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

CRIMINAL APPEAL NO. 304 OF 2010

Smt. Gurmit w/o Surjit Singh Asla
aged about 45 years, Occ. Business,
R/o. Pande Layout, Khamla Road,
Nagpur. **... Appellant**

Versus

Smt. Renusingh Jogising
Aged about 45 years, Occ. Business,
R/o. Yash Complex, 1st Floor, New Raj
Maroti Centre, Amravati Road, Nagpur. **... Respondent**

Mr. K.R. Lule, Advocate h/f Mr. Masood Shareef, Advocate for appellant.
Mr. Anand S. Jaiswal, Senior Advocate a/by Mr. Abhishek Kapoor, Advocate for respondent.

CORAM : M.M. NERLIKAR, J.
DATE : 20.11.2025.

ORAL JUDGMENT:

Heard.

(2) **Admit.** Heard finally by consent of both the learned counsel for the parties.

(3) The present appeal is directed against the judgment and order dated 14.08.2009 passed by the Judicial Magistrate First Class (Special Court) Nagpur, in Misc. Criminal Case No.5925/2005, wherein the respondent was acquitted for the offence punishable under Section 138 of the Negotiable Instrument Act, 1981.

(4) The present appellant and respondent were having close friendly relations with each other. Appellant was running business as a Contractor named and styled as 'M/s. Mandeep Constructions'. Respondent was running the business of selling sarees and dress material under the name and style 'Khubsurat Collection'. The respondent was in dire need of financial assistance therefore, she approached appellant for the same. The appellant out of friendly relations tendered her financial assistance from time to time with a total sum amounting to Rs.7,50,000/- during the period of July 1998 to January 1999, which the respondent promised to pay back. On 15.04.1999, the respondent handed over cheque bearing No.937109 of Rs.7,50,000/- drawn on Syndicate Bank, Law College Square Branch, Nagpur drawn in favour of appellant towards the discharge of liability. The appellant deposited the said cheque with Nagpur Nagrik Sahakari Bank, Vivekanand Nagar Branch, Nagpur, on 28.07.1999, but it was returned unpaid under the remark 'account closed' along with a memo dated 30.07.1999 of Syndicate Bank, Law College Square Branch, Nagpur. The appellant through his counsel issued a legal notice dated 11.08.1999 through R.P.A.D. to the respondent demanding payment of Rs.7,50,000/- within 15 days from the date of receipt of said notice. Notice was returned on 21.04.1999 with postal remark as 'not claimed'. Due to dishonour of cheque, present appellant was compelled to file case under Section 138 of the Negotiable Instrument Act.

(5) After considering the evidence led by the parties, the learned J.M.F.C. (Special Court) Nagpur, acquitted the appellant under Section 255(1) Cr.P.C. for the offence punishable under Section 138 of the Negotiable Instrument Act.

(6) The learned counsel appearing for appellant submits that the trial Court has acquitted the complainant on the ground that the complainant has failed to show source of Rs.7,50,000/- as neither any register was maintained nor Income Tax Return was produced. There is no material placed on record to prove that the complainant had given the hand-loan of Rs.7,50,000/- and the cheuqe was given towards discharge of legal obligation.

(7) The learned counsel submits that upon perusal of evidence of PW-1, it is seen that appellant has duly proved that the cheque is signed by respondent. There were business relations between the appellant and the respondent. The respondent was in need of money for her business and therefore, she requested appellant to give amount of Rs.7,50,000/- which was paid from time to time in cash. When the appellant asked for repayment, the respondent gave the cheque of Rs.7,50,000/-. The said cheque is dated 15.04.1999, which is at Exhibit 19. He further submits that when the cheque was presented to the Bank for encashment, it was returned with an endorsement 'Account Closed'. Thereafter, demand notice was issued,

however, it returned back as 'Not Claimed'. He further submits that the appellant has duly proved the issuance of cheque as there was signature on the said cheque and when it was presented, it was found that the account was closed and therefore, the ingredients provided under Section 138 are fulfilled and the Court ought not to have acquitted the respondent/accused.

