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Exh. No. :

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-2 AMRAVATI

(Presided over by Yashwant A. Goswami)

Criminal Appeal No.58/2023

Sanjay Ganeshrao Koltake
Aged -44 Yrs., Occupation – Labour,
R/o. Anakwadi, Tq. Bhatkuli, Dist. Amravati
Tq. & Dist. Amravati. …. **Appellant**

VERSUS

1. Naresh Rameshwar Kalantri
Aged – 45 Yrs., , Occupation – Agri.
R/o. Prabhat Colony, Shilangan Road,
Amravati,Tq. & Dist. Amravati.

2. State of Maharashtra …. **Respondents.**

APPEAL UNDER SECTION 374 OF CRIMINAL PROCEDURE CODE

Advocate for Appellant : Shri. P.V.Tamhane
Advocate for respondent no.1 : Shri. N.B.Kalantri
Advocate for respondent no.2 : Shri. P.S.Ganorkar

JUDGMENT

(Dated 17.07.2026)

This appeal under Section 374(3) of the Code of Criminal Procedure, 1973 is directed against the Judgment and Order dated 15.02.2023 passed by the learned Judicial Magistrate First Class, Court No.3, Amravati in Summary Criminal Case No.3135 of 2020, whereby the appellant (original accused) came to be convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and was sentenced to suffer simple imprisonment for four months and to pay compensation of ₹3,25,000/- to respondent No.1 (original complainant), with default sentence.

2. For the sake of convenience and continuity, the parties shall hereinafter be referred to according to their original status before the learned Trial Court, i.e., respondent No.1 as the "complainant" and the appellant as the "accused".

3. The case of the complainant, in brief, is that he and the accused were well acquainted with each other. According to the complainant, on 09.05.2019, the accused approached him seeking a hand loan of ₹2,50,000/-. Considering their acquaintance, the complainant allegedly advanced the said amount to the accused on 10.05.2019 by withdrawing ₹2,40,000/- from his bank account and contributing the remaining ₹10,000/- from the cash available with him. It is his case that towards repayment of the said legally enforceable liability, the accused issued cheque bearing No.000188 dated 15.07.2020 for ₹2,50,000/- drawn on Dena Bank, Dhamori Branch. Upon presentation through the complainant's banker, the cheque came to be dishonoured with the endorsement "Funds Insufficient".

Thereafter, the complainant caused a statutory demand notice to be issued to the accused. Since the accused allegedly failed to comply with the demand within the statutory period, the complainant instituted the complaint under Section 138 of the Negotiable Instruments Act.

4. The learned Trial Magistrate, after recording the evidence of Complainant Naresh Rameshwar Kalantri (PW-1) and considering the documentary evidence produced by him, as well as the evidence adduced on behalf of the defence, namely Pravin Jaykrushna Ingle (DW-1), Bandu Baburaoji Kharchan (DW-2) and the Accused Sanjay Ganeshrao Koltake (DW-3), held that the complainant had successfully established all the essential ingredients of the offence punishable under Section 138 of the Negotiable Instruments Act. Consequently, the accused came to be convicted and sentenced as stated hereinabove.

5. Being dissatisfied with the said Judgment and Order of conviction, the accused has preferred the present appeal contending, inter alia, that the learned Trial Magistrate failed to appreciate the oral and documentary evidence in its proper perspective. According to the accused, the cheque in question was never issued in favour of the complainant. It is his specific case that in the year 2018 he had borrowed an amount of ₹1,60,000/- from one Ramji Kharbade and, as security for the said transaction, had handed over a signed cheque, a stamp paper and a 7/12 extract to the said Ramji Kharbade. Though the said amount was allegedly repaid within a short period, Ramji Kharbade did not return those documents. The complainant, who is alleged to be a friend of Ramji Kharbade, is stated to have obtained the said cheque and misused it by instituting the present complaint. It is further contended that the complainant failed to establish the actual

advancement of ₹2,50,000/- to the accused and that mere production of the bank passbook evidencing withdrawal of money does not prove payment of the amount to the accused. The findings recorded by the learned Trial Magistrate are therefore challenged as being contrary to law and evidence.

