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

CRIMINAL APPEAL NO.554/2011

M/s Santaji Krushi Kendra through
its proprietor Ravindra S/o Rambhauji
Take, Occ. Business, R/o. Arvi,
Tah. Arvi, Dist. Wardha.

...**APPELLANT**
(Ori. Complainant)

VERSUS

Ramkrushna S/o Laxmanraoji Nasare,
aged about 55 yrs., Occ. Cultivator,
R/o. Wadhona, Tah. Arvi, Dist. Wardha.

...**RESPONDENT**
(Ori.Accused)

Mr. D.A. Sonwane, Advocate (appointed) for appellant.
Mr. Parit Lakhani, Advocate for respondent-sole.

CORAM : M. M. NERLIKAR, J.

JUDGMENT RESERVED ON : 27.11.2025
JUDGMENT PRONOUNCED ON : 09.12.2025

JUDGMENT :

Heard.

2. The present appeal is filed challenging the judgment and order dated 29.06.2011 passed in Criminal Appeal No.59/2006, wherein the Appellate Court acquitted the original

accused for the offence punishable under Section 138 of the Negotiable Instruments Act ('NI Act'). The Appellate Court set aside the judgment of the Judicial Magistrate First Class, Arvi, whereby the respondent was convicted for an offence punishable under Section 138 of the NI Act and to suffer simple imprisonment for a period of six months and pay a fine of Rs.60,000/- and in-default to suffer simple imprisonment for a period of two months passed in Criminal Summary Criminal Case No.679/2003.

3. Brief facts:-

The complainant is a proprietor of Santaji Krushi Kendra. The respondent was a regular customer and would buy goods from the complainant's shop on credit from time to time. He bought insecticide and seeds worth Rs.47,735/- on credit.

To discharge the aforesaid debt, accused issued cheque No. 256785 of Rs.47,735/- on 01.03.2003 drawn on State Bank of India, Wadhona Branch and along with it a letter stating that the cheque is for repayment of the credit amount. The cheque was presented for encashment on the same date by the complainant. Bank returned the cheque on 04.03.2003 stating that the cheque dishonoured due to 'account closed.' Legal notice was issued on 26.3.2003 which was received by accused on 28.03.2003. As the accused did not pay the amount despite receiving the notice, the case was instituted. After appreciating the evidence, the learned Judicial Magistrate First Class, Arvi convicted the accused for the offence punishable under Section 138 of the NI Act on 15.11.2006. Against the same, an appeal was presented wherein the learned Sessions Judge, Wardha acquitted the accused under Section 138 of the NI Act. The above judgment of acquittal is challenged in the present appeal.

4. The learned counsel for the appellant submits that the Appellate Court has committed gross error in acquitting the present respondent/original accused as the appellant has proved his case beyond reasonable doubt. He submits that CW-1 complainant Ravindra Tekay deposed in his evidence that the accused had given him cheque (Exh.20) on 01.03.2003 to pay the outstanding amount towards credit purchases of insecticides, along with letter which is at Exh.21. The said

cheque was given to satisfy the credit amount. After depositing the cheque (Exh.20) on 01.03.2003, the same was returned upaid for the reason 'account closed' on 04.03.2003. Accordingly, a return memo (Exh.23) was issued. He submitted that dishonour of cheque is not disputed. Pursuant to same, he has issued notice (Exh.24) on 26.03.2003 thereby informing about dishonour of the cheque and demanding the amount within 15 days. The notice was received by accused on 28.03.2003. The acknowledgement to that effect was filed on record at Exh.26. He submitted that despite receiving the notice, the accused failed to pay the cheque amount. The learned counsel for the appellant submits that once the complainant has proved that the cheque was issued and the signature on the cheque is of accused, under such circumstances, the presumption under Section 139 of the NI Act would arise in favour of complainant as the presumption states that it is presumed that the holder of the cheque has received the cheque for discharge of debt or other liability, therefore he submits that the burden lies on the accused i.e. the drawer to rebut the presumption. He submits that the accused has not disputed so far as the issuance of cheque and letter wherein the signature of the accused appears. However, the contents of the same were denied by the accused. The Appellate Court has failed to appreciate the above fact and undue importance was given to oral evidence of accused that the cheque was issued in 1997 and further ignored the evidence at Exh.21 i.e. written acknowledgement of outstanding amount. Therefore, the Appellate Court has failed to appreciate the entire evidence on the record in its true perspective and came to the wrong conclusion by acquitting the accused.

