IN THE COURT OF 13th JUDICIAL MAGISTRATE FIRST CLASS PUNE, AT PUNE

[Presided over by A. A. Pandey]

Summons Criminal Case No.29592/2018
Exh. No. –
CNR : MHPU040342612018

Complainant	Bapu Nathu Akhade, Age – Adult, Occ. : Stall owner, R/o. : Flat No. 3, Shramsapalya Building, Happy Colony, Wadgaon Budruk, Sinhgad Road, Pune 411041.
Represented by	Adv. S.K. Pandit, Ld. Advocate for the Complainant.
Accused	Rahul Nivrutti Gunjal, Age : Adult, Occ. : Business, R/o. : A-6, Rahi Terrace, 3rd Floor, Behind Rajashree Shahu Sahakari Bank, Narahe, Pune 411041
Represented by	Adv. S. S. Salunkhe, Ld. Advocate for the Accused.

Date of offence	30.05.2018
Date of F.I.R.	Nil
Date of Chargesheet	Nil
Date of Framing of Charge	12.02.2019
Date of Commencement of evidence	06.10.2021
Date on which judgment is reserved	15.04.2024
Date of the Judgment	15.04.2024
Date of Sentencing Order, if any	Nil
Duration	Y05 M10 D16

Accused Details

Name of the accused	Date of Arrest (formal)	Date of Release on bail	Offences charged with	Whether acquitted or convicted	Period of Detention Undergone during Trial for purpose of Section 428, Cr. P. C.
Arun Ganpat Jagdale	Nil	Nil	Section 138 of the N. I. Act	Acquitted	Nil

A. List of Complainant Witnesses:

Rank	Name	Exh. Nos.	Nature of Evidence
CW1	Bapu Nathu Akhade	05	Complainant

B. Complainant Exhibits:

Sr. No.	Exh. Nos.	Description
1	21 to 23	Cheques
2	24, 26 and 28	Cheque Return Memos
3	25, 27 and 29	Cheque Intimation
4	30	Bank Statement of Complainant
5	31	Section 65-B Certificate
6	32	Bank Statement of Complainant
7	33	Office Copy of Demand Notice
8	34	Postal Receipt
9	35	Postal Acknowledgment

C. List of Accused Witnesses:

Rank	Name	Exh. Nos.	Nature of Evidence
DW1	Radha Nivrutti Gunjal	52	Witness

D. Defence Exhibits:

Sr. No.	Exh. Nos.	Description
	Nil	Nil

E. Courts Exhibits:

Sr. No.	Exh. Nos.	Description
	Nil	Nil

F. Material Objects:

Sr. No.	Material Object/Article Nos.	Description
1	Nil	Nil

JUDGMENT

[Delivered on 15th April, 2024]

The accused is indicted for dishonour of a cheque tendered by him to the complainant drawn on his account issued in discharge of a legally enforceable debt and, failing to pay the cheque amount within notice period, thereby committing an offence punishable under section 138 of the Negotiable Instruments Act *(hereinafter referred as "the N.I. Act")*.

(2) ***In brief, the case of the complainant is as under :-***

Both, the complainant and the accused run their respective food stalls near Ganga Bhagyoday society, opposite Hume pipe company at Sinhgad road, Pune. Therefore, they are acquainted with each other since the year 2012. In April 2017, the accused represented to the complainant that as his mother was suffering from diabetes and other serious health issues, he was in dire need of money for her medication and hospitalization. Citing this, the accused requested the complainant to lend him Rs.3,00,000/- (rupees three lakhs only) as a short term hand loan. Considering their cordial relations and the extreme need of the accused, the complainant lent him Rs.2,00,000/- (rupees two lakhs only) as a hand loan. Out of the said hand loan, Rs.1,42,500/- (rupees one lakh forty-two thousand and five hundred rupees only) were paid vide cheque bearing No.175290 dated 18/04/2017 drawn on Mahesh Sahakari Bank, Branch Sinhgad Road, Rs.47,500/- (rupees forty-seven thousand five hundred only) were paid vide cheque bearing No.437061 dated 05/05/2017 drawn on Vishveshwar Sahakari Bank, Branch Sinhgad Road and Rs.10,000/- (rupees ten thousand only) were paid in cash as per the instructions of the accused. The said hand loan was agreed to be paid in a period of six months.