6. I have heard the learned counsel appearing for the appellant-accused and the learned counsel appearing for respondent No.1-complainant. I have carefully gone through the entire original record and proceedings, the oral and documentary evidence adduced before the learned Trial Court, the impugned Judgment and the grounds raised in the memorandum of appeal.

7. Since this is an appeal against conviction, this Court, being the first appellate Court on facts as well as law, is under an obligation to independently reappreciate the entire evidence on record and arrive at its own conclusions, while assigning reasons for either affirming or differing from the findings recorded by the learned Trial Magistrate. The evidence is therefore required to be examined afresh in the light of the statutory presumptions under the Negotiable Instruments Act as well as the defence set up by the accused.

8. The points for determination along with my findings thereon with reasons therefor are as under:

POINTS FOR DETERMINATION

S	Points	Findings
1	Whether the complainant proves that the accused issued cheque No.000188 dated 15.07.2020 for ₹2,50,000/- in discharge, wholly or in part, of a legally enforceable debt or liability?	..Yes
2	Whether the accused has succeeded in rebutting the statutory presumptions available under Sections 118(a) and 139 of the Negotiable Instruments Act by raising a probable defence?	..No
3	Whether the findings of conviction and sentence recorded by the learned Trial Magistrate warrant interference in this appeal?	..No
4	What order.	The appeal is dismissed.

REASONS

As to Point Nos. 1 and 3:

9. Before adverting to the rival factual contentions, it is necessary to notice the legal position governing prosecution under Section 138 of the Negotiable Instruments Act. To bring home the charge under Section 138 of the Act, the complainant is required to establish that the cheque in question was drawn by the accused on an account maintained by him, that it was issued in discharge, wholly or in part, of a legally enforceable debt or other liability, that the cheque was returned unpaid for one of the reasons contemplated under the statute, that a statutory demand notice was issued within the prescribed period and that despite service of such notice, the drawer failed to make payment within the stipulated period. Once the execution of the cheque

is admitted or proved, Sections 118(a) and 139 of the Negotiable Instruments Act come into operation and raise statutory presumptions in favour of the holder that the cheque was drawn for consideration and in discharge of a legally enforceable debt or liability.

10. It is equally well settled that the presumptions under Sections 118(a) and 139 are rebuttable. The burden cast upon the accused is not as onerous as that upon the prosecution in a criminal trial. The accused is not required to establish his defence beyond reasonable doubt. He may rebut the statutory presumptions either by relying upon the material brought on record by the complainant or by leading independent defence evidence. The test is only whether the defence raises a probable version sufficient to create doubt regarding the existence of a legally enforceable debt or liability. However, a mere denial of liability or a fanciful explanation is not sufficient. The defence must be supported by such circumstances which render its existence reasonably probable when tested on the touchstone of ordinary human conduct and surrounding circumstances.

11. In the present case, the execution of cheque (Exh.22) and the signature appearing thereon are not disputed by the accused. During the cross-examination of Complainant Naresh Rameshwar Kalantri (PW-1), a specific suggestion was given that the cheque had originally been handed over to one Ramji Kharbade in connection with an independent transaction. The accused, while entering the witness box as Sanjay (DW-3), also did not dispute that the signature appearing on the cheque is his. Once the signature on the cheque is admitted, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act immediately come into operation in favour

of the complainant. Consequently, the initial burden stood discharged by the complainant and the onus shifted upon the accused to rebut the said presumptions by bringing on record a probable defence.

12. The principal defence raised by the accused throughout the trial is not that the cheque bears a forged signature or that it was stolen. His consistent case is that in the year 2018 he had borrowed ₹1,60,000/- from Ramji Kharbade and, as security for that transaction, voluntarily handed over a signed blank cheque along with a blank stamp paper and a 7/12 extract. According to him, though the said amount was subsequently repaid, Ramji Kharbade failed to return those documents and the complainant, who is alleged to be a friend of Ramji Kharbade, somehow obtained the cheque and misused it by filing the present complaint.

13. In view of the nature of the defence, the controversy is not whether the body of the cheque was filled up by the accused himself. The law on this aspect is no longer res integra. In Bir Singh v. Mukesh Kumar, the Hon'ble Supreme Court has authoritatively held that even if a signed blank cheque is voluntarily handed over to another person, the mere fact that its contents are subsequently filled in by the holder does not invalidate the instrument. A person voluntarily signing and delivering a cheque ordinarily confers implied authority upon the holder to complete the particulars. Therefore, the circumstance that the writings on the cheque are in different ink or different handwriting, by itself, neither renders the cheque invalid nor rebuts the statutory presumptions available in favour of the holder.