5. On the other hand, learned counsel for respondent vehemently submitted that the cheque was issued as a security deposit. The amount which was due from the respondent was paid long back. The transaction was of the year 1997, however the cheque remained with the complainant, even after the full payment. The date and amount on cheque were subsequently added, which are in different handwriting and ink. Even in the acknowledgement/letter at Exh.21 the amount written is in

different ink, therefore no reliance can be placed on such letter. So as to substantiate the above, accused has examined himself and one witness namely Narayan Chafle whih has stated that the transaction between complainant and accused took place in the year 1997. The complainant agreed to give the goods on credit only on the condition that the accused would give a blank cheque and a letter signed by him and accordingly cheque was issued in the name of M/s. Santaji Krishi Kendra and letter was also given. The complainant asked the accused to keep the date and amount column blank on cheque as well as acknowledgement. Accordingly, he signed the cheque and the acknowledgement which were given as a security. He submitted that the evidence of accused goes to show that the said cheque was misused by putting the date as 03.01.2003 by the complainant, so also, the amount was inserted later on in the blank space. He submitted that the amount was cleared in the year 1997 itself and accordingly the receipts at Exh. 30 to Exh.43 are placed on record which were paid in cash and kind. There is no outstanding liability after 1997 as no transaction took place between them. Accordingly, he submitted that the Appellate Court has rightly acquitted the accused as there is no legally enforceable debt.

6. Upon considering the rival submissions of the parties at length, it appears that the Trial Court has convicted the accused basically on the ground that the complainant has proved his case and the accused has failed to rebut the presumption under Section 139 of the NI Act. It appears from the judgment of the Trial Court that it is based on three essentials ingredients of Section 138 of the NI Act which were considered by the Trial Court to convict the accused which are (i) Dishonour of cheque, (ii) Issuance of statutory notice and (iii) legally enforceable debt. Firstly the cheque dishonoured as the balance was nil and account was closed which was admitted by the accused. Secondly, statutory notice was issued and for this purpose, the Court has relied on the evidence of complainant and the office copy of legal notice, postal acknowledgement and the accused receiving the notice, which is admitted by the accused in the statement under section 313

of the Code of Criminal Procedure ("Crpc"). The Trial Court has come to the conclusion that even the third ingredient i.e. issuance of cheque for legally enforceable debt is satisifed as the accused has not disputed issuance of cheque. The Trial Court has also relied on the evidence of complainant, wherein he has specifically deposed about the fact that as there was friendly relationship between the complainant and accused, he has given fertilizer, seeds and insecticide on credit basis and in lieu of that the accused has issued the cheque. The Trial Court has drawn adverse inference against the accused as reply was not given by the accused to the notice, therefore the Trial Court has held that the three essential ingredients are proved by the complainant and accordingly the accused was convicted and sentenced to suffer simple imprisonment for a period of six months and pay a fine of Rs.60,000/- in-default to suffer simple imprisonment for a period of two months and also awarded compensation of Rs.47,735/-.

7. Against the above judgment, appeal was preferred and the Appellate Court reversed the finding of the Trial Court on

the basis of the fact that the accused has issued cheque in the year 1997 as a security, and even though the amount outstanding was paid in cash, the cheque remained with the complainant which was misused. The Appellate Court has held that the date and amount on the cheque were subsequently added and are in different ink. The receipts which were placed on record by the accused at Exh.30 to 43 are of the year 1997, however only bill at Exh.81 is of 2001. It was further held that there were no transactions between the complainant and accused in the year 2003. Even in respect of transaction of 2001 bill at Exh.81, there was no delivery memo therefore the same is also doubtful. If it is presumed that, there were transactions between the period of 1997 to 2001 as per bills, then the total amount outstanding would be Rs. 99,965/-. Even if it is assumed that that the cheque is of the year 1997 then also recovery in 2003 was barred by limitation. It was further observed that in absence of books of account or other documents, the case of the complainant cannot be relied. It is further held that the accused has successfully rebutted the presumption and the cheque was for security purposes and issued against a legally enforceable debt. On the aforesaid basis, the Appellate Court came to the conclusion that the Trial Court has committed error and the findings rendered are perverse therefore, set aside the judgment and order of conviction passed by the Trial Court and accordingly, acquitted the accused.