(3) However, in August 2017, the accused's mother passed away. Therefore, the complainant did not demand the repayment from the accused. Thereafter, in November 2017, the accused sought some more time for the repayment. Considering the relations between them and the sad demise of accused's mother, the complainant accepted the said request of the accused. Thereafter, the complainant met the accused in the month of January and asked him for the repayment of the loan amount. However, the accused sought

time till April 2018. Accordingly, the complainant demanded the repayment of the loan amount from the accused in April 2018, who showed his willingness to make the repayment. The accused was issuing one cheque of the total loan amount but the complainant requested him to issue three different cheques for the total repayment so that he can put it for encashment in his three different accounts. Accordingly, the complainant issued three cheques bearing Nos. 013056, 013057 and 013058 all dated 11/04/2018 and drawn on his account in Union Bank of India, Branch Shivaji Road, Pune for an amount of Rs.75,000/- (rupees seventy-five thousand only), Rs.75,000/- (rupees seventy-five thousand only) and Rs.50,000/- (rupees fifty thousand only) and assured that they will be honoured on their presentation in the bank. The complainant presented these three cheques through his banker, but; they were dishonoured and returned with memo with endorsement ‘Funds Insufficient’ on 12/04/2018. Therefore, the complainant issued the notice to the accused through his learned advocate by R.P.A.D. on 18/04/2018, calling upon him to make the payment of cheques amount within 15 days of the receipt of the notice. The notice was served upon the accused on 21/04/2018. However, he failed to pay the cheques amount within the stipulated period and thus, the complainant filed the present case.

(4) My learned predecessor framed particulars of offence against the accused at Exh.12. Its contents were read over and explained to him in his vernacular. He pleaded not guilty and claimed to be tried.

(5) The complainant examined himself as a witness at Exh.05.

(6) After completion of complainant's evidence, the accused was examined under section 313(1)(b) of Criminal Procedure Code, 1973 at

Exh.39. According to him, he had given the cheques after endorsing his signature and putting the amounts on them but he had not put the names, dates and account pay instructions on them. He has already repaid the loan amount to the complainant. The complainant has filed the present case just to harass him.

(7) The accused examined Radha Nivrutti Gunjal as his witness.

(8) Heard Learned Advocate Shri. S. K. Pandit for the complainant and Learned Advocate **Shri. S. S. Salunkhe** for the accused. Perused the record. The following points arise for my determination. I have recorded findings along with reasons thereto as follows.

Sr.No	**POINTS**	**FINDING**
1.	Does the complainant prove that, the accused issued three cheques bearing Nos. 013056, 013057 and 013058 all dated 11/04/2018 for an amount of Rs,75,000/-, Rs.75,000/- and Rs.50,000/-, respectively all drawn on Union Bank of India, Branch Shivaji Road Pune in his favour?	In affirmative.
2.	Does the complainant prove that, the cheques issued by the accused were dishonoured?	In affirmative.
3.	Does the complainant prove that, he made demand for payment of the cheques amount by giving a demand notice dated 18/04/2018 in writing to the accused?	In affirmative.

Sr.No	**POINTS**	**FINDING**
4.	Does the complainant prove that, in spite of service of the demand notice dated 18/04/2018, the accused failed to make payment of the cheques amount to the complainant within 15 days from the receipt of the demand notice?	In affirmative.
5.	Does the complainant prove that, the cheques were issued towards discharge in whole or in part of any legal debt or other legal liability?	In affirmative.
6.	What order?	Accused is convicted.

