MHMM120168082015

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Exh. No.	: **107**

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS,
20TH COURT, MAZGAON, MUMBAI.

(Presided over by V.B. Gulve-Patil)

Summary Criminal Case No.5601646/SS/2015

Between

Dilipkumar Atmaram Nagpal.
Having address at :-
405-A, Neelkanth, 98, Marine Drive,
Mumbai – 400 002. … Complainant

And

1] **M/s. Bluplast Corporation**
212/214, Udyog Bhavan,
2nd Floor, Sharma Indl. Estate,
Walbhat Road, Goregaon (E),
Mumbai – 400 063.

2] **Kamleshkumar Lalchand Jain**
Partner of Accused No.1,
R/at :- 102, Indra Puri, S.V. Road,
Goregaon (W),
Mumbai – 400 104.

3] Indermal Pannalal Jain
Partner of Accused No.1,
R/at :- 402, Evershine Aangan CHS Ltd,
Jawahar Nagar, Opp. Cinemax,
S.V. Road, Goregaon (W),
Mumbai – 400 062. … Accused

The Pleaders :-
Shri Muzumdar/ - for the complainant.
Shri Sanjay Bijale

Shri Vinay V. Vyas - for the accused.

JUDGMENT
(Delivered today on this Friday April 11th, 2025)

The accused stands prosecuted for having committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (Act).

2 **The complaint :-** Accused no.1 is a registered Partnership firm. Wherein, accused nos.2 to 6 are its partners and responsible for day to day affairs and in charge of accused no.1. They have approached the complainant for financial assistance. Upon representations made by all the accused on behalf of accused no. 1, the complainant has advanced loan of **Rs. 25 lacs** in favour of the accused. It has been assured by them that the amount would be repaid including interest thereon.

2/2 The accused have issued a cheque bearing no. **376051** dated **23.09.2015** for **Rs.25,00,000/-** drawn on their account maintained with the **Axis Bank Ltd**, Goregaon (E) branch, Mumbai towards discharge of their liability. The complainant has presented the cheque in it's bank account maintained with the **Bank of Baroda, Lalbaug branch, Mumbai.** The same has been returned unpaid on **24.09.2015** with remarks **"Funds Insufficient"**. The demand notice has been issued to the accused on **08.10.2015** by RPAD and the same has been served upon accused was returned with the postal remark "Left" on 10.10.2015. In response, the accused has failed to pay the cheque amount. As a result, this complaint is presented.

3 The complainant has dropped the proceeding against **accused no.6** Pannalal V. Jain. Whereas, in view of the orders of the Hon'ble the High Court in Criminal Writ Petition No.1202/1203 of 2016, the complaint has been stayed against **accused nos.4 Rekha and 5 Nayna**. During the trial, the accused have submitted a death certificate along-with pursis **Exh.103** to indicate that accused no.4 Rekha is reportedly dead, whereon, the complainant has submitted their no objection.

4 My learned Predecessor has recorded the Plea **Exh.16** against accused nos.1 to 3. They have pleaded not guilty and claimed to be tried. Their defence is of involvement of the complainant in an illegal money lending business and his failure to establish the legal liability as alleged. The complainant has adduced oral as well as documentary evidence. The accused have opted to adduce oral evidence of bank witnesses only.

<u>The points for determination along-with my findings thereon are as under:</u>

	Points	**Findings**
1)	Whether the complainant has proved that the accused issued the cheque in question to discharge legally enforceable debt or other liability?	**Proved**
2)	Whether he has proved that the cheque was presented to the bank within its validity period and it was dishonoured for the reason "Funds Insufficient"?	**Proved**
3)	Whether he has proved that he issued the demand notice to the accused in compliance to Section 138 of the Negotiable Instruments Act?	**Proved**
4)	Whether he has proved that despite service of the demand notice, the accused failed to repay the cheque amount in compliance to Section 138 of the Negotiable Instruments Act?	**Proved**
5)	What order?	**Accused are convicted**

REASONS

AS TO POINT NO. 1 :

5 **Learned advocate for the complainant has submitted that :-** accused nos. 2 to 6 have approached the complainant seeking loan of Rs.25 lacs. The same has been credited in the account of accused no. 1. Pursuant to which, the Bill of Exchange has been executed. The

signature thereon has been proved. The money has been advanced in 2013 and the Bill of Exchange has been renewed from time to time. The bank witness Milind Tayade CW2/DW1 has been examined in support of the claim of the complainant indicating advancement of the amount. The signature on the cheque has not been disputed. The accused have failed to reply to the statutory demand notice. No challenge has been offered to material points during cross-examination of the complainant. The accused have not brought on record such case alleging misuse or delivery of the cheque as security purpose. No explanation has been offered as to why the cheque was placed in the possession of the complainant. The bill/receipt memos **Exh.30** would indicate that regular transaction did occur between the complainant and the accused. The tenor of cross-examination of the complainant would indicate that substantial part of the complaint has been admitted. The defence with regard to money lending business is not at all sustainable in view of the provisions under section 2(13) **the Maharashtra Money Lending (Regulation) Act 2014**.

