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

## CRIMINAL REVISION APPLICATION NO. 188 OF 2018

SURESH SUDHAKARRAO DESHMUKH THROUGH POWER OF ATTORNEY SANDEEP S/O. SUDHAKARRAO DESHMUKH

**VERSUS**

MANISH MADHUKARRAO POKALE

.....

**WITH**

## CRIMINAL REVISION APPLICATION NO. 179 OF 2018

MANISH S/O. MADHUKARRAO POKALE

**VERSUS**

SURESH S/O. SUDHAKARRAO DESHMUKH

.....

**WITH**

## CRIMINAL APPLICATION NO. 783 OF 2019
## IN REVN/179/2018

SURESH S/O. SUDHAKARRAO DESHMUKH THROUGH GENERAL POWER OF ATTORNEY SANDEEP S/O. SUDHAKARRAO DESHMUK

**VERSUS**

MANISH S/O. MADHUKARRAO POKALE

.....

**WITH**

## CRIMINAL REVISION APPLICATION NO. 183 OF 2018

MANISH S/O. MADHUKARRAO POKALE

**VERSUS**

SURESH S/O. SUDHAKARRAO DESHMUKH

Shri D.S. Patil, advocate h/f Shri S.S. Gangakhedkar, Advocate for the accused.
Shri Narwadkar Mrigesh D., Advocate for the complainant.

…

CORAM : SUSHIL M. GHODESWAR, J.

Reserved on : 06 October 2026
Pronounced on : 26 October 2026

JUDGMENT :-

1. All these three Criminal Revision Applications arise out of the common judgment and order dated 18.06.2018 passed by the learned Additional Sessions Judge-5, Nanded, in Criminal Appeal No. 36 of 2014 and Criminal Appeal No. 68 of 2015. As such, these revisions are being decided by this common judgment.

2. By the aforesaid impugned common judgment, the learned Sessions Judge dismissed Criminal Appeal No.36 of 2014 preferred by the accused (Manish Pokale), thereby confirming his conviction and sentenced for the offence under Section 138 of the Negotiable Instruments Act, 1881, imposed by the learned 5th Judicial Magistrate, First Class, Nanded, in SCC

No.2157/2007 whereby, the accused has been sentenced to suffer simple imprisonment for one month and to pay Rs.6 Lakhs towards compensation to the complainant within one month and in default, to suffer simple imprisonment for 15 days. By the same judgment dated 18.06.2018, the learned Sessions Judge partly allowed Criminal Appeal No.68 of 2015 preferred by the complainant (Suresh Deshmukh) to the extent of enhancing the compensation amount from Rs.6 Lakhs to Rs.8 Lakhs.

3. Criminal Revision Application No.179 of 2018 and Criminal Revision Application No.183 of 2018 have been preferred by the accused challenging the dismissal of his appeal and the enhancement of the compensation amount, respectively. Criminal Revision Application No.188 of 2018 has been preferred by the complainant seeking further enhancement of the compensation amount and the substantive sentence as well as the default sentence.

4. Brief facts of the case are as under:-

(a) The complainant (Suresh Sudhakarrao Deshmukh) was engaged in the real estate business. The accused, namely, Manish Madhukarrao Pokale was engaged in the finance

business in the name and style of Shriniwas Finance. Both of them were acquainted with each other on account of their business dealings.

(b) In the month of March 2007, the complainant advanced an amount of Rs. 6 Lakhs to the accused for his finance business. It was agreed between them that the amount would not carry any interest, and an “Usanwar Chitti” (Hand Loan Receipt) was executed on 20.03.2007.

(c) In order to repay the said amount, the accused issued cheque No.636606 dated 23.05.2007 for Rs.6 Lakhs in favour of the complainant. The said cheque was drawn on Pusad Urban Co-operative Bank Limited, Pusad Branch.

(d) The cheque was returned dishonoured on 04.10.2007 with a memo stating "insufficient funds".

(e) The complainant issued the notice dated 18.10.2007 under Section 138 of the Negotiable Instruments Act, which was served on the accused on 23.10.2007. It is pertinent to mention that the said notice packet was returned with the postal remark "refused to accept".