R E A S O N S

Point No.1 : *(Issuance of the cheque)*

(9) To prove that the accused had issued the cheques (Exh.21, 22 & 23) in his favour, the complainant Bapu (CW1) deposed that, the accused issued the cheques (Exh.21, 22 & 23) to discharge his debt. The accused did not deny giving the said cheques (Exh.21, 22 & 23) to the complainant (CW1). In this way, signature on the cheques (Exh.21, 22 & 23) are admitted. The complainant has filed the original cheques (Exh.21, 22 & 23) on record. Evidently, it is lying in his custody. Hence, I reply point No.1 in the affirmative.

Point No.2 : *(Dishonour of cheque)*

(10) The complainant Bapu (CW1) deposed that, the cheques (Exh.21, 22 & 23) given by the accused were presented in his account in

Union Bank of India, Branch Sinhgad Road, however, they were dishonoured and returned with the memos (Exh.24, 26 and 28) dated 11/04/2018 carrying endorsement- ‘Funds Insufficient’. In support of these submissions, the complainant (CW1) has placed on record, the original cheques (Exh.21, 22 & 23) and computer generated return memos (Exh.24, 26 and 28). As per these return memos (Exh.24, 26 and 28) the cheques (Exh.21, 22 & 23) were presented on 11/04/2018 and these return memos (Exh.24, 26 and 28) were created on 12/04/2018. Although, the return memos (Exh.24, 26 and 28) filed by the complainant (CW1), being computer generated, does not bear the signature and stamp of the concerned bank which disqualifies it to the benefit of presumption as per section 146 of the N. I Act, however, the accused has nowhere denied that these cheques (Exh.21, 22 & 23) were dishonoured as claimed by the complainant. Therefore, it can be inferred that, the cheques (Exh.21, 22 & 23) presented by the complainant (CW1) in his bank account were dishonoured for the reasons ‘Funds Insufficient’. Accordingly, point No.2 is replied in the affirmative.

Point No.3 : *(Service of notice)*

(11) The complainant Bapu (CW1) deposed that, on dishonour of the cheques (Exh.21, 22 & 23), he issued demand notice (Exh.33) to the accused by registered post. He has filed the postal receipt (Exh.34) and postal acknowledgment (Exh.35) on record. It shows that, the demand notice (Exh.33) was received by accused on 23/04/2018. The complainant has filed the office copy of the demand notice at Exh.33. The accused has not denied receiving the demand notice (Exh.33) on 23/04/2018 as per the postal acknowledgment (Exh.35). Therefore, in this situation, it is clear that the notice (Exh.33) was served on the accused as claimed by the complainant

(CW1). Therefore, I reply point No.3 in the affirmative.

Point No.4 : *(Non-payment of cheque amount)*

(12) The complainant Bapu (CW1) deposed that, in spite of receiving the demand notice (Exh.33), the accused failed to make payment of cheques amount. Likewise, the accused did not bring anything on record to show that the payment was made within 15 (fifteen) days of receiving the demand notice (Exh.33). Resultantly, I reply point No.4 in the affirmative.

Point No.5 : *(Legally enforceable debt or liability)*

(13) So far, the complainant has been successful in satisfying all the elementary of offence taken up for consideration by this Court, as a result of which, point Nos.1 to 4 are answered in the affirmative. Now, the moot question revolves around existence of legally enforceable debt or liability which the accused, may or may not, owe to the complainant. Essentially, the existence of legally enforceable debt or liability would determine the fate of this case.

(14) Before proceeding further, it would be of significant help to consider the settled law regarding the cases of dishonour of cheque, under the lights and shines of the guidelines set-forth by the Hon'ble Supreme Court of India. In case of, ***Bir Singh vs. Mukesh Kumar, 2019 ALL SCR (Cri) 510,*** the Hon'ble Supreme Court held that, "*once the signature and issuance of cheque is admitted by the accused, the presumption under section 139 of the Negotiable Instruments Act is raised in favour of the complainant that the holder of cheque received the cheque of nature referred to in section 138 for discharge of any debt or other liability. Onus is on accused to rebut the*

presumption by proving that cheque was not in discharge of any debt or other liability. Even a blank cheque leaf voluntarily signed and handed over by accused towards some payment, would attract presumption under section 139 of N.I. Act, in absence of any cogent evidence to show that cheque was not issued in discharge of debt".