(8) On the other hand, the learned Senior Counsel submits that the complainant has utterly failed to prove that the appellant was financially capable to provide hand-loan of Rs.7,50,000/- as in 1998 the said amount was huge. It is also very difficult to believe the version of the complainant that she has paid the entire amount in cash. Not only that, she has also failed to prove that the said amount was given as hand-loan. In the cross-examination of PW-1 it has come on record that the said amount was borrowed from some friends by the complainant. However, none of the friends were examined during the trial and therefore, adverse inference is necessary to be drawn. No material was placed on record to prove the financial capacity and source of Rs.7,50,000/-. On the contrary, in the cross-examination, she has admitted that she has not filed income tax returns on the record and there is no entry of this amount in the income tax returns. It was suggested to the complainant that from 1994 to 1999 the income of construction business of which she was a proprietor was not more than

Rs.1,00,000/-. It was also suggested that the complainant is not financially capable to lend the amount of Rs.7,50,000/- to anyone. It was further brought to my notice that it was specifically admitted by the appellant that she doesn't know whether the name, amount and date on the cheque is in the handwriting of respondent. He further submits that the respondent at the relevant time had issued a letter to the Bank dated 21.06.1999 in respect of stopping of payment of 36 cheques, which she had lost. The complainant has taken undue advantage of the lost cheque. From all the aforesaid admissions, he submits that the presumption under Section 139 of the Negotiable Instrument Act has been rebutted and burden has shifted on the appellant to prove the financial capacity and she has given the hand-loan of Rs.7,50,000/-.

(9) Upon hearing both the learned counsel, it appears that though the cheque dated 15.04.1999 at Exhibit 19 is having signature of the respondent/accused that by itself is not sufficient to prove the case under Section 138 of the Negotiable Instrument Act. As was observed by the Hon'ble Supreme Court in the case of ***Baslingappa Vs. Mudibasappa reported in (2019) 5 SCC 418***, *"during his cross-examination, when financial capacity to pay Rs.6 lakhs to the accused was questioned, there was no satisfaction reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial* *capacity and other facts".* Considering the law laid down by the Hon'ble Supreme Court, it is incumbent on the part of the complainant to prove her financial capacity. After perusal of the entire evidence she has utterly failed to prove the financial capacity and therefore, it cannot be believed that such a huge amount of Rs.7,50,000/- was given as a hand-loan without there being any security. It is to be noted that the case of the complainant cannot be believed that she had financial capacity as she has admitted in the cross-examination that she had taken loan from her friends. However, no witness was examined to support her version and therefore, even this version cannot be believed.

(10) It is further to be noted that the respondent has rebutted the presumption by cross-examining the complainant and it was brought on record that the complainant has not submitted any documentary evidence from the account of her firm which shows that she has paid the amount of Rs.7,50,000/- to the respondent. Even no Income Tax Return was placed on record; It has also come on record that the complainant and her husband has filed many cases against many persons in the year 1999 to 2000.

(11) The admission that *"I do not know whether the name, amount and date on cheque is in handwriting of accused"* which has come on record is fatal to the case of the appellant. Further, the respondent has also brought on record a letter dated 21.06.1999 (page 66) addressed to the Bank Manager, Syndicate Bank, Law College Square, Nagpur, which is at Exhibit 90, which goes to show that the bank was intimated by respondent that she has misplaced 36 cheque and the bank should stop payment against them. The cheque in dispute is also mentioned in the said letter. It appears from the record that the aforesaid letter was given on 21.06.1999 thereafter, the case was instituted on 06.09.1999. From the facts and circumstances, it could be gathered that the appellant has taken undue advantage of the lost cheque, as she has admitted that she doesn't know whether the name, amount and date on the cheque is in the handwriting of respondent.

(12) Considering the above facts and circumstances, the findings of the Trial Court acquitting the respondent are based on cogent evidence and does not require any interference at the hands of this Court. Hence, the appeal is dismissed.

[M.M. Nerlikar, J.]

Prity