IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.434 OF 2026

Mrs. Diksha Dnyaneshwar Salgaonkar
Wife of Mr. Dnyaneshwar Salgaonkar
55years of age, Indian National and
Resident of Chawdewada, Parse, Pernem
Goa, 403512 ….PETITIONER

V/s

1 .Mrs. Anuja Anil Salgaonkar,
Wife of Anil Salgaonkar,
38 years of age, Married,
Indian National and Resident of
H.No. 47, Chawdewada, Parse, Pernem
Goa, 403512.

2.State of Goa
The Public Prosecutor,
High Court of Bombay at Goa,
Porvorim-Goa …..RESPONDENTS

Mr Sanket Mahambre, Advocate for the Applicant.

Mr Preetam Talaulikar, Additional Public Prosecutor for the Respondent No.2.

CORAM: ASHWIN D. BHOBE, J.

DATED : 19th November, 2026.

Oral Judgement:-

1. Heard, Mr Sanket Mahambre, learned Advocate for the Petitioner and Mr Preetam Talaulikar, learned Additional Public Prosecutor for the

Respondent No.2- State.

2. By order dated 23.10.2026, notice for final disposal at the admission stage was issued to the Respondents in this petition and made returnable on 30.10.2026. As the service report for Respondent No. 1 was awaited on 30.10.2026, the petition was adjourned to 05.11.2026.

3. The Office note in this file indicates that Respondent No. 1 was served with the notice issued in this petition on 04.11.2026.

4. On 05.11.2026, the following order was passed:-

> *"1. Heard Mr Sanket Mahambre, learned Advocate for the Petitioner and Mr P. Faldessai, learned Additional Public Prosecutor for the State.*
>
> *2. Notice was issued to the Respondent No.1 on 23.10.2026.*
>
> *3. Mr Sanket Mahambre, learned Advocate for the Petitioner states that the notice issued to the Respondent No.1 has been duly served. The office endorsement also indicates the Respondent No.1 to be served with the Court notice.*
>
> *4. Though this Petition is fixed for final disposal at the stage of admission as per the notice dated 23.10.2026, to afford an opportunity to the Respondent No.1, as a matter of indulgence list this matter on 19.11.2026. It is clarified that in the event the Respondent No.1 remains absent on the said date or any subsequent date, this Petition would be heard and disposed of after hearing the parties present."*

5. Today, when this petition was called out during the morning session, no one appeared, either in person or via video conference, as such, the petition was kept post-lunch. Again, neither Respondent No. 1 nor any Advocate on behalf of Respondent No. 1 appeared when the petition and the name of Respondent No. 1 were called out by the Sheristadar for the second time post-

lunch.

6. Mr Sanket Mahambre, learned Advocate for the Petitioner, submits that the absence of Respondent No. 1, despite having been served, shows that Respondent No. 1 has no interest in contesting this Petition. He submits that the matter before the Magistrate is fixed for tomorrow and therefore insists that this matter be taken up for disposal.

7. Mr Preetam Talaulikar, learned Additional Public Prosecutor, submits that, as Respondent No. 1 was notified that the petition is listed for final disposal at the admission stage and has chosen not to appear, this Court should consider the matter on the merits in view of the urgency expressed by Mr Sanket Mahambre, learned Advocate for the Petitioner.

8. Rule, returnable forthwith.

9. By this petition filed under Section 227 of the Constitution of India read with Section 528 of the BNSS, 2023, the Petitioner (*Accused*) assails the Order dated 19.08.2026 ("*impugned order*") passed by the Judicial Magistrate First Class at Pernem ("*Magistrate*"), rejecting the Application dated 19.08.2026 filed by the Petitioner under Section 145(2) of the Negotiable Instruments Act, 1881 ("*NI Act*") at Exh.D-12 in Criminal Case No. 62/OA(NIA)2026.

