IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.759 OF 2006

Shri. Pandurang Hari Dhokne
Age : 45 years, Occ : Agri,
R/o. Gopalpur, Tq. Newasa,
Dist. Ahmednagar. ..Appellant
(Orig. Complainant)

Versus

Shri. Bansi Vithoba Gaikwad
Age : 40 Yrs, Occ : Business,
R/o. Mahalaxmihivere road, Chanda,
Tal : Newasa, Dist : Ahmednagar. ..Respondent
(Orig. Accused)

...

Mr. Sachin Karad h/f Mr. H.D. Deshmukh, Advocate for Appellant.
Mr. Riyan Kazi h/f Mr. S.S. Kazi, Advocate for Respondent/Sole.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : OCTOBER 22, 2026

PRONOUNCED ON : OCTOBER 27, 2026

JUDGMENT :-

1. In this appeal, there is challenge to judgment and order of acquittal passed by learned Judicial Magistrate First Class, Newasa dated 09.03.2006 in Summary Trial Case No.387 of 2005 acquitting the respondent from charges under Section 138 of Negotiable Instruments Act.

2. In brief, case set up by present appellant in Trial Court was that complainant was an agriculturist, who reaped and harvested

onion crops, whereas accused was a businessman who dealt in sell of onion. A deal and transaction was struck between them. Accused purchased onion worth Rs.1.83,920/-. He paid Rs.1,00,000/- by cash and for remaining amount accused issued cheque, which on its presentation was returned dishonored. Therefore, a legal notice was dispatched. However, accused failed to pay the cheque amount within stipulated period. Hence, above complaint under Section 138. The trial was conducted, but learned Judicial Magistrate First Class was pleased to acquit the accused. Hence, instant appeal.

3. Learned counsel for the appellant would point out that there is incorrect appreciation of evidence by trial Court. He submitted that all ingredients attracting the charge was very much available in his evidence. All legal requirements for attracting the charge were available, however, there is acquittal solely on the ground of repeated or successive presentation of cheque and based on a judgment of Hon'ble Supreme Court referred and relied in the judgment, appellant's case is not accepted and accused has been acquitted.

4. Learned counsel pointed out that there is incorrect appreciation of settled law. He seeks reliance on the judgment of Hon'ble Apex Court in the case of ***M.S.R. Leathers Vs. S. Palaniappan***

and Another reported in ***2013 (2) SCC (Cri) 458*** and would submit that the Hon'ble Apex Court has held that successive presentation of cheque till realization is very much permissible.

For above reasons, as a sole ground for dismissing the complaint and acquitting the accused is not the correct law. Consequently, appeal is sought to be allowed.

5. Per contra, learned counsel for respondent would justify the order of acquittal and that Trial Court committed no error by relying on the judgment of Hon'ble Apex Court in case of ***M/s. Prem Chand Vijay Kumar Vs. Yashpal Singh and Ors*** reported in ***2005 All M.R. (Cri.) 2029***.

6. After considering the above submissions, the limited ground on which the appeal is based is that law permits successive and repeated presentation of cheques and reliance is placed on above judgment of Hon'ble Apex Court. However, apparently said ruling which is now taken recourse to is of 2012, whereas, case in hand was pertaining to the year 2005 and at that time, law dealt and relied by learned Trial Court in the case of **M/s. Prem Chand Vijay Kumar** *(supra)* was holding the field and was in force. Apparently, the judgment relied by learned counsel for appellant is of 2012 and it is subsequent. Therefore, though by subsequent judgment the Hon'ble

Supreme Court has held that successive presentation of cheque is permissible, however, rider is still that such repeated or successive presentation has to be within the validity of cheque.

7. Here record shows that complainant has admitted dispatching notice to the accused on 15.02.2005, 19.02.2005 and 23.02.2005, however, the notice which is relied is of 15.02.2005. When complainant has himself admitted issuing of multiple notices, he has failed to prove exactly which amongst the three notices gave him cause of action to file complaint. Therefore, learned Trial Court committed no error in relying on the judgment of **M/s. Prem Chand Vijay Kumar** *(supra)* while dismissing the appeal.

8. As stated above, judgment of Hon'ble Apex Court in the case of **M/s. Prem Chand Vijay Kumar** *(supra)* is of 2005, whereas, the judgment relied by appellant is much subsequent that is of 2012. It would be appropriate at this juncture, to refer to and rely on the judgment of Hon'ble Apex Court in the case of Hyder Vs. State of Kerala, Criminal Appeal No.5193 of 2024 (Arising Out of SLP (Criminal) No.14267 of 2023) decided on 10.12.2024, wherein its earlier own judgment in the case of ***Delhi Development Authority Vs. Tejpal and Ors*** reported in ***(2024) 7 SCC 433*** was taken into account and the relevant observations are as under :

> *"47. To sum up, we hold that subsequent change of law will not be attracted unless a case is pending before the competent court awaiting its final adjudication. To say it differently, if a case has already been decided, it cannot be re-opened and re-decided solely on the basis of a new interpretation given to that law."*

9. Having regard to the above, it is clear that even if there is subsequent change in law, it will not be applicable to cases pending before the Competent Court awaiting its final adjudication.

10. For above reasons, there is no merit in the appeal and the same is required to be dismissed. Hence, the following order :

ORDER

(I) Criminal Appeal stands dismissed.

[ABHAY S. WAGHWASE, J.]