(f) Thereafter, the complainant instituted Summary Criminal Case No.2157 of 2007 under Section 138 of the Negotiable Instruments Act before the learned Judicial Magistrate First Class, Nanded. The said complaint was registered on 17.11.2007.

(g) On 13.05.2014, the learned Judicial Magistrate First Class convicted the accused and sentenced him to suffer simple imprisonment for one month. The learned Magistrate also directed the accused to pay compensation of Rs.6 Lakhs to the complainant under Section 357 of the Code of Criminal Procedure, 1973. In default, the accused was directed to suffer simple imprisonment for 15 days.

(h) Being aggrieved by the said judgment of conviction and order of sentence, the accused preferred Criminal Appeal No.36 of 2014 before the learned Sessions Court at Nanded. The complainant also preferred Criminal Appeal No.68 of 2015, seeking enhancement of the substantive sentence as well as the compensation awarded by the learned Judicial Magistrate First Class.

(i) The learned Additional Sessions Judge, Nanded, by

the common judgment dated 18.06.2018, dismissed Criminal Appeal No.36 of 2014 preferred by the accused and partly allowed Criminal Appeal No.68 of 2015 preferred by the complainant, thereby enhancing the compensation from Rs.6 Lakhs to Rs. 8 Lakhs. The substantive sentence of simple imprisonment for one month and the default sentence of simple imprisonment for 15 days were maintained.

Hence, the present Criminal Revision Applications.

5. The learned counsel for the accused submitted that the cheque placed on record bears No.636606. However, the complainant, in the notice issued under Section 138 of the Negotiable Instruments Act, mentioned a different cheque number, i.e. 630063. Therefore, according to learned counsel for the accused, the notice issued under Section 138 of the Negotiable Instruments Act was invalid and as such, the complaint on the basis of such notice is not maintainable. He submitted that the discrepancy was not merely procedural defect, but the notice was illegal and incorrect. Consequently, the prosecution under Section 138 of the Negotiable Instruments Act is vitiated. It was submitted that the impugned judgments passed

by the learned Sessions Court as well as the learned Trial Court were illegal and, therefore, deserved to be quashed and set aside.

6. The learned counsel for the accused further submitted that there was no evidence adduced by the complainant to establish that he was financially capable of advancing loan of Rs.6 Lakhs to the accused. Moreover, the said amount had not been disclosed by the complainant in his Income Tax Returns. He further submitted that the cheque number and the date mentioned in the agreement were written in different handwriting and therefore, the document was forged. According to him, the cheque number and date had been filled in subsequently. It was further submitted that the agreement at Exhibit 41 disclosed a different cheque number and date and that there were no attesting witnesses to the said agreement.

7. The learned counsel for the accused submitted that the cheque at Exhibit 39 had been handed over to the complainant in completely blank condition. According to him, the complainant misused the said cheque without the permission of the accused. He further submitted that the postal envelope at Exhibit 45, containing the notice, had been returned with the

remark "refused to accept". Therefore, according to him, the complainant had failed to prove service of the notice, as he had not examined the postman to substantiate that the notice had actually been served on the accused.

8. It was further submitted that the complainant had admitted in his cross-examination that he had not issued any notice to the accused demanding payment of the amount covered by cheque No.636606. The complainant had, therefore, failed to comply with the mandatory requirements of law. Consequently, according to learned counsel for the accused, the offence under Section 138 of the Negotiable Instruments Act was not made out, and the accused deserved to be acquitted by allowing his revision application.

9. On the other hand, the learned counsel for the complainant submitted that, although the cheque was issued in the year 2007, the accused had not paid the cheque amount to the complainant till date, nor had he deposited the said amount in the Court to demonstrate his bona fides. The accused had not denied his signature on the cheque and, therefore, the presumption under Section 139 of the Negotiable Instruments Act would arise in

favour of the complainant. It would be presumed that the cheque had been issued towards discharge of a debt. Therefore, according to learned counsel for the complainant, the burden lies on the accused to rebut the said presumption. However, the accused had adduced no evidence to rebut the same.

