

C.C. No.OA/887/NIA/2022/A

ORDER (Below Exhibit D-39

*(Delivered on this the 19th day of the month of April of the
year 2025)*

This order shall dispose of the application at Exhibit-39 filed by the Accused for cross-examination of the Complainant.

2. By this application the Accused has sought leave to cross-examine the Complainant on the ground that demand notice is not served, there is no legally enforceable

debt, signature is not of the accused, there is no authority to depose and entries in the statement of account are false.

3. Complainant has objected to the application.

4. I have perused the record and heard learned Advocate for the Complainant and the accused.

5. On going through the application, I find that the application has been filed in the most casual manner and without disclosing any defence. It does not set out on what points the Accused wishes to cross-examine the Complainant. It is only stated that demand notice is not served, there is no legally enforceable debt, signature is not of the accused, there is no authority to depose and entries in the statement of account are false. In the present case accused has not disputed the loan. Further accused has not disputed that the cheque belongs to him. There is nothing on record as to how the cheque has landed into the hands of the complainant

6. In the case of ***Meters and Instruments Private Limited & Anr. v. Kanchan Mehta, 2018 (1) SCC***

(Cri) 477, the Hon'ble Apex Court has inter alia observed that a Accused who wants to contest the case, must be required to disclose specific defense for such contest.

7. Further, in the case of **Rajesh Aggarwal v. State & Anr., 2010 (4) RCR (Cri) 124**, the Hon'ble Delhi High Court has observed that the offence under Section 138 of N.I. Act is an offence in the personal nature of the complainant and it is an offence made under N.I. Act so that the trust in commercial transactions is not destroyed because of the dishonour of cheques. Offence under Section 138 of N.I. Act is a document based technical offence deemed to have been committed because of dishonour of cheque issued by the accused or his company or his firm. Once the complainant has brought forward his case by giving his affidavit about the issuance of cheque, dishonour of cheque, issuance of demand notice etc., he can be cross-examined only if the accused makes an application to the Court as to on what point he wants to cross-examine the witness(es). The accused must disclose to the Court as to what is his defence on the very first hearing when the accused appears before the Court. Accused cannot simply

say "I plead not guilty" and want to face trial. The application must disclose the defence of the accused and the reasons why he wants the case to be tried as a summon trial as it is within the special knowledge of the accused as to why he is not to face trial under Section 138 N.I. Act. There is no presumption that even if an accused fails to bring out his defence, he is still to be considered innocent. Complainant or his witness cannot be recalled in the Court for cross-examination only for the sake of pleasure.

8. More recently, in the case of ***Rukmakar alias Bharat Tulshidas Naik v. Santosh Shaba Gaonkar, Criminal Writ Petition no.35/2019 decided on 05.04.2019***, the facts were such that the Accused made an application before the Magistrate seeking leave to cross-examine the Complainant in a case under Section 138 of the N.I. Act. The application was conspicuously silent as to the probable defence of the Accused and on the points on which he intended to cross-examine the Complainant. The Magistrate dismissed the application observing inter alia that the Accused was required to specifically spell out the points on which he wishes to cross-examine the

Complainant and ought to disclose his defence. The order of the Magistrate was challenged before the Hon'ble High Court. The Hon'ble High Court observed thus:

“12.....the trial of the offence under Section 138 of the Act is a class apart and the Magistrate is required to conduct the trial normally in a summary way and in accordance with the procedure laid down for summary trials and in the light of the directions issued by the Supreme Court in the case of Indian Bank Association (supra) and Meters and Instruments Private Limited (supra).

14.....The first point of time when the accused has an opportunity to set out his defence is when he sends a reply to the statutory notice of the complainant. The second such opportunity to set out the grounds is in the application seeking leave to cross examine the complainant. In a given case, the accused can also disclose such grounds during the course of the hearing of the application and in answer to the questions which may be posed by the learned Magistrate as is permissible, (as held in para 20 of the judgment in the case of Meters and Instruments Private

Limited). On none of these occasions, the petitioner thought it fit to disclose the grounds as to why and on what points he proposes to cross examine the complainant...” It was thus, held that the order of the Magistrate could not be faulted and the petition was dismissed.

9. So also, in ***Paresh Bandekar v. Rajaram D. Satardekar, 2021 SSC Online Bom 254***, the facts were such that the learned Magistrate passed an order allowing the Accused to cross-examine the Complainant when the Accused had not disclosed any probable defence and had filed the application in a casual manner. The Hon’ble High Court again reiterated the view taken in Rukmakar alias Bharat Tulshidas Naik (supra) and held that in his application the Accused was required to set out the grounds or show the probable defence without which the learned Magistrate could not have granted leave to the Accused to cross-examine the Complainant. The judgment relied by the accused will have no bearing in view of the judgment referred by me above.

10. In view of above, I pass the following Order:

ORDER

The Application at Exhibit D-39 is rejected.

Pronounced in the open Court.

(Shri. Jude T. Sequeira)
Judicial Magistrate First Class,
“A” Court Ponda - Goa

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