Suzana

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 3 OF 2026

Wheel Magnets, thr. its Auth. Partner ... Petitioner

Versus

Aniket Naik ...Respondent

Mr Jatin Ramaiya, Advocate for the Petitioner.
Mr Prashant Agrawal, Advocate with Mr. Amogh Vaingankar, Advocate for Respondent.

CORAM: S. G. CHAPALGAONKAR, J

DATED: 7th OCTOBER 2026

ORDER.:

1. The Petitioner impugns Order dated 01.12.2025 passed by Chief Judicial Magistrate 'A' Court, Merces-Goa, in Criminal Case No.OA/311/NIA/2020/A thereby allowing Application below Exhibit D-31 granting permission to Respondent accused to cross-examine the Petitioner to the extent of defence mentioned in the Application.

2. The parties are hereinafter referred to as per their original status in the Complaint. The Petitioner/original Complainant instituted proceedings under Section 138 of Negotiable Instruments Act, 1881 alleging that the Complainant appointed Respondent/accused as Sub-dealer for Marcel region. The accused commenced placing orders for motorcycles with the complainant. He was given credit facility by the Complainant. He procured 112 motorcycles from the Complainant between 2018 to 2019. The liability of around Rs.56,15,360/- (Rupees Fifty Six Lakhs Fifteen Thousand Three Hundred and Sixty only) was accumulated against the accused. Despite selling the motorcycles and scooters supplied by Complainant, he failed to clear outstanding dues. The accused voluntarily admitted liability vide his Affidavit-cum-Declaration dated 13.06.2019 and issued Cheque towards discharge of his liability. However, on presentation, Cheque has been dishonoured with remark 'insufficient funds'. The Complainant issued a Demand Notice, which was not replied by the accused. Eventually, Complainant approached the Magistrate and filed criminal case.

3. The accused on his appearance before JMFC filed application Exhibit D-31 under Section 145(2) of Negotiable Instruments Act, 1881. By impugned Order, Learned Magistrate allowed the application and permitted him to cross-examine the Complainant.

4. Mr. Jatin Ramaiya, Learned Advocate appearing for Petitioner would submit that it was obligatory on the part of Magistrate to delve into the probability of defence raised by the accused. Unless accused demonstrates specific probable defence and satisfies Magistrate that his defence is not moonshine or illusionary, the Magistrate cannot exercise discretion under Section 145(2). Per contra, Mr. Prashant Agrawal, Learned Advocate appearing for Respondent supports the impugned Order.

5. Having considered submissions advanced by Learned Counsel for respective parties and upon consideration of the submissions advanced, it can be observed that the accused raised a defence that there is no legally enforceable debt and Complainant is not entitled to recover the amount of Rs. 56,15,360/- (Rupees Fifty Six Lakhs Fifteen Thousand Three

Hundred and Sixty only) along with interest. The Complaint itself demonstrates that the accused had issued five Cheques of Rs.10,00,000/- (Rupees Ten Lakh only) each. However, in the month of June, 2019, accused paid an amount of Rs.12,50,000/- (Rupees Twelve Lakh Fifty Thousand only) towards part liability and then issued two Cheques of Rs.20,00,000/- (Rupees Twenty Lakh only) each.

6. The impugned Order shows that the Learned Magistrate considered probable defence available to the accused, particularly, as regards the legally enforceable debt, as there was no clarity as to what amount was actually due after accused made the payment. Learned Magistrate has, therefore, rightly exercised discretion under Section 145(2) and granted conditional leave to defend. This Court finds no jurisdictional error in exercise of discretion by the Magistrate.

7. In result, the Writ Petition stands rejected.

S. G. CHAPALGAONKAR, J

Signed by: MARIA SUZANA REBELLO
Designation: Personal Assistant
Date: 08/10/2026 17:01:36