14. Thus, the first foundational fact which the accused is required to establish is not that the cheque was blank when delivered,

but that it was in fact delivered to Ramji Kharbade in connection with an altogether different transaction and that after discharge of the said transaction, the cheque came to be misused without any subsisting authority or liability. Unless these foundational facts are probabilised, the plea of misuse of a blank cheque cannot, by itself, displace the statutory presumptions available in favour of the complainant. The defence, therefore, deserves to be examined in the light of the evidence led by the parties and the attendant circumstances.

15. In order to discharge the initial burden, the complainant examined himself as Naresh Rameshwar Kalantri (PW-1). He deposed in consonance with the averments made in the complaint that on 10.05.2019 he advanced a hand loan of ₹2,50,000/- to the accused after withdrawing ₹2,40,000/- from his account maintained with Cosmos Bank, while the remaining amount of ₹10,000/- was already available with him. He further deposed that towards repayment of the said liability, the accused issued cheque (Exh.22), which upon presentation came to be dishonoured for insufficiency of funds. He also proved the statutory notice (Exh.24), postal receipt (Exh.25) and returned postal envelope (Exh.26). The copy of the bank passbook (Exh.21) corroborates his version regarding withdrawal of ₹2,40,000/- on 10.05.2019. Thus, apart from the statutory presumptions, the complainant has also adduced oral as well as documentary evidence in support of the transaction pleaded by him.

16. During the cross-examination of Naresh (PW-1), it was elicited that neither the complaint nor the statutory notice contains particulars regarding the duration of acquaintance between the parties or the manner in which they knew each other. Naresh (PW-1) clarified

that both of them had studied in the same school. It was also elicited that there was no independent witness present when the amount was allegedly advanced and that no separate writing acknowledging the loan transaction was executed. The witness further admitted that he had not produced his income-tax returns. However, he consistently denied the defence suggestion that the cheque in question had originally been issued to Ramji Kharbade or that he had obtained the cheque from the said Ramji Kharbade for its misuse. Nothing substantial has been elicited in his cross-examination so as to demolish his assertion regarding advancement of the loan or issuance of the cheque by the accused.

17. Learned counsel for the appellant vehemently contended that the production of the passbook merely establishes withdrawal of ₹2,40,000/- from the complainant's account and does not establish that the said amount was actually paid to the accused. It was further argued that there is no documentary evidence evidencing payment of the alleged hand loan and, therefore, the complainant has failed to establish the existence of a legally enforceable debt.

18. The submission, though attractive at first blush, cannot be accepted in its broad formulation. In a prosecution under Section 138 of the Negotiable Instruments Act, once execution of the cheque is admitted, the complainant is not required, in every case, to independently prove the entire transaction as if no statutory presumptions existed. The statutory presumptions under Sections 118(a) and 139 operate in favour of the complainant unless they are rebutted by the accused. Therefore, the question is not whether the bank passbook by itself conclusively proves payment of the loan. The

real question is whether, after considering the entire evidence led by both the parties, the accused has succeeded in rebutting the statutory presumptions by raising a defence which is reasonably probable.

19. The complainant has not merely relied upon the statutory presumptions. He has entered the witness box, subjected himself to detailed cross-examination and has produced contemporaneous documentary evidence showing withdrawal of a substantial amount from his bank account immediately preceding the alleged transaction. The defence could not demonstrate that the withdrawal reflected in Exh.21 was for any other purpose or that the complainant lacked the financial capacity to advance the amount. Though non-production of income-tax returns has been highlighted during arguments, the mere absence of such returns is not, by itself, sufficient to discard otherwise reliable evidence, particularly when the complainant has disclosed the source from which he arranged the amount and has supported the same by documentary evidence.

20. The entire defence, therefore, rests upon the plea that the cheque was never issued in favour of the complainant but had been handed over to one Ramji Kharbade in connection with an independent transaction in the year 2018. Consequently, it becomes necessary to examine whether the defence evidence succeeds in probabilising that version so as to rebut the statutory presumptions available in favour of the complainant.

