



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 333 OF 2025

Mohammad Irfan Salimmuddin Bagwan

Age : ... years, Occupation : Business,

R/o : Jhanzar Manzil, Kapad Bazar,

Durgawadi, Paithan,

District Aurangabad.

... Revision Petitioner

Versus

Abhishek Kamalkishor Malpani

Age : 38 years, Occupation : Practice,

R/o : Sambhaji Nagar, Jalna.

... Respondent

.....

Mr. Amit A. Yadkikar, Advocate for the Revision Petitioner.

Mr. Yogesh Somani, Advocate for the Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 11.03.2026

Pronounced on : 16.03.2026

ORDER :

1. Revisionist-original accused in offence under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) hereby takes exception to the judgment and order dated 10.10.2025 passed by learned Sessions Judge, Aurangabad in Criminal Appeal No. 9 of 2022 arising out of the judgment and order dated 11.01.2022 passed by learned J.M.F.C., (Court No.14), Aurangabad in S.C.C. No. 536 of 2017.

2. The brief background of the case is that, present respondent instituted proceedings under Section 138 of the NI Act against present revisionist on the premise that he is a Chartered Accountant by profession. That, accused, who is his client, for rendering audit work, had agreed to pay professional fees of Rs.2,50,000/-. That, it was his practice to take fees in the form of R.T.G.S. or cheques. Accordingly, accused handed over signed cheque and it was duly presented to the bank for realization, but the same was dishonored with remark as “Account Blocked”. This was followed by issuance of statutory legal notice and on failure to pay the cheque amount within stipulated period. above S.C.C. was instituted in the court of learned J.M.F.C., Aurangabad.

3. After appreciating the evidence adduced by the parties, learned J.M.F.C., vide judgment and order dated 11.01.2022, held offence of Section 138 of the NI Act being proved and accordingly convicted present revisionist for said offence and sentenced him to pay Rs.4,72,000/- by way of fine and in default to undergo simple imprisonment for three months. There were directions to pay Rs.3,43,972/- to the complainant out of the fine amount by way of compensation.

4. The above order was taken exception to, by filing appeal before learned Sessions Judge vide Criminal Appeal No. 9 of 2022, but the same came to be dismissed by judgment and order dated 10.10.2025, maintaining the order of conviction passed by learned J.M.F.C.

5. In revision against above both orders, learned counsel Mr. Yadkikar would submit that, there is no dispute over status of the parties. However, according to him, offence of Section 138 NI Act was not made out. Elaborating his such arguments, he would submit that, the instrument, i.e. cheque in question was handed over by way of security. That, there were no dues payable and as such, there was no legally enforceable debt. That, moreover, even complainant has admitted that cheque was blank one and its text and material was filled up by the complainant himself. That, it was apparently misuse of blank signed cheque entrusted to the complainant by way of security. However, according to him, these aspects are not considered by both, learned trial court as well as learned first appellate court.

6. He further took this court through the cross faced by complainant before the trial court and would point out that, complainant has admitted that he does not remember when exactly the cheque was received by him. That, he also does not remember the

date and year of issuing cheque or on which date they had discussion about the cheque. Therefore, it is his submission that, with such answers in cross, alleged transaction itself has come under shadow of doubt, but both courts below erred in still believing the case of complainant.

7. He further pointed out that here, both the courts below have not appreciated that complainant had not proved the case beyond reasonable doubt, which is the cardinal principle of law and moreover, accused had discharged and rebutted the initial presumption available under Section 138 of the NI Act.

8. His further contention is that, both learned courts below ought to have noted that, as per complainant, when actual dues were to the tune of Rs.2,81,000/-, and when complainant was in possession of blank cheque, why only cheque of Rs.2,50,000/- would have been issued and not for the entire remaining dues. According to him, such material itself was sufficient to create doubt about the alleged transaction. According to him, admittedly complainant had inserted the contents over the cheque and has misused the blank signed cheque.

9. On merits, it is also his contention that, here, cheque in question was not returned for want of sufficient funds or for the reasons spelt out in the Act. According to him, remark for returning cheque was "Account Blocked". Therefore, said remark having come at the instance of bank, it was beyond control and means of the revisionist-accused so as to meet the liability. According to him, said remark would not attract dishonor and on this count, he seeks reliance on the judgment of the Karnataka High Court in the case *M/s. ND Developers Private Ltd. and others v. Ritesh Raushan* [Criminal Petition No. 11207 of 2025] and the judgment of the Hon'ble Apex Court in the case of *Standard Chartered Bank v. State of Maharashtra and others* MANU/SC/0409/2016, apart from relying on the object of the Section 138 of NI Act.

For above reasons, he urges to allow the revision by setting aside the orders passed by both, trial court as well as first appellate court.