(15) In the case at hand, the accused has admitted his signature on the cheques (Exh.21, 22 & 23). Therefore, the presumption under section 139 of the N.I. Act is raised in favour of the complainant (CW1). Section 139 of the N.I. Act provides for a presumption of existence of legally enforceable debt or liability in favour of the complainant. However, this presumption is rebuttable. The accused can rebut the presumption by setting up a probable defence. The rebuttal could be by stepping into the witness box or setting up a probable defence through cross-examination of the complainant's witnesses.

(16) Moving further, let's now appreciate the evidence envisaged by the accused to rebut the presumption of legally enforceable debt or liability existing against him. To begin with, it is essential to note that the onus is on the accused to rebut the presumption under section 139 of the N.I. Act and, in the present case the accused has not stepped into the witness box himself, though, he has examined his sister Radha (DW1) as a defence witness. Therefore, this Court has to crystallize the cross-examination of the complainant (CW1) and the evidence of Radha (DW1) to discern if the accused has rebutted the existing presumption or not.

(17) The complainant Bhausaheb (CW1) has deposed at Exh.07 by filing his evidence affidavit. His evidence affidavit is identical to the complaint filed by him, hence, its contents are not repeated for the sake of

brevity. Now, a close look at the cross-examination of the complainant would show that the accused has nowhere denied taking the hand loan of Rs.2,00,000/- (rupees two lakhs only) from the complainant (CW1). His defence, as can be seen from the cross-examination of the complainant (CW1) and the chief-examination affidavit (Exh.52) of Radha (DW1) is that he had repaid the loan amount to the complainant (CW1) in cash and the complainant has misused the cheques (Exh.21, 22 & 23) which were given to him at the time of the taking the hand loan.

(18) Now, while conducting the cross-examination of the complainant (CW1), the accused tried to set-up a defence that he has repaid the loan amount to the complainant (CW1). Even in his statement under section 313(1)(b) recorded at Exh.39 he claimed that he has returned the hand loan amount to the complainant (CW1). Both these statements are made in a way to make this Court believe that he had discharged the hand loan which he owed to the complainant (CW1). However, Radha (DW1), on the other hand, claimed that they have repaid Rs.1,50,000/- (rupees one lakh fifty thousand only) to the complainant and they owe only Rs.50,000/- (rupees fifty thousand only) to him which they are ready to pay. Therefore, there are two versions of repayment by the accused which makes his defence unbelievable.

(19) Moving further, Radha (DW1) has claimed that she had taken a loan of Rs.85,000/- (rupees eighty-five thousand only) from Capital First Finance on 28/08/2017. The complainant (CW1) came to know about it and demanded money from them. Therefore, they added Rs.15,000/- (rupees fifteen thousand only) to the said loan amount and gave Rs.1,00,000/- (rupees one lakh only) to the complainant (CW1). They asked the complainant (CW1) to return the cheques which he promised to return afterwards once his

son was discharged from the hospital. Thereafter, they paid Rs.50,000/- (rupees fifty thousand only) to the complainant (CW1) on 11/03/2018 and sought some more time for the remaining amount. But the complainant (CW1) did not hear anything and later on they came to know that the complainant (CW1) has gotten their cheques dishonoured.

(20) In her cross-examination, she is seen to be changing her case quite often. For instance, she claimed in her chief-examination that, they had taken the loan from Capital First. However, in her cross-examination, she is seen to be making alternate statements about who had taken the said loan. In one breath, she said that she had taken the said loan and the loan amount had credited to her account, while in the other, she said that the loan was taken in the name of her brother and the loan amount had credited to his account. Now, the question is, if the loan was taken by the accused then why did he not examine himself as a witness? It is further seen that she claimed in her cross-examination that, she took the said loan to repay the loan amount of the complainant (CW1). However, this reasoning is missing in her chief-examination. On the contrary, she claimed in her chief-examination that when the complainant (CW1) came to know about the said loan, he started demanding money from them. Therefore, the evidence of Radha (DW1) is self contradictory on material points and it appears that her testimony is inspired by her relationship with the accused.