21. To substantiate the said defence, the accused examined Pravin Jaykrushna Ingle (DW-1), Bandu Baburaoji Kharchan (DW-2) and thereafter entered the witness box himself as Sanjay Ganeshrao Koltake (DW-3). All the three defence witnesses have consistently stated

that the accused had borrowed ₹1,60,000/- from Ramji Kharbade in the year 2018 and had handed over a signed cheque, a blank stamp paper and a 7/12 extract as security. According to them, although the amount was subsequently repaid, the said documents were not returned by Ramji Kharbade. It is further their common case that the complainant, being a friend of Ramji Kharbade, obtained the cheque and misused the same by instituting the present complaint.

22. At this stage, it becomes necessary to bear in mind that the defence is not required to establish its version beyond reasonable doubt. Nevertheless, the version projected by the accused must satisfy the test of probability. The Court is entitled to examine whether the conduct attributed to the accused accords with the ordinary course of human affairs and whether the surrounding circumstances lend assurance to such a defence. It is in this context that the evidence of Sanjay (DW-3), Bandu (DW-2) and Sanjay (DW-3) requires closer scrutiny.

23. The entire defence proceeds on the premise that the cheque in question was voluntarily handed over by the accused to one Ramji Kharbade as security for repayment of a hand loan of ₹1,60,000/- obtained in the year 2018. It is the further case of the accused that although the said loan was repaid within two to three months, Ramji Kharbade failed to return the signed cheque, blank stamp paper and 7/12 extract and, subsequently, the complainant, being his friend, obtained the cheque and instituted the present complaint. Thus, before the Court can examine the alleged misuse of the cheque, the accused is first required to probabilise the foundational facts constituting the defence, namely, the existence of the alleged transaction with Ramji Kharbade, delivery of the cheque in connection

therewith, repayment of the loan and the continued retention of the cheque by Ramji Kharbade despite repayment.

24. In support of the said plea, Pravin Jaykrushna Ingle (DW-1) and Bandu Baburaoji Kharchan (DW-2) have supported the accused. However, their evidence requires careful scrutiny. During cross-examination, Sanjay (DW-3) expressed inability to state the cheque number allegedly handed over by the accused, the particulars of the 7/12 extract or even the date on which the alleged amount of ₹1,60,000/- was repaid to Ramji Kharbade. Likewise, Bandu (DW-2) admitted that neither the date of borrowing nor the date of repayment finds place in his affidavit. Though he identified the cheque as one drawn on Dena Bank and referred to a particular Gat number, he also stated that the accused had handed over two cheques to Ramji Kharbade, a fact which does not find mention either in the accused's own evidence or in the affidavit of Sanjay (DW-3). These omissions and variations, by themselves, may not be sufficient to discard the defence in its entirety; nevertheless, they assume significance while testing the overall probability of the defence.

25. The accused, while entering the witness box as Sanjay (DW-3), reiterated that after repayment of the alleged loan he repeatedly demanded return of the cheque, stamp paper and 7/12 extract from Ramji Kharbade, but the latter avoided returning the documents and even demanded interest though, according to the accused, there was no agreement regarding payment of interest. Accepting this version for the sake of examination, it necessarily follows that according to the accused he was fully aware that a signed cheque bearing his signature continued to remain in the possession of another

person despite discharge of the liability in connection with which it had allegedly been issued.

26. Once such a factual situation is projected by the accused himself, his subsequent conduct assumes considerable importance. Ordinarily, a prudent person who knows that a signed cheque continues to remain with another despite repayment of the underlying transaction would be expected to take some contemporaneous step to protect himself against its possible misuse. Such protective measures may vary from case to case and no inflexible rule of law can be laid down that a particular course of action is mandatory. Nevertheless, the absence or presence of such conduct is certainly a relevant circumstance while assessing whether the defence is probable.