8. It appears from the record that in the cross-examination, it is admitted by the complainant that the accused has not made any purchase in 2003. He does not know whether the date and amount in words and figure written on the cheque is in the handwriting of the accused or not. The outstanding bill of credit purchase placed on record are of the years from 1997 to 2001. He admitted that the said fact was not mentioned by him in the complaint as well as in the notice. Though he regularly maintained books of account, he has not filed any books of account in the matter. It was further brought on record in cross-examination that when the complainant sold the goods from his shop, delivery memo is prepared, however

in the present case, he has not filed the copies of delivery memo and the bills. He used to show the outstanding amount in the income tax return, however he has not filed balance sheet of his business in the present case. He admitted that he usually issued the receipts upon receiving the payment. If the cheque is issued, particulars of the cheque are mentioned in the bill and the mode of payment like by Demand Draft, cheque and cash is also mentioned in the bills. He admitted that several receipts i.e. from Exh. 30 to 43 are placed on record in respect of payment by the accused. He has not filed the copies of outstanding bills or any account to show that sum of Rs.47,735/- was outstanding against the accused. The office copy of bills are still in his shop and he has not sent any notice to the accused demanding outstanding amount. He has also not issued any receipt to the accused against issuance of cheque in question. He further admitted that he cannot tell whether the words written before pay to "Santaji Krushi Sewa Kendra, Arvi" and the amount mentioned in words on cheque at Exh.20 are in different handwriting. However, he has admitted that there is a slight difference in the handwriting of amount of words and the payee's name on the cheque at Exh.20.

9. The accused examined himself and deposed that he had transactions with complainant in 1997. Thereafter, there was no transaction with the complainant. In June 1997, the accused was in need of seeds and fertilizers. Therefore, he went to the complainant and told him that he does not have money and asked him to give the goods on credit. The complainant agreed, however asked for cheque and chit as a security. The complainant asked him to keep the date and amount columns blank on the cheque and chit/acknowledgement. Therefore, the accused gave a signed cheque in the name of M/s Santaji Krushi Kendra by keeping the amount and date column blank. He further deposed that he has never given the cheque at Exh.20 and chit at Exh.21 on 01.03.2003. The amount and the date therein are not in his handwriting. He further deposed that in the year 1997, the entire amount was paid, thereafter there were no transactions between the complainant and the accused. He further deposed

that after returning the amount, receipts are issued at Exh. 30 to Exh. 43.

10. During cross-examination, he admitted that purchase from the complainant’s shop was made prior to 1997 also. The chit at Exh.21 was in his handwriting, however the date and amount is not in his handwriting. He has taken goods of Rs.50,000 from complainant, and accordingly whenever he would take goods on credit, bill was to be issued and signature was taken. When various bills were shown to him (Exh. 71-81) he stated that those all have been paid in cash. He admitted the above bills bear his signature except bill at Exh.82. Goods worth Rs.37,431/-were delivered by the complainant and same was paid, partly in kind by exchanging cotton yield and partly in cash. He also admitted that he purchased goods in credit on his wife's name but cannot say whether Rs. 43,678/- worth goods were purchased in his wife's name or not. Admittedly, he stated to be aware that goods worth Rs. 1,00,000/- or so are purchased on credit by him. He denied the suggestion that he owed total of Rs.1,15,026/- from him and Rs. 43,678/- from his

wife. He admitted that even after adjustment, Rs.70,000/- are still due towards complainant. He denied the suggestion that the said amount was agreed to be paid by issuing cheque for the same. The accused has also examined witness Narayan Chafle in his defence wherein he has specifically stated that the complainant has obtained cheque and the letter as a security. He deposed that the amount and the date columns were blank at the time of issuance of cheque. It appears from record that nothing was brought on record in the cross-examination by the complainant so as to shake his testimony