10. In answer to above, learned counsel for respondent-original complainant justifies the orders passed by courts below and according to him, there are concurrent findings of two courts and therefore there is no reason to interfere. Moreover, he also relies on the

judgment of the High Court of Madras in ***Challani Rank Jewellery v. Ashok Kumar Jain*** [Crl. O.P. No. 21268 of 2024] reported in LAWS (MAD) 2024-10-50 and the judgment of Karnataka High Court in ***Avneet Bedi v. Navin Malik*** [Crl.P. No. 3879/2013 with Crl.P. No. 3880/2013 and 3881/2013] reported in LAWS (KAR)-2013-10-25.

11. This being revision under Section 397 of Cr.P.C., it would be fruitful to give brief account of the judicial precedent and settled position while dealing with revisionary powers. 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”.

12. Thus, the limited scope for this court is to ascertain whether the impugned orders suffer from any illegality, perversity or patent error. With such limited scope, the case in hand is dealt.

13. Record shows that, complainant, a Chartered Accountant, was engaged by accused, i.e. there was professional - client relationship. There is cheque under the signature of accused vide Cheque No. 036302 dated 06.12.2016 for amount of Rs.2,37,500/- drawn on Punjab National Bank. The said cheque was shown to be dishonored vide memo dated 08.12.2016 with remark, “Account Blocked”. Statutory demand notice at the end of complainant via R.P.A.D. is of 19.12.2016 and received by the accused on 21.12.2016 followed by institution of S.C.C. No. 536 of 2017.

14. On going through the record, it is emerging that present respondent has instituted proceedings under Section 138 of the NI Act against present revisionist on the premise that revisionist-accused issued cheque towards payment of professional fees for rendering professional services in the capacity of Chartered Accountant. It is complainant's case that accused is his client and he was looking after financial matters related to business of accused. That, towards fees for rendering said work, accused signed cheque. Complainant himself has come with a case that he filled the remaining required details of the cheque and presented it for realization, but the same was dishonored with remark as "Account Blocked". This was followed by issuance of legal notice and on failure to pay the cheque amount, above proceedings were lodged in the court of J.M.F.C.

15. Before the learned trial court, stand taken by accused was that there was no legally enforceable debt. Secondly, blank cheque tendered by way of security at the time of agreement being misused and thirdly, no mandatory legal notice being served on him.

Record shows that, complainant has adduced his own evidence and reiterated the contents of complaint and its substance is that, he himself is a Chartered Accountant, whereas, accused is in the business

of wholesale grocery and further, accused was indenting to venture in steel business and therefore, for the said company, complainant was engaged and as per decided terms, accused had agreed to pay him fees of Rs.2,50,000/-. He also deposed that, he performed audit of the firm, uploaded the 3CB, 3CD forms as well as income tax returns of accused and caused digital signature. Copies of the same were placed before the court by him vide Exhibits 48 and 49. He also stated that he himself maintained account of accused as per mercantile law and an amount of Rs.2,81,432/- was shown under the head of Sundry Debtors which is receivable from accused, and the said amount includes services charges and amount paid to concerned department at the behest of accused. He placed balance sheet on record which is marked at Exhibit 50. That apart, he placed on record, bank memo, cheque in question, legal notice etc.

Record shows that complainant has faced cross during which also, he reiterated that Rs.2,50,000/- was agreed as fees and Rs.2,81,000/- was outstanding. He is unable to state the exact date and year of the issuance of cheque.

16. What can be discerned from above evidence is that, there is sufficient evidence on behalf of complainant to demonstrate that he,

in the capacity of Chartered Accountant, had rendered professional services to the accused, and as agreed, for the same Rs.2,50,000/- by way of fees were due and towards the same, accused had issued cheque. Though accused has denied said liability, but except denying, there is nothing concrete from his side to show that there was no liability. It is to be noted that relation as client of complainant is not denied. Documents placed on record by complainant at Exhibits 48, 49 and 50 are not disputed or denied. These documents demonstrate work rendered by complainant. Stand taken that, accused misused the cheque which was given by way of security, is also not substantiated. For what purpose cheque was issued by way of security, is not clarified. Apparently, issuance of cheque and signature over the cheque is admitted and therefore, automatically presumption available under Section 138 of NI Act gets drawn. This presumption being rebuttable, it was expected of accused to dislodge the same. Even by preponderance of probabilities, said burden is not discharged.

17. As regards to stand taken about contents not being filled by accused and that it was blank signed cheque is concerned, law is succinctly dealt by the Hon'ble Apex Court in the case of ***Bir Singh v. Mukesh Kumar*** 2019 Cri.L.J. 3227 and both the courts below, i.e.

learned trial court as well as learned first appellate court, have rightly applied the said law, wherein it has been held that, if cheque is duly signed by the drawer, it is immaterial as to who fills up the remaining contents of the cheque. Therefore, even above submission of misuse of blank signed cheque holds no water.