27. In the present case, Sanjay (DW-3) admitted during his cross-examination that he neither issued any stop-payment instructions to his banker in respect of the cheque allegedly retained by Ramji Kharbade nor lodged any police complaint alleging wrongful retention or possible misuse of the signed cheque. He further admitted that he did not issue any legal notice calling upon Ramji Kharbade to return the cheque, stamp paper or 7/12 extract. Even according to his own version, despite repeated refusal on the part of Ramji Kharbade to return those documents and despite his alleged demand of interest, no contemporaneous legal or other action whatsoever was initiated by the accused. Significantly, even after receipt of the statutory notice issued by the complainant, the accused did not take any action against Ramji Kharbade alleging misuse of the cheque or conspiracy with the complainant. The evidence is conspicuously silent as to any plausible explanation for such inaction.

28. It is clarified that failure to issue stop-payment instructions or failure to institute legal proceedings against the person retaining the cheque is not, by itself, conclusive of the guilt of the drawer. The law does not cast an absolute obligation upon every drawer to adopt such measures. However, where the entire defence rests upon the plea that a signed cheque remained in the possession of a third person after discharge of the liability and was subsequently misused, the absence of any contemporaneous protective step constitutes a relevant circumstance while appreciating the probability of such defence. It is one circumstance among several and cannot be viewed in isolation. In the facts of the present case, the complete absence of any preventive or remedial action assumes significance when read conjointly with the other evidence on record.

29. The learned counsel for the appellant also emphasised that the body of the cheque is written in handwriting and ink different from the signature of the accused. This circumstance does not advance the defence. In Bir Singh v. Mukesh Kumar, the Hon'ble Supreme Court has categorically held that where a signed cheque is voluntarily handed over by the drawer, the mere fact that the remaining particulars are filled up by another person does not invalidate the cheque nor does it by itself rebut the statutory presumptions. Therefore, assuming for the sake of argument that the contents of the cheque were filled by a person other than the accused, such circumstance by itself neither establishes misuse nor renders the instrument unenforceable. The crucial question continues to be whether the accused has probabilised the special circumstances under which the cheque allegedly travelled from Ramji Kharbade to the complainant. On that aspect, the evidence led by the

defence falls short of the standard required for rebutting the statutory presumptions.

30. Much emphasis was laid by the learned counsel for the appellant on the defence that the complainant had obtained the cheque from Ramji Kharbade and thereafter instituted the present complaint. Undoubtedly, the accused was not legally bound to examine Ramji Kharbade as a defence witness, nor can any adverse inference be drawn merely because he was not examined. Nevertheless, when the entire defence is founded upon a specific factual assertion that the cheque travelled from the accused to Ramji Kharbade and thereafter from Ramji Kharbade to the complainant, the Court is required to examine whether the surrounding evidence renders that version reasonably probable. In the present case, apart from the oral testimony of Pravin Jaykrushna Ingle (DW-1), Bandu Baburaoji Kharchan (DW-2) and the Accused (DW-3), there is no contemporaneous circumstance or independent material lending assurance to the defence version. Therefore, the Court is required to appreciate the defence on the basis of the evidence actually available on record and not on the basis of conjectures.

31. It is equally necessary to bear in mind that rebuttal of the statutory presumptions does not necessarily require documentary evidence. A probable defence may even emerge from the admissions elicited in the cross-examination of the complainant. Therefore, the evidence of Naresh (PW-1) also deserves to be examined to ascertain whether any such material has emerged which probabilises the defence.

32. During the cross-examination of Naresh (PW-1), it was brought on record that the complaint, statutory notice and affidavit do

not mention the precise nature or duration of acquaintance between the complainant and the accused. It was also elicited that there was no independent witness to the payment of the alleged hand loan and that no written acknowledgment of the loan transaction was obtained. Further, Naresh (PW-1) admitted that he had not produced his income-tax returns. These circumstances undoubtedly constitute matters relevant for appreciation of evidence. However, they do not, either individually or collectively, probabilise the specific defence that the cheque had originally been issued to Ramji Kharbade and was subsequently misused by the complainant.

33. On the contrary, Naresh (PW-1) consistently denied every suggestion that the cheque had been obtained from Ramji Kharbade. He also denied the suggestion that no transaction had ever taken place between himself and the accused. His testimony regarding advancement of the amount remained substantially unshaken. The defence could not demonstrate any material contradiction or omission affecting the core of his version. Merely because no independent witness was examined or because the transaction was not reduced into writing cannot, by itself, render the complainant's version unacceptable, particularly when the statute itself raises presumptions in favour of the holder of the cheque.