11. From perusal of the entire record including testimonies of witnesses, it appears that the accused has issued the cheque at Exh. 20 and also chit/letter/acknowledgement at Exh.21. As admitted by the accused that cheque was signed by him, however the date and the amount columns were kept blank. Under such circumstances, it would be useful to refer to the cross-examination of the complainant, wherein he has specifically admitted that in the year 2003, the accused has not purchased any goods from his shop and further the words

written before pay to “M/s Santaji Krushi Kendra, Arvi” and the amount mentioned in words on cheque (Exh.20), there is a slight difference in handwriting in the amount of words and the payee’s name on cheque (Exh.20). From this fact, it is clear that the accused has handed over the signed cheque only by writing name of complainant, however rest of the columns were kept blank, even after perusal of the original cheque, it appears that handwriting in the column of amount in word, amount in figure and date are in different ink. Similarly, Exh.21 which was a chit issued would demonstrate that the date and the figure are in different handwriting and in different ink. Therefore, naturally it creates a doubt about the veracity of the version of the complainant. Therefore, it was rightly observed by the Trial Court that the cheque was issued in the year 1997, which was misused by the complainant in the year 2003 by filling the amount and date in the blank columns. Further, receipts of the transactions are placed on record from Exh. 30 to Exh. 43 which also show the year as 1997. Only one receipt at Exh. 81 is of the year 2001. Even no delivery memo with respect to bill at Exh.81 is placed on record and the bill is also illegible which makes it doubtful whether the appellant has purchased any goods in 2001. Considering the aforesaid, one fact is clear that there were no transactions after 1997.

12. Perusal of the evidence, further shows that the accused has examined himself and the other witness namely Narayan Chafle who in clear terms stated that the cheque was issued only by writing name of the M/s Santaji Krushi Kendra and other Columns were kept blank. Therefore, it could be safely said that the cheque was given as a security and not in lieu of discharge of legally enforceable debt. It could be further gathered from the evidence of complainant that he has specifically admitted that he used to issue the receipt only after payment of the amount, therefore it strengthen the probable defence, which was taken by the accused that only after payment of the amount, the receipt were issued. It is necessary to mention at this juncture that the complainant has deposed that he used to maintain the books of account on regular course of business. However, he has not filed the same to support his

case and also he has not shown any documentary evidence in respect of outstanding amount of Rs.47,735/- which ought to have been shown him in the books of account. Therefore, adverse inference could be drawn from the said fact that there is no legally enforceable debt against the accused.

13. Considering the fact that though it was shown the cheque was issued on 01.03.2003, however absolutely there is nothing on record to show that the complainant has sold the fertilizers or seeds to the accused in the year 2003. Under such circumstances, if there is no transaction of the year 2003, there is no question of issuance of cheque in the year 2003. The accused has taken a consistent stand that the cheque was issued as a security in the year 1997 which is also supported by the witness No.2 for defence as nothing was brought on record in the cross-examination of both these witnesses.

14. It appears from the record that there are several credit bills which are filed on record from Exh. 72 to Exh. 81. All these credit bill amount to Rs. 19848/-. Even if it is presumed

that there is some existing liability, however the figure of Rs.19,848/- and the figure on the cheque is not matching, therefore, whatever the bills which are filed by the complainant during the cross-examination of the accused, is not sufficient to say that there exists any legally enforceable debt.

15. Even if this Court considers the admission of the accused that still Rs.70,000/- is balance and outstanding from him, still the theory which was put-forth by the complainant discredit the fact that the cheque amount was shown as Rs. 47,735/-. Therefore, in view of discrepancies, theory put-forth by the complainant cannot be accepted.

16. Considering the above facts and circumstances, the Appellate Court has rightly appreciated the entire evidence on record. The complainant has failed to make out a case, therefore, the acquittal granted by the Appellate Court is proper. Therefore, there is no merit in the appeal hence, appeal is dismissed.

(M. M. NERLIKAR , J.)

Gohane