



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

**CRIMINAL REVISION APPLICATION NO. 323 OF 2025
WITH CRIMINAL APPLICATION NO. 825 OF 2026 IN REVN/323/2025**

Ganesh S/o Laxman Tathe
Age: 52 years, Occu.: Business,
R/o. Lata Vihar, Bhukarwadi,
Near Marathi School, Balika
Ashram Road, Savedi,
District Ahmednagar.Applicant

Versus

1. Kamruddin Kasambhai Attar
Age" 58 years, Occu.: Military Retire,
R/o. Plot No.55, Gurukrupa Colony,
In front of Kakasaheb Mhaske School,
Nagapur, Tal. And District Ahmednagar.
2. The State of MaharashtraRespondents

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Advocate for Applicant : Mr. Joyeb I. Shaikh
APP for Respondent no.2 : Mr.S.M.Ganachari
Advocate for Respondent no.1 : Mr.Vishwajeet Ramesh Jain

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CORAM : ABHAY S. WAGHWASE, J.

**RESERVED ON : 04 MARCH, 2026
PRONOUNCED ON : 06 MARCH, 2026**

ORDER :

1. Instant revision application arises out of judgment and order dated 03-07-2025 passed by learned Additional Sessions Judge, Ahmednagar, dismissing the appeal and confirming judgment and

order of Additional Chief Judicial Magistrate, Ahmednagar in SCC No.669 of 2022 dated 28-02-2023.

2. Present respondent instituted SCC No.669 of 2022 against present revision petitioner on the premise that, complainant and accused being friends and as accused was in need of funds, he demanded hand-loan of Rs.8,00,000/-. Complainant complied with the said demand by extending hand-loan to the tune of Rs.7,76,000/- and towards repayment of the same, accused issued cheque, which on its presentation, got dishonoured and therefore, after demand, when there was failure to pay cheque amount, above proceedings were instituted against accused, which ended up in conviction by learned Additional Chief Judicial Magistrate by order dated 28-02-2023 imposing sentence of simple imprisonment for six months and to pay compensation of Rs.2,30,000/-.

3. Feeling aggrieved by the above, accused preferred Criminal Appeal No.90 of 2023 challenging the impugned judgment dated 28-02-2023. On complete re-appreciation of evidence, learned Additional Sessions Judge, Ahmednagar dismissed the appeal by judgment and order dated 03-07-2025.

4. Present revision is offshoot of above order by invoking Section 397 read with Section 401 of the Code of Criminal Procedure. Before advertng to the merits, it would be fruitful to highlight the scope of Section 397 while exercising revisionary powers.

While exercising powers under Section 397 of the Cr.P.C., this Court is merely expected to test the legality, propriety or illegality in the findings recorded by learned trial court. Such powers are to be exercised to prevent miscarriage of justice and when there are glaring errors on the face of order or there is failure and non compliance of law. Re-appreciation is to be avoided unless findings are patently perverse and as such, is the narrow scope of revisional court. Law regarding the scope of revision is elucidated in catena of judgments. Though there are catena of judgments, the landmark judgment of ***Amit Kapoor v. Ramesh Chander and another*** (2012) 9 SCC 460 is relied and the relevant observations therein are borrowed and quoted as under :

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well -

founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits."

5. Thus, re-appreciation of evidence is not expected at hands of this Court and it is only to be seen whether there is any patent illegality, error or perversity in the impugned order. Whether relevant material and evidence has been overlooked or whether relevant evidence has been ignored while passing the impugned order. With this limited scope order under challenge are tested.

6. In trial Court, by way of SCC 669 of 2022 case was set up by present respondent no.1 that he and accused are friends. That, accused is merchant dealing with onion. In February 2021 accused was in need of Rs.7,00,000/- to Rs.8,00,000/- and borrowed hand-

loan from complainant with assurance to repay the same in a year. Complainant arranged Rs.7,76,000/- from time to time from period February 2021 to September 2021 and accused assured to repay the loan in installments upto 30-04-2022 and also executed loan receipts. For repayment of the hand-loan, accused issued cheque dated 28-11-2021, which on presentation, was dishonoured and therefore, complainant issued statutory notice, which was returned with remark “unclaimed”.

7. Considering the same to be a good service, learned Additional Chief Judicial Magistrate issued summons to the accused and on his appearance recorded his plea. His defence was in spite of repayment of loan, false complaint being lodged. This was solitary defence.

8. Learned Additional Chief Judicial Magistrate formulated necessary points, and initially on the strength of complainant's evidence as well as documentary evidence, reached to a finding that complainant has proved execution of cheque by accused. Issuance of cheque under signature of accused was not denied and therefore, presumption available under Sections 118 and 139 of the Negotiable Instruments Act was pressed into service. Accused seems to have

failed to rebut the said presumption and therefore, it was held that complainant proved that the cheque was issued towards discharge of legally enforceable debt. Further on testing the bank memo and taking into account the statutory legal notice, postal acknowledgment, learned Additional Chief Judicial Magistrate answered remaining points in affirmative and finally by judgment and order dated 28-02-2023, returned the guilt for offence under Section 138 of the Negotiable Instruments Act.

9. Dissatisfied by the same, Criminal Appeal seems to have been preferred and copy of judgment of learned First Appellate Court in Criminal Appeal No.90 of 2023 of is also placed on record. Even First Appellate Court, which is the last fact finding court, formulated points, re-appreciated the oral and documentary evidence and learned First Appellate Court also recorded a finding that case of presumption under Sedction 139 of the Negotiable Instruments Act has been made out and further failure on the part of accused to rebut the same. Learned First Appellate Court also accepted the complainant's case and recorded a finding that essential ingredients of Section 138 of the Negotiable Instruments Act are made out. Finally, taking into account defence of accused, held that defence has

not been probalilized about either misuse of cheque or there to be no legally enforceable debt and ultimately dismissed the appeal for want of merits.

10. Thus, here, there are two concurrent findings rendered by learned trial Court as well as learned First Appellate Court, who also undertook the exercise of complete re-appreciation and analysis of evidence on record. There being concurrent findings, and no point made out on merits demonstrating error, illegality or perversity in both the impugned orders, revision fails. Hence, following order :

ORDER

- (I) Criminal Revision Application No.323 of 2025 stands dismissed.
- (II) Criminal Application No.825 of 2026 is allowed in terms of prayer clause "B".

(ABHAY S. WAGHWASE)
JUDGE