34. Learned counsel for the appellant further contended that Exh.21 merely evidences withdrawal of ₹2,40,000/- from the complainant's bank account and does not establish actual payment of the amount to the accused. The submission cannot be accepted in the manner advanced. The passbook by itself does not prove delivery of the amount to the accused. Equally, however, it cannot be ignored that the complainant had specifically pleaded the source of funds in the

complaint itself and reiterated the same in his affidavit as well as oral evidence. Exh.21 lends corroboration to that part of his testimony by showing withdrawal of ₹2,40,000/- on the very date pleaded by him. Thus, the documentary evidence cannot be viewed in isolation; it has to be appreciated together with the statutory presumptions and the oral evidence led by the complainant.

35. The submission that the transaction ought to have been effected through banking channels or electronic mode also deserves to be rejected. Merely because a hand loan was allegedly advanced in cash does not ipso facto render the transaction non-existent for the purposes of Section 138 of the Negotiable Instruments Act. The present prosecution is founded upon a dishonoured cheque and not upon enforcement of a cash transaction simpliciter. Once execution of the cheque is admitted, the statutory presumptions continue to operate unless rebutted by a probable defence. Therefore, the mere circumstance that the complainant allegedly paid the amount in cash cannot by itself defeat the prosecution.

36. Learned counsel for the appellant also assailed the cheque return memo (Exh.23) on the ground that it does not bear the seal or signature of the concerned bank. Reliance has been placed upon the decisions of the Gujarat High Court and the Bombay High Court. The submission has been duly considered.

37. Section 146 of the Negotiable Instruments Act permits the Court to presume the fact of dishonour upon production of the bank's slip or memo having thereon the official mark denoting dishonour, unless such fact is disproved. In the present case, Naresh (PW-1) identified Exh.23 during his evidence and specifically deposed that the

cheque was returned unpaid for the reason "Funds Insufficient". During cross-examination, though a suggestion was given that the memo did not bear the bank's seal, Naresh (PW-1) immediately clarified that the memo did bear the bank's seal and denied the suggestion that the document was not genuine. More importantly, the accused has never disputed that cheque No.000188, drawn on his account, was in fact dishonoured. The defence throughout has been that the cheque was not issued to the complainant but had been misused after being issued to Ramji Kharbade. Thus, dishonour of the cheque has never been the real controversy between the parties.

38. Even assuming that some technical objection regarding Exh.23 could have been raised, in the facts of the present case the same does not create any dent in the prosecution case, particularly when the accused has not disputed that the cheque originated from his account and when his entire defence proceeds on the footing that the cheque had reached the complainant through misuse. Consequently, this ground of challenge also does not assist the appellant.

39. The next submission advanced on behalf of the appellant relates to service of the statutory demand notice. According to the learned counsel for the appellant, since the cheque was never issued to the complainant, the accused had no reason to expect any notice from him and, therefore, it cannot be presumed that the statutory notice was duly served.

40. The submission cannot be accepted. The complainant proved the office copy of the statutory notice (Exh.24), postal receipt (Exh.25) and the returned postal envelope (Exh.26) through the evidence of Complainant Naresh Rameshwar Kalantri (PW-1). The

returned envelope bears the postal endorsement showing that the article was returned after the addressee declined or failed to claim it. Significantly, the accused has not disputed the correctness of the address mentioned on the statutory notice. The same address was admittedly sufficient for service of summons issued by the Trial Court. Once the notice is shown to have been dispatched to the correct address by registered post, the statutory presumption regarding due service becomes applicable. The accused has not adduced any convincing material to rebut the said presumption.

41. It is equally well settled that even after receiving summons from the Court in a prosecution under Section 138 of the Negotiable Instruments Act, the drawer may, within the period recognised by law, make payment of the cheque amount and place the relevant circumstances before the Court. The accused admittedly did not adopt any such course. Consequently, the challenge to service of the statutory notice is devoid of merit.

42. On an overall reappreciation of the evidence, this Court finds that the complainant has established the foundational facts necessary for invoking the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act. The accused has undoubtedly put forward a specific defence that the cheque had been issued to Ramji Kharbade in connection with an earlier transaction. However, when the entire evidence is appreciated cumulatively, the defence does not attain the degree of probability necessary to rebut the statutory presumptions. The omissions noticed in the evidence of the defence witnesses, the absence of any contemporaneous conduct consistent with the alleged apprehension of misuse of the signed

cheque, the lack of any satisfactory explanation regarding retention of the cheque after repayment and the absence of circumstances lending independent assurance to the defence version collectively render the defence improbable.