(21) Even otherwise, the accused has no explanation for not taking any written acknowledgment from the complainant (CW1) while making the alleged repayment to him when he had taken the loan amount from the complainant (CW1) on his bank account. He has no explanation for not replying to the demand notice (Exh.33) sent by the complainant (CW1)

wherein he could have put his case forward at the very first instance. He has no explanation for not sending any legal notice to the complainant (CW1) seeking return of the cheques (Exh.21, 22 and 23) if he had already paid the loan amount to the complainant (CW1). He has no explanation, whatsoever, for not giving any instructions to his bank to stop the payment of the cheques (Exh.21, 22 and 23) if he had already paid the loan amount to the complainant (CW1), as it can be seen that the cheques (Exh.21, 22 and 23) were returned not because its payments were stopped but for insufficient funds in the account of the accused. Therefore, in this situation, there is nothing on record to show that the accused had discharged his loan to the complainant (CW1), either wholly as claimed by him, or, partially as claimed by his sister Radha (DW1).

(22) Moving further, from the cross-examination of the complainant it is further seen that that accused has denied the date and name on the cheques (Exh.21, 22 and 23) to be in his hand-writing. Effect, if any, to the presumption existing in favour of the payee under section 139 of the N.I. Act if the contents of the blank cheque is not filled by the drawer is explained by Hon'ble Supreme Court in case of, ***Bir Singh Vs. Mukesh Kumar, (2019) 4 SCC 197.*** The Hon'ble Supreme Court observed as follows.

> *"If a signed blank cheque is voluntarily handed over to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the*

drawer.”

(23) Now coming to the present case, the accused has not denied giving the cheques (Exh.21, 22 and 23) to the complainant (CW1). On the contrary, he has admitted giving these cheques (Exh.21, 22 and 23) to the complainant (CW1) but according to him, these cheques (Exh.21, 22 and 23) were given on 17/07/2017 which is denied by the complainant. Even if it is taken as true, then also, there is a gap of two months between the date of securing the hand loan from the complainant (CW1) and the date of handing over the cheques (Exh.21, 22 and 23) as per the accused. Further, the accused has not taken any defence that these cheques (Exh.21, 22 and 23) were given as a security to the complainant (CW1), irrespective of the time when they were given. Therefore, in view of the dictum mentioned above, the complainant (CW1) had all the rights to fill in the remaining contents of these cheques. However, the court is duty bound to see if the accused was under any undue influence or was coerced to issue the blank cheques. But, the accused has not led any evidence of coercion or undue influence which made him to hand over the cheques (Exh.21, 22 and 23) to the complainant (CW1). Hence, the present defence is not enough to invalidate the presumption against the accused.

(24) To conclude, it stands proved that the complainant (CW1) had paid Rs.2,00,000/- (rupees two lakhs fifty only) to the accused. Towards its repayment, the accused issued the cheques bearing nos. 013056 (Exh.21) and 013057 (Exh.32) each for amount of Rs.75,000/- (rupees seventy-five thousand only) and the cheque bearing No.013058 (Exh.23) for an amount of Rs.50,000/- (rupees fifty thousand only) in favour of the complainant (CW1). Total sum of these cheques (Exh.21, 22 and 23) amounts to Rs.2,00,000/-

(rupees two lakhs only). The liability existing on the date when these cheques (Exh.21, 22 and 23) were presented in the bank was also Rs.2,00,000/- (rupees two lakhs only). In short, the cheques (Exh.35 & 36) were issued in discharge of legally enforceable debt by the accused in favour of the complainant (CW1). Accordingly, I reply the point under consideration in the affirmative.