10. The facts relevant to the petition are that on 27.02.2026, Respondent No. 1 (Complainant) filed a complaint under Section 138 of the NI Act, alleging that the Petitioner, who is Respondent No. 1's sister-in-law, requested Respondent No. 1 to grant a friendly loan of Rs. 20,00,000/-, as the Petitioner was in financial difficulty. Respondent No. 1 provided the friendly loan in instalments. In repayment of the said friendly loan, the Petitioner issued cheque No. 342580, dated 31.12.2025, drawn on the State Bank of India,

Pernem Branch, for Rs. 20,00,000/- ("said cheque"). Upon presentation for payment, the said cheque was returned dishonoured with the endorsement "0-exceeds arrangement". Despite the demand notice dated 09.07.2026, the Petitioner failed to comply with the requisition made therein, which led Respondent No. 1 to file the complaint before the Magistrate, registered as Criminal Case No. 62/OA(NIA)2026.

11. Upon being summoned, the Petitioner appeared in Criminal Case No. 62/OA(NIA)2026 and pleaded not guilty.

12. On 19.08.2026, the Petitioner filed an Application at Exh. D-12 in Criminal Case No. 62/OA(NIA)2026 under Section 145(2) of the NI Act, seeking leave to cross-examine Respondent No. 1 and his witnesses. The grounds for seeking leave are that: the Petitioner did not have any financial difficulties and as such, neither represented to nor approached Respondent No. 1 for a friendly loan; that Respondent No. 1 has not produced any document or agreement indicating the advancement of Rs. 20,00,000/- or demonstrating that Respondent No. 1 had the capacity to advance Rs. 20,00,000/- as a loan; that Respondent No. 1 misused the Petitioner's cheque; and that both the issuance of the said cheque and the Petitioner's signature on it are disputed.

13. Respondent No. 1 endorsed his say on the Application at Exh. D-12, which reads as follows:

> *"Say of the Complainant:-*
>
> *That the present application is filed to delay the proceedings. That the accused has never replied to the demand notice issued by the complainant. Hence, the application may be dismissed with costs."*

14. Mr Sanket Mahambre, learned Advocate for the Petitioner, in his submissions, has reiterated the grounds mentioned in the Application at Exh. D-12. He submits that the case of the Respondent No. 1 is that Rs. 20,00,000/- was advanced to the Petitioner in cash. He submits that Respondent No. 1 has no capacity to advance Rs. 20,00,000/-. He further submits that this is a case where Respondent No. 1 misused the Petitioner's cheque, taking advantage of their relationship. He therefore submits that the Petitioner has made out a case for leave to cross-examine Respondent No. 1.

15. Mr. Preetam Talaulikar, learned Additional Public Prosecutor, referring to paragraph No. 8 of the Application at Exh. D-12, submits that the record of Criminal Case No. 62/OA(NIA)2026, placed in this petition, does not indicate that Respondent No. 1 has paid any amount to the Petitioner.

16. Perused the records with the assistance of the learned Advocates.

17. A perusal of the complaint in Criminal Case No. 62/OA(NIA)2026 indicates that Respondent No. 1 has approached the Magistrate, alleging that Rs.20,00,000/- was advanced to the Petitioner in fourteen (14) instalments, commencing on 08.02.2024 and ending on 25.08.2025, as stated in paragraph No. 4 of the complaint. The complaint contains no averment that the Petitioner issued a receipt, nor has Respondent No. 1 produced any document showing that the Petitioner acknowledged receipt of Rs. 20,00,000/-. In his complaint, Respondent No. 1 does not claim that the amount was paid to the Petitioner through banking channels.

18. The demand notice dated 09.01.2026 is silent as to the manner and mode in which Respondent No. 1 advanced Rs. 20,00,000/- to the Petitioner.

19. The Petitioner, referred to by Respondent No. 1 as his sister-in-law, has

contended in the Application at Exh. D-12, among other grounds, that she has not received any amount from Respondent No. 1, as she did not need any amount. Petitioner has specifically disputed the alleged advance of Rs.20,00,000/- and the capacity of Respondent No. 1 to advance that amount. Petitioner has alleged that Respondent No. 1 misused the said cheque and that no legally enforceable debt exists.

20. The opposition of Respondent No. 1 to the Application at Exh. D-12 is as set out in the endorsement on the Application. Respondent No. 1 has neither specifically denied nor addressed the contentions of the Petitioner in the Application at Exh. D-12. Despite being served with this petition, Respondent No. 1 has chosen not to appear, leaving the contentions urged in this petition and the submissions made by Mr Sanket Mahambre, learned Advocate for the Petitioner, unrebutted.