10. The learned counsel for the complainant submitted that the cheque number had been inadvertently mentioned as 630063 instead of 636606 in the notice. However, the said mistake had not caused any prejudice to the accused. There was no provision in the Act or under law mandating that the correct cheque number must be mentioned in the notice issued by the complainant. Therefore, according to learned counsel for the complainant, the incorrect mention of the cheque number would not come to the rescue of the accused.

11. As regards the financial capacity of the complainant to lend the amount to the accused, the learned counsel for the complainant submitted that the complainant was not required to establish his financial capacity in the manner suggested by the accused and that the burden to rebut the statutory presumption lies on the accused. The accused had not replied to the notice

issued by the complainant. It was further submitted that non-disclosure of the amount advanced to the accused in the Income Tax Returns was irrelevant to determine the liability of the accused. The notice had been sent to the correct address of the accused. Although the accused had refused to accept the notice, service thereof was required to be treated as complete.

12. The learned counsel for the complainant, therefore, submitted that the learned Trial Court had rightly convicted the accused. However, instead of awarding the maximum sentence, the learned Trial Court had shown leniency by imposing sentence of only one month's simple imprisonment. It was submitted that Section 138 of the Negotiable Instruments Act provides for imprisonment which may extend to two years and the fine which may extend to twice the amount of the cheque. According to learned counsel for the complainant, neither the substantive sentence nor the compensation awarded by the learned Sessions Judge was adequate. He, therefore, prayed for enhancement of the sentence as well as the compensation amount.

13. After hearing the learned counsel for the parties and perusing the record, it is found that the complainant examined

two witnesses, namely, PW-1 complainant himself and PW-2 Rajesh Bajaj, Branch Manager of the Bank and produced various documents. Exhibit 41 is the Usanwar Chitti executed on 20.03.2007 in respect of the loan amount of Rs.6 Lakhs. The cheque dated 23.05.2007 for Rs. 6 Lakhs came to be dishonoured for the reason "insufficient funds". Consequently, the complainant issued a notice dated 18.10.2007 to the accused. However, the notice was not accepted by the accused and the proceedings were thereafter conducted against him.

14. The learned Trial Court, after considering the evidence on record, was pleased to hold that the complainant had proved his case. The accused had contended that the complainant had not produced any evidence regarding his real estate business, bank balance, or Income Tax Returns to establish his financial capacity to advance the loan amount of Rs.6 Lakhs. It was for the accused to falsify the aforesaid aspects regarding the complainant's real estate business, bank balance, and Income Tax Returns. The learned Court below applied the principle that "he who alleges must prove" and held that the accused had failed to establish his contentions regarding the complainant's financial

capacity and real estate business.

15. The burden on the accused to rebut the statutory presumption is discharged on the touchstone of preponderance of probabilities. The accused did not deny his signature on the cheque. He did not claim that the cheque belonged to an account maintained by somebody else, nor did he offer any explanation as to how the cheque had reached the complainant. The accused, therefore, failed to establish the circumstances in which the cheque had been issued or came into the possession of the complainant. Consequently, the learned Trial Court held that the cheque had been issued towards discharge of a legally enforceable debt and, accordingly, allowed the complaint and convicted the accused.

16. The accused also did not offer any explanation under Section 313 of the Code of Criminal Procedure, 1973, and merely pleaded ignorance rather than specifically denying the allegation regarding insufficiency of funds or explaining the circumstances in which the cheque had been issued. The learned Trial Court further held that the summons in the case as well as the demand notice had been sent to the same address of the

accused. The submissions of learned counsel for the accused regarding non-service of the summons and the notice were not found to be satisfactory. The postal envelope bears the endorsement "refused to accept". The learned Trial Court held that non-examination of the postman did not invalidate service of the notice, having regard to Section 27 of the General Clauses Act, 1897.