Point No.6: *(Order)*

(25) To conclude the foregoing discussion, the accused issued the cheques (Exh.21, 22 and 23) in discharge of legally enforceable debt. They were dishonoured. The accused received demand notice (Exh.33) from the complainant (CW1). Even then, he failed to make good the cheques (Exh.21, 22 and 23) amount within the stipulated period. As a natural corollary, he stands convicted.

(26) Heard accused, his Learned Advocate and Learned Advocate for the complainant on the quantum of sentence. Learned Advocate for the accused submitted that the accused is the only bread earner of his family. He runs a tea stall. His father and sister are senior citizens and they are dependent upon him. On this note, he prayed for leniency in sentencing. Contrarily, Learned Advocate for the complainant submitted that if the complainant had invested the said amount somewhere else then, he would have earned some profit over it. Hence, the accused be sentenced to maximum punishment and hammered with twice the amount of cheques as fine which should ultimately be paid to the complainant towards compensation.

(27) As the present offence has economical folds, the benefit under

Probation of Offenders Act cannot be enlarged to the accused.

(28) While deciding the quantum of compensation, one has to consider the provisions contained in sections 73 and 74 of the Indian Contract Act, 1872. Compensation need not be punitive but reasonable. It should be given after considering the nature of the transaction and the financial stability of the parties.

(29) The complainant (CW1) had paid Rs.2,00,000/- (rupees two lakhs only). However, this Court is inclined to add interest on the transaction amount for the period of time taken for this litigation. Evidently, this complaint has taken five years and ten months to attain its fate. If the complainant had deposited Rs.2,00,000/- (rupees two lakhs only) as fixed deposit in a bank, he would have earned some handsome returns, at a minimum of 7% per annum. At the same time, it is important to keep in mind that the accused runs a food stall and his financial stretch is limited. Therefore, this Court is duty bound to secure the interest of both the parties. That is to say, the compensation should be enough to make good of the time and efforts taken by the complainant to get justice, at the same time, it should not be exorbitant to exhaust the hopes of the accused in life. Considering all these aspects, this Court considers an interest @ 7% per annum would meet the ends of justice. That would be Rs. 81,667/- (rupees eighty-one thousand six hundred sixty-seven only) towards interest. The complainant has also paid Rs.3,000/- (rupees three thousand only) towards court-fee stamp and incurred miscellaneous expenses to make this complaint reach its destination, say Rs.10,000/- (rupees ten thousand only). These amounts are to be awarded in addition to the cheque amount. Therefore, Rs.2,94,667/- (rupees two lakhs ninety-four thousand six hundred sixty-seven only) coupled with substantive

sentencing would meet the ends of justice. Order as follows.

<u>O R D E R</u>

1. Accused Rahul Nivrutti Gunjal is hereby convicted for the offence punishable under Section 138 of the Negotiable Instruments Act as per Section 255(2) of the Code of Criminal Procedure, 1973 and he is sentenced to suffer simple imprisonment for a period of 3 (three) months.

2. The accused do pay Rs.2,94,667/- (rupees two lakhs ninety-four thousand six hundred sixty-seven only) as compensation to the complainant vide section 357(3) of the Code of Criminal Procedure, 1973 within 30 (thirty) days from the date of this order. In default, to suffer simple imprisonment for 15 (fifteen) days.

3. The accused shall surrender his bail bonds.

4. A copy of this Judgment be given to the accused free of cost.

Judgment dictated and pronounced in the open Court.

ALOK ASHOK PANDEY

Digitally signed by ALOK ASHOK PANDEY
Date: 2024.04.18 11:56:52 +0530

(Alok A. Pandey)
Judicial Magistrate First Class,
(Court No.13), Pune.

PUNE
APRIL 15, 2024

CERTIFICATE

I certify that the contents of this PDF File are word to word as per Original Judgment.

Name of Steno	: R. D. Sonkamble
Name of the Court	: 13th Jt.C.J.J.D. & J.M.F.C., PUNE
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