21. Section 145 of the NI reads as follows:-

> *"145. Evidence on affidavit.—*
>
> *(1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.*
>
> *(2)The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein"*

22. In *Mandvi Cooperative Bank vs. Nitnesh B. Thakore*[1], in paragraphs 20 and

1 2010(3)SCC 83

21 the Hon'ble Supreme Court has observed as under:-

> *20. It may be noted that the provisions of Sections 143, 144, 145 and 147 expressly depart from and override the provisions of the Code of Criminal Procedure, the main body of adjective law for criminal trials. The provisions of Section 146 similarly depart from the principles of the Evidence Act. 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 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.*
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> *21. 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 allow 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 Sections 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."*

23. In *Meters and Instruments Pvt. Ltd. vs. Kanchan Mehta*[2], it was observed that an accused in proceedings under Section 138 of the NI Act, who wants to contest the case, must be required to disclose a specific defence for such

2 AIR 2017 SC 4594

contest and it is open to the Court to ask specific questions to the accused at that stage (*see para 20*).

24. This Court *Rakesh Singh Vs. Anil Madanmohan Gulati*[3], *Narayan Shivdas Kadam v/s. M/S. Shriram Transport Finance Co. Ltd.*[4] and *Sandesh Suresh Shirodkar vs. Anil Vithal Mandrekar*[5], has observed that the accused has an absolute and unqualified right to have the complainant and his witnesses summoned for cross-examination and it is desirable to grant an opportunity to the accused in appropriate cases where the accused shows or demonstrates before the Magistrate that there is a probable defence which he intends to produce before the Court by way of cross-examination of the complainant and his witnesses.

25. By the Application at Exh. D-12, filed at the appropriate stage, the Petitioner indicated that she wanted to contest the complaint filed by Respondent No. 1 and accordingly disclosed her defence. The averments in the Application at Exh. D-12 are sufficient to bring the Petitioner's case within the ambit of the expression "setting up a specific defence", as required at the stage of considering an Application under Section 145(2) of the NI Act.

26. The case set out in the Application at Exh. D-12 cannot be said to be a sham, cryptic, or casual defence warranting curtailment of the Petitioner's valuable right to cross-examine Respondent No. 1 and his witnesses in Criminal Case No. 62/OA(NIA)2026. Similarly, this is not a case that suggests the Application at Exh. D-12 was filed to delay or prolong Criminal Case No. 62/OA(NIA)2026.

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3 (2023) SCC Bom 522
4 2024:BHC-GOA:424
5 2026 SCC Online Bom 14579

27. The Petitioner, an accused in Criminal Case No. 62/OA(NIA)2026, has a right to a fair trial. Petitioner has made out a case in the Application at Exh. D-12 of a probable defence, consequently, the Petitioner cannot be denied the right to cross-examine the Respondent No.1 and all his witnesses summoned in Criminal Case No. 62/OA(NIA)2026. In the circumstances of this case, if the Petitioner is not afforded an opportunity to cross-examine, it would deprive the Petitioner of the right to rebut the presumptions under Section 139 of the NI Act.

28. The Magistrate failed to consider this aspect of the matter and erred in rejecting the Application at Exh. D-12 in Criminal Case No. 62/OA(NIA)2026. The reasons assigned by the Magistrate in the impugned order are perverse. The impugned order cannot be sustained, as such, it is quashed and set aside.

29. This petition is allowed in terms of prayer clause (a). The impugned order dated 19.08.2026 passed by the Judicial Magistrate First Class at Pernem on the Application dated 19.08.2026 filed by the Petitioner under Section 145(2) of the NI Act, at Exh.D-12 in Criminal Case No. 62/OA(NIA)2026, is quashed and set aside, consequently, the Application dated 19.08.2026 at Exh.D-12 is allowed.

30. Rule made absolute in the above terms. No orders as to costs.

ASHWIN D. BHOBE, J.

Signed by: MEENA VISHAL BHOIR
Designation: Private Secretary
Date: 25/11/2026 20:34:20