luzana

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 428 OF 2026

Rushikesh Bhatt ... Petitioner

Versus

AMDG Collective LLP rep. its designated Partner. ...Respondents

Mr Chaitanya Padgaonkar, Advocate with Ms Anushri Naik Dessai, Advocate for the Petitioner.

Mr Jay Mathew, Advocate for Respondent.

CORAM: S. G. CHAPALGAONKAR, J

DATED: 7th OCTOBER 2026

ORDER.:

1. The Petitioner impugns Order dated 01.09.2026 passed by Judicial Magistrate First Class 'A' Court, Bicholim, below Exhibit D-32 in OA 431/2025/A thereby rejecting Petitioner's application filed under Section 145(2) of Negotiable Instruments Act, 1881. (The parties are hereinafter referred to as per their original status in the original complaint).

2. The complaint states that the Accused is sole proprietor of the entity, A.R. Chemical and Aksh Chemical, which deals as trader and exporter of Citric Acid Anhydrous. The Complainant

was appointed by Alliance Chemical Group, a United States of America based company, to assist them in sourcing Citric Acid Anhydrous of Indian origin. The Complainant had a Broker and Procurement Services Agreement with them. The dispute arose owing to substandard and defective nature of consignment supplied by the Accused. The parties entered into Memorandum of Understanding dated 25.02.2025 to resolve the dispute, wherein the Accused admitted his liability arising out of defective consignment and agreed to pay the sum of USD 231.600 and also issued a Cheque in favour of Complainant dated 05.03.2025 drawn on ICICI Bank, Ankleshwar Branch, for Rs.2,00,97,000/- (Rupees Two Crores Ninety-Seven Thousand only). However, on presentation of said Cheque, it was dishonoured. The Accused was served with Demand Notice but he failed to act upon the same. On complaint under Section 138 of N.I.Act, Learned Magistrate issued process against Accused. On his appearance, he filed Application under Section 145(2) of the N.I. Act, which came to be rejected by impugned Order dated 01.09.2026.

3. Mr. Padgaonkar, Learned Advocate appearing for the Accused, would submit that Accused has specifically denied his

signature on the Cheque in question. Even the Cheque Return Memo shows a signature mismatch. The Accused disputed legally enforceable debt. However, trial Court rejected the Application, holding that the Accused did not explain why said Cheque was given to the Complainant, and he failed to reply to the statutory notice. As such, no specific defence is available to him, enabling grant of permission to cross-examine the Complainant.

4. Per contra, Mr. Jay Mathew, Learned Advocate appearing for Respondent supports the impugned Order. He takes this Court through the Memorandum of Understanding wherein the Accused has accepted the liability and provided an undated cheque for an amount of Rs.2,00,97,000/- (Rupees Two Crores Ninety-Seven Thousand only) towards security. He would invite attention of this Court to the very Cheque which is the subject matter of dispute, being part of the Memorandum of Understanding. He would further invite attention of this Court to the email communication dated 18.06.2025 made by the Accused to the Complainant and others accepting liability towards the amount.

5. In support of his contention, he relied upon the observations of this Court in case of ***Apolonius Francisco Luis v/s. Sahajanand Investments Pvt. Ltd rep. by its Director, Rasiklal Mohanilal Gangani***[1].

6. Having considered submissions by Learned Advocate appearing for respective parties. The only issue that requires consideration in the present case is as to whether the Accused made out a case for grant of the Application under Section 145(2) of Negotiable Instruments Act, 1988 for cross-examination of the Complainant and witnesses. In this backdrop, it is apposite to refer to certain observations of the Supreme Court and this Court in the case of **Kamal Nilkanth Naik v/s. VPK Urban Co-operative Credit Society**[2], on the point in issue.

> "8. In case of **Mandvi Cooperative Bank Ltd**. **v/s. Nimesh B. Thakore**[3], Supreme Court observed in paragraph no.16 as under:
>
> > *Section 143 makes it possible for the complaints under Section 138 of the Act to be tried in the summary manner, except, of course, for the relatively small number of cases where the*

[1] WPCR/838/2021 decided on 12.09.2022

[2] WPCR/61/2025 decided on 11.09.2026

[3] AIR 2010 Supreme Court 1402

Magistrate feels that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily. It is, however, significant that the procedure of summary trials is adopted under Section 143 subject to the qualification "as far as possible", thus, leaving sufficient flexibility so as not to affect the quick flow of the trial process. Even while following the procedure of summary trials, the non-obstante clause and the expression "as far as possible" used in Section 143 coupled with the non-obstante clause in Section 145 allows for the evidence of the complainant to be given on affidavit, that is, in the absence of the accused. This would have been impermissible (even in a summary trial under the Code of Criminal Procedure) in view of Section 251 and 254 and especially Section 273 of the Code. ***The accused, however, is fully protected, as under Sub-section (2) of Section 145 he has the absolute and unqualified right to have the complainant and any or all of his witnesses summoned for cross-examination.***"