43. It needs to be emphasised that this Court is not rejecting the defence merely because the accused failed to establish it beyond reasonable doubt. The defence has been tested on the touchstone of preponderance of probabilities, which is the standard recognised in prosecutions under Section 138 of the Negotiable Instruments Act. Even upon application of that comparatively lighter standard, the material brought on record is insufficient to rebut the statutory presumptions operating in favour of the complainant. Consequently, the complainant continues to enjoy the benefit of those presumptions, which stand further supported by his own oral testimony and the contemporaneous documentary evidence produced by him.

44. The learned Trial Magistrate has, therefore, rightly concluded that the cheque in question was issued towards discharge of a legally enforceable liability, that it was dishonoured for insufficiency of funds, that the statutory demand notice was duly issued and served and that despite expiry of the statutory period, the accused failed to make payment. Though some of the reasons assigned by the learned Trial Magistrate require elaboration, as discussed hereinabove, the ultimate conclusion reached by the Trial Court does not suffer from any legal or factual infirmity warranting interference by this appellate Court.

45. The appellant has not advanced any independent challenge to the quantum of sentence except seeking general leniency. The

learned Trial Magistrate has imposed simple imprisonment for four months together with compensation of ₹3,25,000/-. Having regard to the cheque amount of ₹2,50,000/-, the period during which the complainant has been deprived of the amount, the object sought to be achieved by Section 138 of the Negotiable Instruments Act and the overall facts and circumstances of the case, the sentence imposed cannot be said to be excessive or disproportionate so as to warrant appellate interference.

46. In view of the foregoing discussion, Point No.1 is answered in the affirmative whereas Point Nos. 2 and 3 are answered in the Negative.

As to Point No. 4:

47. In view of my findings to Point Nos 1 to 3, the appeal will have to be dismissed. The conviction and sentence recorded by the Magistrate will have to be maintained. The record of appeal shows that while suspending the substantive sentence, the appellant accused had deposited 65,000/- as this court-imposed condition of depositing 20% of the amount of compensation. The complainant will have to be permitted to withdraw the amount so deposited by the appellant accused. To that extent the appellant accused will have to be discharged from payment of compensation. Thus, in answer to Point No. 4, I pass the following order.

ORDER

(i) The Criminal Appeal is dismissed.

(ii) The judgment and order dated **15.02.2023** passed by the learned Judicial Magistrate First Class, Court No.3, Amravati in

Summary Criminal Complaint Case No.3135 of 2020 convicting the appellant (original accused) for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 is hereby confirmed.

(iii) The sentence imposed by the learned trial Court, namely, simple imprisonment for four months and payment of compensation of ₹3,25,000/- under Section 357(3) of the Code of Criminal Procedure, with the default sentence, is maintained.

(iv) An amount of ₹65,000/- deposited by the appellant during the pendency of this appeal shall be adjusted towards the compensation awarded by the learned trial Court.

(v) The respondent (original complainant) shall be entitled to withdraw the amount deposited before this Court, if not already withdrawn.

(vi) The appellant has remained absent on the date fixed for pronouncement of judgment without obtaining exemption from personal appearance. He has thereby committed breach of the conditions of the bail bond executed by him. Accordingly, the bail bond and surety bond executed by the appellant stand forfeited. The learned trial Court shall take consequential proceedings in accordance with Section 446 of the Code of Criminal Procedure.

(vii) The learned trial Court shall forthwith take necessary steps under Section 418 of the Code of Criminal Procedure for execution of the substantive sentence and for securing the presence of the appellant to undergo the sentence of imprisonment.

(viii) After giving due credit to the amount of ₹65,000/- already deposited by the appellant, if any balance compensation remains unpaid, the learned trial Court shall recover the same in accordance with Sections 421 and 431 of the Code of Criminal Procedure.

(ix) Record and Proceedings be sent back to the learned trial Court along with a copy of this judgment forthwith.

(Yashwant A. Goswami)
Additional Sessions Judge
Amravati.

Date:17.07.2026