17. The learned Trial Court also observed that the correct cheque number was 636606, whereas the demand notice mistakenly mentioned cheque No.630063. The learned Trial Court held that, under Section 138(b) of the Negotiable Instruments Act, it was not mandatory for the complainant to mention the correct cheque number in the statutory notice and that an accidental or clerical mistake in mentioning the cheque number would not vitiate the proceedings under Section 138 of the Negotiable Instruments Act.

18. After perusing the judgment passed by the learned Trial Court as well as the judgment passed by the learned Sessions Court in appeal, I find that the concurrent findings recorded by both the Courts below, as regards the guilt of the

accused, are based on the evidence available on record. The accused has not been able to demonstrate any perversity, material illegality or error of law in the appreciation of evidence by the Courts below, warranting interference by this Court in exercise of its revisional jurisdiction under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973. The statutory presumption arising under Sections 118 and 139 of the Negotiable Instruments Act, 1881, has been considered in the light of the defence raised by the accused. The mere fact that the cheque number has been incorrectly mentioned in the statutory notice would not be sufficient to invalidate the prosecution, provided the notice, read as a whole, satisfies the statutory requirements. In the facts of the present case, no sufficient ground is made out to interfere with the order of conviction and substantive sentence passed against the accused. Therefore, Criminal Revision Application Nos. 179 of 2018 and 183 of 2018 deserve to be dismissed.

19. However, so far as the Criminal Revision Application No. 188 of 2018 preferred by the complainant is concerned, it is necessary to consider whether, the compensation

awarded by the learned Sessions Court is adequate in the facts and circumstances of the case. The cheque in question was issued on 23.05.2007 for an amount of Rs.6 Lakhs. The complainant has been deprived of the said amount for considerable period i.e. for almost 20 years and the accused has not shown that the liability covered by the cheque has been discharged. Though the learned Sessions Court enhanced the compensation from Rs.6 Lakhs to Rs. 8 Lakhs, however, the passage of time and the continued deprivation of the amount due to the complainant are relevant considerations while determining adequate compensation. In ***R. Vijayan v. Baby, (2012) 1 SCC 260***, the Hon'ble Supreme Court emphasised the need for realistic compensation in proceedings under Section 138 of the Negotiable Instruments Act, 1881, having regard to the cheque amount and reasonable interest thereon. Having regard to the amount of the cheque, the period for which the complainant has been deprived of the amount, and the object of the provisions of the Negotiable Instruments Act, I am of the view that the compensation of Rs.8 Lakhs awarded by the learned Sessions Court is inadequate. In the facts and circumstances of the present case, the total compensation payable to the complainant deserves to be enhanced to Rs.12 Lakhs,

being twice the amount of the cheque. Accordingly, Criminal Revision Application No. 188 of 2018 deserves to be allowed to that extent.

20. In that view of the matter, the judgments passed by the learned Trial Court and the learned Sessions Court deserve to be maintained in the aforesaid terms. Hence, the following order:-

**ORDER**

(a) **Criminal Revision Application Nos. 179 of 2018 and 183 of 2018 preferred by the accused are dismissed.**

(b) **Criminal Revision Application No.188 of 2018 preferred by the complainant is partly allowed.**

(c) The judgment and order dated 18.06.2018 passed by the learned Additional Sessions Judge-5, Nanded, in Criminal Appeal Nos. 36 of 2014 and 68 of 2015 is maintained insofar as the conviction of the accused under Section 138 of the Negotiable Instruments Act, 1881, and the substantive sentence of simple imprisonment for one month are concerned.

(d) However, the order enhancing compensation from

Rs.6 Lakhs to Rs.8 Lakhs is modified. The total compensation payable by the accused to the complainant is enhanced to Rs.12 Lakhs. Any amount already paid or recovered towards compensation shall be adjusted against the said amount and the accused shall be liable to pay only the balance amount.

(e) The prayer of the complainant for enhancement of the substantive sentence and default sentence is rejected.

(f) The complainant is allowed to withdraw the amount of compensation, if deposited by the accused. **The pending Criminal Application is, accordingly, disposed of.**

(g) The record and proceedings be returned to the concerned Court.

*kps* (SUSHIL M. GHODESWAR, J.)