5/2 He has relied upon the case laws, **Rangappa Vs. Mohan,** Cri.Appeal No.1020 of 2010, 07.05.2010, **B.M. Basavraj Vs. Srinivas Datta,** Cri.Appeal No.306 of 2016.

6 **Learned advocate for the accused has submitted that :-** Section 138 of the Act does not attract. The debt in question is not enforceable in law. There is express bar to any such claim on part of the complainant in view of sections 10, 13 of the Money Lending (Regulation) Act 2014. The court cannot pass an effective decree in

such cases. The document **Exh.32** has been tendered which an intention to evade provisions of the Money Lending Act. The complainant has admitted that he is involved in money lending business since more than 20 years. He has admitted his representation as the Power of Attorney holder on behalf of such several money lenders. He has failed to place on record the Bill of Exchange which was allegedly executed in 2013. Hence, it cannot be said that renewed Bill of Exchange **Exh.32** is that document which was executed against the value allegedly received by the accused in 2013. Therefore, proviso to the defining term of “loan” under section 2 is not applicable to the transaction in question. The complainant has admitted that he is not a licenced finance broker and thus he is dis-entitled to enforce the legal liability in question. Even otherwise, he has not proved advancement of the money in favour of the accused.

6/2 In support of his submissions, reliance is placed upon the case laws **Smt. Nanda Dharam Nandanwar Vs. Nandkishore Talakram Thaokar** (2010(1) Crimes 708 (Bom), **Anil Baburao Kataria Vs. Purshottam Prabhakar Kawane** (2010 Cri.L.J.1217), **Monica Sunit Ujjain Vs. Sanchu M. Menon** (1(2023) BC 573 (Bom.), **Raj Kumar Santoshi Vs. Prashant Malik** (SC-2024).

7 Section 118, 139 of the Act lay down that **unless the contrary is proved,** the presumptions shall be made that every negotiable instrument was made or drawn for consideration and the holder of a cheque received it for the discharge of any debt or any other liability. **In Rangappa .....** (cited supra) the Hon’ble the Apex court has

ruled that there is an initial presumption which favours a complainant and it does include the existence of a legally enforceable debt or liability. It is rebuttable presumption.

8 **Hiten P. Dalal Vs. Bratindranath Banerjee** [AIR 2001 SC 3897], the Hon'ble the Apex court has ruled that the rebuttal does not have to be conclusively established but such evidence must be adduced in support of the defence that the court must either believe the defence to exist or consider its existence to be reasonably probable, **the standard of responsibility being that of the 'prudent man'. The words 'unless the contrary is proved' make it clear that the presumption has to be rebutted by 'proof' and not by bare explanation which is merely plausible.**

9 The complainant has deposed that accused no.1 is a registered Partnership firm and accused nos.2, 3 are in charge, responsible for day to day affairs of said firm. This aspect has not been negated during his cross-examination. The cheque **Exh.33** would indicate that it has been issued on behalf of accused no.1 through its partners cum authorized signatories. This has also not been negatived during cross-examination of the complainant. The accused have not showed or proved contrary to disbelieve said aspect.

10 The complainant has deposed that he advanced the sum of Rs.25 lacs in favour of accused no.1 and accused nos. 2 and 3 executed a Bill of Exchange as partners, directors of accused no.1. He has deposed that initially, said loan amount was supposed to be repaid

within certain limited period but since said period was renewed from time to time; fresh execution of Bill of Exchange happened. Accordingly, he has relied upon the Bill of Exchange **Exh.32** indicating that accused no.1 through accused nos.2, 3 in their capacity as authorized signatories and drawer of said document, executed it and at the same time, accepted the terms therein in their capacity as acceptors. Milind Nilkanth Tayade CW2/DW1 has deposed that as per the bank statement of the complainant two debit entries are reflected i.e. on 04.05.2013, 23.09.2013 indicating that Rs.10 lacs, Rs.25 lacs were debited through cheque nos.167, 247 in favour of accused no.1. Although, said fact of the credit entries in favour of accused no.1, have not been clearly admitted on part of the accused; the same has not been contradicted by way of any contrary evidence in rebuttal. That apart, the Bill of Exchange **Exh.32** and the cheque **Exh.33** would signify much similarity in the signatures of the executors of said documents. In this regard, the complainant has deposed that said documents have been signed by accused nos.2 and 3 in his presence. The accused have not discarded the same by their examination as witness before the court. The bank statement and the version of Milind CW2/DW1 do support and reaffirms the fact of the bank transaction and credit of Rs.25 lacs in the account of accused no.1.

