



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

CRIMINAL APPEAL NO. 47 OF 2026

...

Jaswant S/o Tejraj Gorghate (Complainant),
Age 63 yrs, Occu. Business,
R/o. 1st Floor, Plot No.161-A, Vivekanant Nagar,
Wardha Road, Nagpur – 440 015,
Tah. & Distt. Nagpur.

... **APPELLANT**

- - **V E R S U S** - -

Naresh S/o Lahuji Charde, (Accused),
Age 45 yrs, Occu. Advertiser,
R/o M/s Shubh Ad's, Block No.13,
Paul Complex, Ajni Square,
Nagpur – 440 015, Tah. & Distt. Nagpur.

... **RESPONDENT**

Mr. Jaswand Tejraj Gorghate, Appellant in Person.

Mr. Prafulla W. Jasutkar, Advocate for the Respondent.

CORAM : M.M. NERLIKAR, J.

DATED : APRIL 18, 2026.

ORAL JUDGMENT

Heard finally by consent at the stage of admission.

2. The present appeal under Section 372 of the Code of Criminal Procedure, 1973, (Cr.P.C.), is filed by the complainant, namely, Jaswand Gorghate. He has argued in person. This Court asked him whether he requires a counsel/Advocate from legal Aid Panel, he refused the same. He argued that the Advocates on legal Aid Panel don't have basic knowledge. This Court cautioned him not to make such comment / allegations against Advocates on Legal Aid Panel. Therefore, I proceeded to hear him personally.

3. The appellant has challenged the judgment and order dated 22/09/2025, passed by the 11th Joint Judicial

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Magistrate First Class, (Court No.8), Nagpur, wherein, the respondent/accused – Naresh Lahuji Charde, was acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short “N.I. Act”).

4. The party-in-person has vehemently submitted that the trial Court has miserably failed to take into consideration the relevant record placed before it. He further submits that the trial Court has intentionally recorded the evidence of the appellant falsely in collusion with the Advocate of accused. The lease deed was entered between the appellant and the accused – Naresh on 01/12/2018, which states that, the property owned by the appellant has been given on rent for the purpose of advertising hoarding. It was submitted by the appellant that though the lease agreement was entered, and thereafter, the hoarding was installed by the respondent/accused, however, rent was not paid, and therefore, according to party-in-person, the accused-Naresh had given him a cheque of Rs.50,000/- on

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23/02/2019 for the payment of rent. The said cheque was submitted to the bank for encashment, however, it was returned with an endorsement "Payment stopped by drawer." Accordingly a notice was issued to the respondent by Registered Post with Acknowledgement Due (RPAD). However, even after receipt of the notice, respondent failed to repay the amount, and therefore, appellant filed the complaint before the learned Magistrate. He further submits that he had also made an application to the Senior Police Inspector (Officer Incharge), Nagpur, for the alleged fraud. He further contended that so far as the evidence led before the trial Court is concerned, it is not recorded as per his version, and that the trial Court has also played fraud on him in collusion with Advocate for respondent. He lastly submitted that, he has proved the case beyond reasonable doubt, and therefore, the respondent herein be convicted under Section 138 of the N.I. Act.

5. On the other hand, the learned counsel appearing

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for the respondent vehemently opposes the appeal and submits that the complaint filed before the Judicial Magistrate itself is not tenable in view of the fact that the prayers made in the appeal are altogether different. He has invited my attention to the appeal memo and submitted that, the appellant has made wild allegations against the Court as well as the counsel appearing for the accused. Amongst other prayers made in the present appeal is a prayer to pass an order against the learned counsel for the accused because he has committed professional misconduct in the trial Court. He further submitted that, the appellant has miserably failed to prove his case beyond reasonable doubt. When the complaint before the trial Court itself was not maintainable, the Court ought to have rejected it at the threshold, however, considering the fact that appellant appeared in person, the Court has entertained and treated the complaint under Section 138 of the N.I. Act. The appellant has miserably failed to bring on record the notice which has been served on the accused / respondent. He further submitted that

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the cheque was issued by Shubh AD'S, however, said Shubh AD'S was not made party to the proceedings. Though the appellant has admitted in his cross-examination that, there are two signatures appearing in the cheque, out of which one signature is of Pankaj Ingale, he has not been made party in the proceedings before the trial Court. He submits that appellant has also admitted that he has not placed on record the acknowledgment in respect of service of notice, and therefore, the basic criteria for institution of complaint under Section 138 of the N.I. Act is not fulfilled. Even if it is presumed that the lease-deed agreement was executed, however, according to the learned counsel, the appellant has miserably failed to bring on record that it was acted upon, for the reason that, he has specifically admitted in the cross-examination that the hoarding is not installed on the spot. Learned Counsel further submitted that the cheque was not issued in discharge of any legally enforceable debt which is a necessary ingredient under Section 138 of the N.I. Act. Lastly it was submitted that the

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presumption under Section 138 of the N.I. Act has been rebutted by the respondent which is evident from the cross-examination of the appellant, and therefore, according to him, the trial Court has considered each and every aspect and thereafter acquitted the accused holding that the appellant has miserably failed to prove his case beyond reasonable doubt, and therefore, the respondent was acquitted by the trial Court.

