



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

CRIMINAL APPEAL NO. 939 OF 2025

Netafim Agriculture Financing Agency Pvt.Ltd.
(NAFA), through Its Authorized Signatory,
Mr.Somnath Babasaheb Dhole
Assistant Manager, Legal Department,
Age: 44 years, Occu.: Service,
R/o. : C/o. Branch Officer at House No.N-12/D-02/05,
Swami Vivekanand Nagar, T.V.Center road,
Chharapati Sambhajinagar.Appellant

Versus

Amol S/o. Shankarrao Waghmare
Age: Major, Occu.: Agriculturist,
R/o. At.Post.Shiraswadi, Tq. & Dist.Jalna.Respondent
(Orig. Accused)

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Advocate for Appellant : Mr. Vishwanath P. Golewar
Respondent sole is Served.

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CORAM : ABHAY S. WAGHWASE, J.

DATE : 03 FEBRUARY, 2026

ORDER :-

1. Record shows that initially leave to file appeal was sought by filing application bearing ALP Nos.124 of 2025. This Court vide order dated 04.12.2025, allowed the said leave application and directions were issued to register the appeal.
2. Learned counsel for applicant submitted that, appellant

company is engaged in the business of providing financial assistance to the agriculturists according to their requirement. That, the respondent/accused is agriculturist and he was in need of money. Therefore, he approached appellant requesting for providing term loan finance facility towards Hi-Tech Cultivation under protected condition investment and production related expenses for agricultural activities, crop production and other related activities in his agricultural farm from the appellant company. That, the respondent/accused, as per procedure, has submitted relevant documents in support of the loan application. That, based on policies terms and conditions mutually agreed upon and representations made by accused. That, the appellant company agreed to provide term loan facility to the respondent. That, the appellant company sanctioned term loan upto maximum value of Rs.34,39,490/- vide its sanction letter dated 08-03-2017 and the appellant company disbursed the loan amount in accordance with the terms and conditions mentioned in the sanction letter.

3. Learned counsel further submits that in discharge of the aforesaid liability, the respondent accused issued cheque bearing no.058397 dated 06-01-2020 drawn on IDBI Bank, Branch Aambad,

Dist.Jalna for amount of Rs.23,89,632/- in favour of appellant. That, on 14-01-2020, the aforesaid cheque was presented by the appellant company in its bank. That, the said cheque was dishonoured and return unpaid with the reason "Drawer Signature Differs". Therefore, appellant company issued statutory demand notice to the respondent and inspite of service of statutory demand notice, respondent failed to make payment within stipulated period. Therefore, the appellant filed complaint SCC No.5270 of 2020 in the Court of Learned Chief Judicial Magistrate, Aurangabad.

4. The learned JMFC Court No.13 issued process against respondent for offnece under Section 138 of the Negotiable Instruments Act. That, on 29-07-2024, the matter was posted in learned trial Court for issuance of non-bailable warrant against respondent. On 29-08-2024, the matter was listed on board for issuance of non-bailable warrant, which was not ready and accordingly, matter was adjourned to 17-10-2024. On 17-10-2024, the learned trial Court, without considering the fact that, in the matter, non-bailable warrant is ordered to be issued vide earlier order and as it was not issued, on that day, the office of the learned trial Court ought to have posted the matter for issuance of non-bailable warrant against respondent/accused. However, the concerned Clerk

put up the matter for order before learned trial Court and on 17-10-2024. The learned trial Court kept the matter for dismiss in default order. That, on 07-12-2024, the learned Presiding Officer was on leave and on that day, the appellant through his Advocate has filed application for issuance of non-bailable warrant against accused. However, without considering the said application dated 07-12-2024, the learned trial Court vide order dated 12-12-2024 dismissed the complaint filed by appellant for non-appearance of complainant and respondent came to be discharged from the offence punishable under Section 138 of the Negotiable Instruments Act. Learned counsel undertakes to diligently prosecute the case henceforth and prays to remand the matter back for trial.

5. In spite of service, none appeared for respondent.

6. Perused the order dated 12.12.2024. It seems that, the matter was pending for the steps of the complainant. The learned trial Court observed that the complainant is absent when called out repeatedly and therefore, the learned trial court passed the order dated 12-12-2024 and the complaint came to be dismissed for non-appearance of the complainant.

7. Learned counsel for the appellant also assures to be diligent in conducting the matter henceforth.

8. In view of the above, complainant cannot be deprived of his right to prosecute accused if at all there is a case made out to that extent. Resultantly, it would be just and proper to remand the matter back to the learned trial court, who shall afford opportunity to both sides to adduce their respective evidence and come to its independent conclusion. Accordingly, I proceed to pass the following order:

ORDER

- I. The appeal is allowed in terms of prayer clause "C".
- II. Parties are directed to appear before the trial court on 05-03-2026 and co-operate in conducting the trial.
- III. Learned trial Judge to expedite the hearing of the case by giving opportunity to both sides to adduce evidence, and decide the matter on its own merits.

(**ABHAY S. WAGHWASE**)
JUDGE