IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.1767 OF 2025

1. Amit s/o Vasantrao Mendule,
Aged about 45 Years,
Occupation : Business,
R/o Sharda Colony, Bramhapuri,
Tahsil Bramhapuri,
District Chandrapur. **.... APPLICANT**

// VERSUS //

1. Suresh s/o Gajilal Jaiswal,
Aged about 58 Years,
Occupation : Business,
R/o. Mendki, Tahsil Bramhapuri,
District Chandrapur.

2. State of Maharashtra,
Through Police Station Officer,
Police Station, Bramhapuri,
District Chandrapur. **....NON-APPLICANTS**

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Mr. Nishant Gurani, Advocate h/f Mr. A. S. Dhore, Advocate for applicant.
Mr. Y. A. Kullarwar, Advocate for non-applicant No.1.
Ms. R. V. Sharma, APP for State.

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CORAM : URMILA JOSHI-PHALKE, J.
DATED : 09/04/2026

ORAL JUDGMENT :

1. Heard.

2. **Admit**.

3. Heard finally with the consent of the learned Counsel for the applicant, learned counsel for non-applicant No.1 and learned APP for State.

4. Present application is preferred by the applicant to challenge the order passed by the learned Judicial Magistrate First Class, Bramhapuri, rejecting the application filed by the present applicant for dismissal of the complaint by order dated 01.10.2022.

5. Applicant is the original accused, who was prosecuted on the basis of a complaint filed by the non-applicant No.1 on an allegation that the applicant as well as the non-applicant No.1 both are residents of Bramhapuri and doing business of plotting within the tahsil area Bramhapuri. There was hand loan transaction between both of them. As the present applicant has allegedly obtained the hand loan of Rs.15,00,000/- from the present non-applicant No.1 and towards the repayment of the said amount, he has issued the cheque bearing No.646956 dated 31.07.2017 drawn on the State Bank of India, Bramhapuri in favour of the non-applicant No.1. On depositing the said cheque, it was returned back with "funds insufficient" and therefore, the non-applicant No.1 has issued the notice to him. After receipt of the notice also, the amount was not repaid, and therefore, the non-applicant No.1 constrained to file the complaint against the present applicant.

6. The learned Magistrate has taken cognizance of the said complaint and issued the process against the present

applicant. After issuance of the process, the present applicant appeared and filed an application for dismissal of the complaint on the ground that the complainant has not filed any supporting document to show that the payment was made by him to the accused on 14.07.2016, 30.08.2016 and 09.09.2016. As there is no legal and enforceable debt on the part of the present applicant and the agreement dated 07.07.2017 which is brought on record by the complainant itself shows that the cheque No.646956 issued towards security. Hence the cheque is not towards the legal and enforceable debt or any legal liability. The date of issuance of cheque and the date of presentation of the cheque is more than three months. Hence, the cheque is presented after the validity of the cheque and on all the above grounds, the offence under Section 138 of the Negotiable Instruments Act is not made out.

7. The said application is strongly opposed by the complainant on the ground that there was a hand loan transaction, against the said hand loan transaction the cheque was issued. Thus, the non-applicant No.1 was holder in due course and the presumption lies in favour of him as well as he should have an opportunity to adduce the evidence whether there was any land loan or not and at this stage, it cannot be dismissed.

8. Learned Magistrate after hearing both sides and on perusal of the entire record dismissed the application. Being aggrieved with the same, the present applicant has preferred the present revision which also came to be dismissed. Hence, the present application.

9. Heard learned counsel for the applicant, who submitted that the trial Court as well as the revisional Court has not considered that *prima facie* there is no material on record to show that there was any hand loan transaction and the cheque was issued against the said transactions. In view of that, he submitted that in absence of any material on record, no *prima facie* offence is made out, and therefore, the complaint deserves to be dismissed.

10. Learned counsel for the non-applicant No.1 has supported the order passed by both the Courts and submitted that the application is devoid of merit and liable to be dismissed.

11. On hearing both sides and on perusal of the recitals of the complaint, it reveals that it was contended by the non-applicant No.1, who is the original complainant that the present applicant who is the original accused was in need of financial assistance, and therefore, he approached to the complainant in the month of July 2016 and requested the complainant to pay the hand loan. Accordingly, he has paid the

hand loan on various dates and towards the repayment of the said hand loan, the applicant has issued the cheque bearing No.646956 dated 31.07.2017 of Rs.15,00,000/- drawn on the State Bank of India, which was deposited by him. On depositing it was returned with an endorsement 'funds in sufficient', therefore, the statutory notice was given to the present applicant. After receipt of the notice also, the amount was not paid. Thus, the cause of action was arose to file the said complaint, in view of that, the offence is made out. Thus, the recitals of the complaint specific averments that the accused issued the cheque against the legal and enforceable debt, there is a specific allegation against the accused. In view of the aforesaid, the burden of proof lies, admittedly, on the present applicant. Moreover, the opportunity is to be granted to the complainant to adduce the evidence that he was having means to give such amount to the present applicant as hand loan. Still that stage has not come, therefore, at this stage, it would not be appropriate to consider that there is no evidence to prove the fact that the non-applicant No.1 is having any sufficient means to give such an amount. The learned Magistrate as well as the learned Additional Sessions Judge has considered this aspect and observed that "the petitioner in fact in this situation cannot make a grievance with regard to the cognizance being taken by the learned Magistrate without perusal of recitals of agreement or the cheque was misused by the present applicant. In Negotiable Instruments Act, there is presumption to the cheque, it has been issued for discharge of legal enforceable debt. So, it is on the part of the accused/revision petitioner to rebut the said presumption by adducing the evidence.

12. Admittedly, the opportunity is to be granted to the non-applicant No.1 to adduce the evidence whether he was having any sufficient means to give hand loan. The presumption is also in favour of the complainant. However, the complainant has to prove the foundational facts and thereafter the presumption will attract in his favour. But for proving the foundational fact, the opportunity is to be given to him to adduce the evidence. In view of that, the application being devoid of merit and liable to be rejected. Accordingly, I proceed to pass following order:

ORDER

(i) The application is **rejected**.

(ii) The trial Court shall not be influenced by the observation of this Court, which is only for the purpose of deciding the present application.

(URMILA JOSHI-PHALKE, J)