6. It is necessary to mention at this juncture that the complaint was filed by the appellant titled as under:-

“COMPLAINT FILED FOR THE OFFENCES OF FRAUD, CRIMINAL BREACH OF TRUST, CHEATING U/S-138 NEGOTIABLE INSTRUMENT (AMENDMENT) ACT 1881, 2018 r/w section 142.”

7. In the complaint, the complainant/appellant has made the following prayers:-

“ This Hon'ble Court be pleased and pass order in favour of your deeply aggrieved Landlord Complainant's Rights:

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1) *to pay an amount Rs.1,38,000/- to your complainant by issuing written order to the Accuse abovenamed within one day in the interest of justice by protecting your Complainant's rights u/s 141 of its liability.*

2) *to compensate the financial loss, injury and damage caused to the said property that has to be forced to suffer mental agony, anxiety, court expenses etc. of Rs.50,000/- to you complainant in the interest of rule of law.*

3) *to punish under IPC against Accuse abovenamed for the commission of offences of fraud, breach of trust, cheating etc.”*

8. I have considered the rival submissions. So far as the merits of the case is concerned, I have gone through the entire record including the complaint, evidence, and the documents placed before me. To decide the case, following issues are necessary to be proved:-

(i) Whether Statutory Notice was issued by the appellant as required under Section 138 of the N.I. Act;

(ii) Whether complainant/appellant proved that the cheque was issued by the respondent/accused for discharge of legally Enforceable Debt and;

(iii) Whether the complaint is maintainable for not arraying another partner, namely, Pankaj Ingale, as accused.

(i) **STATUTORY NOTICE :-**

So far as the notice part is concerned, appellant admits that no notice was sent to Shubh AD'S or to Pankaj Ingale. It appears from the record that, notice at Exh.26 demanding amount was issued by one K.A. Peter. Even this fact was admitted in cross-examination by the complainant that Exh.26 bears the name of K.A. Peter as sender of the said notice. It is further to be noted that there is no evidence on record to show that the said notice though issued by K.A. Peter was received by the respondent, in fact, nothing was placed on record by the appellant to substantiate this contention. It is also not clear from record as to who is K.A. Peter and why K.A. Peter's acknowledgment is placed on record. Nothing was brought on record to prove that on behalf of appellant, K.A.

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Peter has issued legal notice to the respondent. Under such circumstances, I hold that the basic ingredients for invoking Section 138 of the N.I. Act is lacking.

ii) **ENFORCEABLE DEBT:-**

After perusal of the evidence on record, the appellant has produced on record the documentary evidence such as Exh.23 is lease-deed agreement between the parties, Exh.24 is the legal notice, Exh.27 is the Postal Tracking report and Exh.28 is the complaint to the Police. In support of the documentary evidence, the appellant has led his evidence. It appears from the examination-in-chief that, the appellant has not proved the documents such as stamp paper, postal receipt and acknowledgment, however, only for the purpose of identification, the Court has given them exhibit numbers. Therefore, the main question that is to be considered is, whether the cheque was issued for a legally enforceable debt or not.

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After going through the averments as well as evidence placed before me, it appears from Exh.25 that the said cheque was issued by Shubh AD'S, there are two signature appearing on the said cheque. The cheque amount is of Rs.50,000/-. It further appears that, when the cheque was presented, the said cheque was not encashed but was returned with the endorsement "Payment stopped by drawer." It is necessary to mention at this juncture that, during the evidence, it was specifically admitted by the appellant that the cheque at Exh.25 is not of the personal bank account of the accused. He admits that it is not known whether Exh.25 is belonging to the account of the accused. It was suggested that the cheque belongs to Shubh AD'S and the cheque was never given by the accused. It was further suggested that the cheque does not bear the signature of the respondent. The appellant has denied all these suggestions, however, he admits that, there are two signatures on the cheque at Exh.25. He further admits that, so far as right side signature is concerned, i.e., is of one Pankaj

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Ingale, however, he denied, that he has forged the other signature on the left side.