9. Similarly, in case of **Rakesh Singh v/s. Anil Madanmohan Gulati & Anr**[4]., this Court while elaborating exposition of law laid down by Supreme Court in case of **Mandvi Cooperative Bank Ltd**. (supra) further observed that:

"*The trial Court, in my opinion, committed error in observing that the petitioner is silent on the specific ground of defence or point on which he wishes to cross examine the complainant. It may be that the petitioner has an opportunity to lead defence evidence and rebut the presumption if any, however, that does not mean that the valuable right of the petitioner to cross examine the complainant which he is entitled to under*

[4] Criminal Writ Petitions No.34 and 35 decided on 09.05.2023

Section 145(2) of the NI Act can be lightly brushed aside."

10. Thereafter in case **of Narayan Shivdas Kadam s/o Shivdas Kadam Vs. Shriram Transport Finance Company Limited**[5], this Court observed that accused has an absolute and unqualified right to have complainant and his witness summoned for cross-examination. It is not necessary for Court to delve deep into merits of defence which is set up by accused. The purpose of disclosing defence is not to find out whether any details are given or to reject it at the threshold thereby curtailing such right of accused. In paragraph no.34, it has been observed that main intention of legislature incorporated under Section 145(2) of N.I. Act is to grant an opportunity to accused, in desirable cases, wherein he shows or demonstrates before the Magistrate that there is probable defence which he wants to produce before Court by way of cross-examination of complainant. Such opportunity cannot be taken away from accused if he satisfies Magistrate about probable defence.

11. In case of **K. Narsimulu V/s. Naguesh C. Dandi**[6], this Court in reference to law down in case of **Mandvi Cooperative Bank Ltd.** (supra) observed that Section 145(2) of N.I. Act protects right of accused to have complainant and his witnesses cross-examine and he has absolute and unqualified right to have complainant and any or all of his witnesses summoned for cross-examination.

12. In case of **Apolonius Francisco Luis Vs. Sahajanand Investments Pvt. Ltd**[7]. , this Court found that cryptic and casual defence was employed in application filed by accused and, therefore, he was declined opportunity to cross-examination".

[5] 2024 (2) Mh.L.J.147

[6] 2010 Mh.L.J. (4) 220

[7] Criminal Writ Petition No.838/2021 decided on 12.09.2022

7. In light of aforesaid exposition, there cannot be contest that Section 145 of the Negotiable Instruments Act cannot be interpreted as an absolute bar forfeiting right of the Accused to cross-examine. Once accused demonstrates triable defence, he is entitled to leave to cross-examine Complainant and his witnesses. It is well settled that while deciding Application under Section 145(2) of the N.I. Act, Magistrate need not delve deep into probable defence put forth by accused. The Magistrate has to, prima facie, satisfy himself that defence is not evasive and capable to put for trial.

8. In light of the aforesaid position, if the facts of present case are examined, it is clear that the accused has raised candid defence of absence of his signature on the subject Cheque. Such defence goes to the root of matter. The Cheque cannot be termed as negotiable instrument in absence of signature of drawer. In this backdrop, although there is sufficient material to demonstrate transaction between accused and Complainant, supported by Memorandum of Understanding, the accused needs to be given sufficient opportunity to establish that negotiable instrument/Cheque in question sans his signature. Prima facie,

Bank Return Memo supports defence of the accused and endorse signature on Cheque does not match with signature of Accused. In this backdrop, this Court finds that the impugned Order foreclosing right of accused to establish a probable defence cannot be countenanced. In result, the Writ Petition deserves to be allowed in the following terms:

(a) Impugned Order dated 01.09.2026 passed by Judicial Magistrate First Class 'A' Court, Bicholim, below Exhibit D-32 in OA 431/2025/A is quashed and set aside.

(b) The Petitioner's Application below Exhibit D-32 is partly allowed.

(c) The Applicant is permitted to cross-examine the Complainant and his witnesses so far as his defence as to absence of signature on the Cheque.

(d) The Trial Court shall endeavour to decide the Complaint within a period of nine months from the date of this Order.

9. Writ Petition stands disposed of in aforesaid terms.

S. G. CHAPALGAONKAR, J

Signed by: MARIA SUZANA REBELLO
Designation: Personal Assistant
Date: 08/10/2026 15:27:40