973 *vis-a-vis* Section 378(4) of the Code of Criminal Procedure, 1973. The law laid down in the aforesaid judgments is not applicable to the instant case. The fact remains that accused has not made out any ground to rebut the presumption. That being so, I am of the opinion that the revision application needs to be allowed and consequently, it is allowed.

(17) The judgment passed by the Additional Sessions Judge, Pusa, District – Yavatmal in Criminal Appeal No.19 of 2019 dated 18.10.2023 is hereby quashed and set aside.

(18) The judgment of conviction dated 08.05.2019 passed by the learned Judicial Magistrate First Class, Pusa, is restored.

The revision application stands disposed of, accordingly.

[RAJNISH R. VYAS, J.]

Prity