18. As regards to remark of “Account Blocked” for return of cheque is concerned, it is seen that it is raised for the first time before this Court and there was no contest on this issue either before trial court or before first appellate court. Be it so. Learned counsel for revision petitioner has relied on the above referred judgment by the High Court of Karnataka in *M/s. ND Developers* (supra). However, even on going through the same, nothing useful to the revisionist is found in the said judgment. There is mere reference to “Account Blocked”, but on facts before that Court, it was in the backdrop of initiation of criminal prosecution that bank had issued said remark in compliance to request by enforcement agencies. In a case in which crime was registered, the bank had issued said remark. Even in the judgment before Hon’ble Apex Court in *Standard Chartered Bank* (supra) relied by learned counsel for the revisionist, excerpts/contents of complaint in that case were reproduced where there is some passing reference in para 10 of the complaint. Resultantly, said cases being distinct on

facts, are of no avail to the revision petitioner.

19. On the contrary, in the judgment of High Court of Madras in ***Challani Rank Jewellery*** (supra) relied by learned counsel for the respondent, in paragraphs 30 to 33 and 38, it was observed as under :

“(30) Sec. 138 of the NI Act envisages two contingencies to attract prosecution. They are:

(1) the amount of money standing in the account must be insufficient to honour the cheque

or

(2) the cheque amount should exceeds the amount arranged to be paid.

*(31) Though **account blocked** is not specifically mentioned as a reason for dishonour to attract Sec. 138 of NI Act, the judicial pronouncements had made it clear that the two contingencies mentioned in the Sec. 138 of the NI Act are genus, the reasons like account closed, stop payment, signature differs etc., are species. If the complaint disclosed that the subject cheque was given without sufficient fund or in excess of arrangement, the other reasons which are species to the genus will follow to proceed under Sec. 138 of NI Act. (emphasis laid)*

(32) In this regard, it is profitable to refer the observation of the Supreme Court judgment in Laxmi Dyechem v. State of Gujarat reported in [(2012) 13 SCC 375]:-

“We find ourselves in respectful agreement with the decision in Magma case (NEPC Micon Ltd. v. Magma Leasing Ltd. (1999) 4 SCC 253) that the expression “amount of money... is insufficient” appearing in Sec. 138 of the Act is a genus and dishonour for reasons such “as account closed”, “payment stopped”, “referred to the drawer” are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Sec. 138, so also dishonour on the ground that the “signatures do not match” or that the “image is not found”, which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Sec. 138 of the Act. (emphasis supplied).”

*(33) If the above logic and analogy is applied, it is amply clear that in cases of ‘**account block**’ or ‘**account freezed**’ complaint under Sec. 138 of NI Act is maintainable, if the complainant prima facie satisfies that in the account there was no sufficient fund to honour. As supreme court has held, the genus of the crime is any one of the contingencies envisaged under Sec. 138 of NI Act. If the complaint discloses that dehors of account block or account freeze and even otherwise, the cheque could not been passed due to want of fund in the account, the drawer of the cheque cannot take umbrage under the fact that his account is*

blocked or freezed. Issuing the cheque without sufficient fund to honour is the genus of the crime.

(34)

to

(37)

(38) The cheques were returned with endorsement "account blocked". Situation covered in 2125". On the date of presentation of the cheque or even on the date of the cheque, the petitioners had no sufficient fund to honour it or made arrangement with bank to honour the cheques. The balance in the account running in debit. Therefore, applying the dictum of the Hon'ble Supreme Court in NEPC-vs-Magma case and in Laxmi Dyechem v. State of Gujarat the prima facie case of the complainant that the cheques were issued exceeding the arrangement with Bank satisfies the second contingency envisaged under Sec. 138 of NI Act. Therefore the complaint under Sec. 138 of Negotiable Instruments Act, 1881 as against these petitioners is maintainable."

Therefore, on facts, above case of High Court of Madras would squarely apply rather than the one relied by learned counsel for revision petitioner.

20. Therefore, above contest on the point of, remark of “Account Blocked” to be not maintainable for gravitating offence of Section 138 NI Act, has no force or substance. Moreover accused has not adduced evidence of any bank official.

21. On visiting the impugned judgments of both, trial court as well as first appellate court, it is clear that both courts below had correctly appreciated and analyzed the evidence on record as well as have taken into account the settled legal propositions and thereafter have rendered respective judgments. What was the error, how there was inappropriate appreciation of evidence, what material has not been considered appropriately while rendering the judgment, is not pinpointed or brought to the notice of this Court so as to interfere. Resultantly, revision being devoid of merits, following order is passed :

ORDER

The Criminal Revision Application is dismissed.

[ABHAY S. WAGHWASE, J.]

22. When this order was pronounced, learned counsel for the Revision Petitioner sought stay to the effect and implementation of

this order for a period of six weeks so as to enable him to approach the Hon'ble Supreme Court.

23. In view of the above, there shall be stay to the effect and implementation of this order for a period of six weeks from today.

[ABHAY S. WAGHWASE, J.]

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