Under such circumstances, the main ingredient is whether the cheque is handed over by the respondent for legally enforcement debt or not. In his cross-examination, he has specifically admitted that he has not placed anything on record that the said land belongs to him. No proof has been placed on record except Exh.23 which is a lease-deed. He further admits that the lease-deed agreement was entered between the appellant and Shubh AD'S which is correct as can be seen from the perusal of the lease-deed. It further appears that the respondent was shown as a witness in the said lease-deed, under such circumstances, it cannot be said that one of the signature appearing on the cheque is of the respondent. When the appellant has miserably failed to prove that second signature was of the respondent, it is very difficult to say that the cheque was issued by the respondent himself in his personal capacity for a legally enforceable debt.

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It is further admitted by the appellant that during the period, i.e., December, 2018 to February, 2019, there was no installation of any hoarding on the said land, meaning thereby, it appears that, the lease-deed was not acted upon. Under such circumstances, it cannot be said that, the cheque was issued for a legally enforceable deed.

(iii) NON JOINDER OF NECESSARY PARTY:-

Appellant admits that he has not made said Pankaj Ingale as party respondent in the present proceedings. Considering the assumptions by the appellant, that he was not aware of the fact whether the cheque is issued from the personal account of the respondent or not, under such circumstances, he has presented the said cheque to Federal Bank, wherein the account of Shubh AD'S is there. However, it appears from the record that the said cheque was returned with the endorsement "Payment stopped by drawer." It is pertinent to note that the said Pankaj Ingale is not made party respondent

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though he is a signatory to the cheque.

It further appears that there are two signatures on the cheque, presuming for a moment that, one signature is of the present respondent, however, when there is another signature, it was incumbent on the part of the complainant / appellant to make Pankaj Ingale as party respondent, however, it appears from the record that, the complainant / appellant has unilaterally tried to prosecute the respondent herein, therefore, the complaint is bad in law for non-joinder of necessary party. It is further to be noted that it appears from the examination-in-chief of the complainant/ appellant that he has presented the cheque in the account of respondent herein.

9. After considering the entire cross-examination of the complainant / appellant, it is crystal clear that, the ingredients of Section 138 of the Negotiable Instruments Act, are not fulfilled and the respondent has successfully rebutted the presumption provided under Sections 118 and 139 of the N.I.

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Act. It is further to be noted that, after going through the entire judgment of the trial Court, I do not find any perversity, the Court has considered the entire material.

CONDUCT OF THE APPELLANT:-

10. At the outset, it is necessary to mention at this juncture that, during the hearing of more than one hour of the appeal, the appellant before this Court has made a bold statement that the evidence was not recorded by the concerned Judge as per his version. He has repeated for several times the same despite of cautioning him. It is necessary to mention at this juncture that, the Judges has nothing to do with, they are doing their work to the best of their abilities, and therefore, making such bold statement derogates the majesty of law, this practice of making bold allegations against the Judges needs to be deprecated. Further such statement is made, without any proof thereof.

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11. The appellant has alleged that his evidence has not been recorded as per his narration, and therefore, he has made allegations against the learned Magistrate. Not only that, it appears in the present appeal memo in Paragraph No.7 at Page 7, he has made the following allegations:

“7) Despite, complainant had filed Notes of written argument vide Annx.I and pursis Annx.J on record, the accused's counsel has mislead, misinformed and falsely interpreted the primary evidences of complainant by dictating himself to the Ld.magistrate and falsely recorded the cross examination of complainant wilfully in trial court during pleading, as the complainant appeared in person.”

12. It is further to be noted that the appellant again has argued the matter saying that the basic facts and grounds have not been considered by the trial Court, and therefore, the appeal is to be allowed. This is nothing but an abuse of process of law. The appellant has taken undue advantage of the fact that he was allowed to appear in person. Further, the practice of making allegations is required to be dealt with sternly and

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needs to be deprecated. Under such circumstances, in the absence of any proof thereof, the appellant has made wild allegations, and therefore, I am constrained to impose cost of Rs.50,000/- on the appellant. Hence the following order :-

ORDER

(i) The appeal is **dismissed** with costs of Rs.50,000/-;

(ii) The cost shall be deposited by appellant within three months from the date of passing of this order in Union Bank of India, Branch – High Court, Civil Lines, Nagpur, in Public Welfare Account No.129712010001014, IFSC Code – UBIN0812978;

(iii) In case, the appellant fails to deposit said amount of cost within stipulated period, the same be recovered from the appellant as land revenue arrears and after recovery same be deposited in the Union Bank of India, Branch – High Court, Civil

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Lines, Nagpur, in Public Welfare Account

No.129712010001014, IFSC Code – UBIN0812978.

[**M. M. NERLIKAR, J**]