11 The accused have contended that said advancement of the money and more particularly cross-examination of the complainant would signify his indulgence in an illegal money lending business which would debar him from enforcing the legal liability, as alleged by him. Hence, it is to be analyzed whether the amount which was advanced to

the accused is covered by the definition of “Loan” as defined under **the Maharashtra Money Lending (Regulation) Act 2014.**

12 **The Maharashtra Money Lending (Regulation) Act 2014** has been incorporated with an object to take immediate action considering inadequate enactments to protect the farmers debtors, frequent suicides by farmers, harassment of the farmers debtors by the money lenders. The complainant and the accused are apparently from business community. Section 2 (13)(j) of said Act excludes an advance of any sum exceeding rupees three thousand made on the basis of a Negotiable Instrument as defined in the Act, other than a Promissory Note. Herein, it has been brought on record that the loan was advanced to the accused through the bank transaction in view of the version of Milind CW2/DW1. The scope of sections 5, 6, 13 of the Act is very much material. Whereby, a cheque is classified as a Bill of Exchange drawn on a specified banker and a Bill of Exchange is covered under the definition of Negotiable Instrument.

13 The complainant has deposed that the accused had made the payment towards interest/discount charges to the complainant against advancement of the money. He has deposed that the accused have executed the Bill of Exchange dated 26.06.2015 for the sum of Rs.25 lacs and the same was signed by accused nos.2 and 3 as partners, acceptors for and on behalf of accused no.1, in his presence. The complainant has deposed that he used to take Bill of Exchange, post dated and interest cheques at the time of renewal of Bill of Exchange. He has deposed that the Bill of Exchange **Exh.32** was executed from

time to time and the term loan was extended. He has deposed that in view of the bill memo **Exh.30**, slip memo **Exh.31** said entries with reference to renewal of the loan/the Bill of Exchange have been recorded. He has been questioned whether an acknowledgment was received from the accused disclosing service of the bill memo to the accused. He has deposed that no such acknowledgment was obtained but volunteered that it was not done considering trust, relation with the accused. He has been questioned whether **Exh.32** mentions that he had advanced the money to the accused. Whereupon, he has deposed that said fact has not been mentioned in **Exh.32** since it is renewed and the previous Bill of Exchange is in possession of the accused. The complainant has in a way **deposed oral account of the contents which were recorded in the Bill of Exchange of 2013**. Furthermore, he has deposed that said renewal has been made almost for five to six times during 2013 to 2015. Thus, revival of the acknowledgment, with regard to the principle/loan amount of Rs.25 lacs by way of the Bill of Exchange **Exh.32**, would indicate confirmation of the amount/value received earlier.

14 The complainant has deposed that accepting said liability, the cheque has been issued under the signature of accused no.2 by the accused. He has deposed that the cheque **Exh.33** was received by him in **June 2015.** His version would indicate that the amount was advanced in 2013 and towards interest component, the accused had issued certain cheques. It further signifies that at the time of execution of the Bill of Exchange **Exh.32** i.e. on **26.06.2015,** the cheque **Exh.33** was also placed in possession of the complainant.

15 The complainant has thus deposed usual practice which was followed while transacting with the accused. Although, the complainant has been questioned with regard to numbering of the bill memos, acknowledgment on part of the accused; his version has remained unchallenged on the aspect of advancement of the money and several transactions which occurred between him and accused no.1 during 2009 to 2015. The complainant has deposed that the Bill of Exchange which was executed in 2013, is now in possession of the accused. Said aspects have not been dealt with during his cross-examination or in the explanation offered in their statement **Exh.69** by the accused.

16 The complainant has deposed that the demand notice has been addressed to the accused as per **Exhs.35 to 38.** Said demand notice dated 08.10.2015, postal receipts of the same date, postal acknowledgments disclosing service of the demand notice, RPAD envelopes would signify that the demand has been made and notified to the accused on their known address. The accused have not refuted said aspect nor rebutted the same by adducing defence evidence. Hence, their failure to respond to the statutory demand notice is also a circumstance to disbelieve their contentions regarding non receipt of the money, execution of the Bill of Exchange in year 2013 and renewal of the same from time to time. Useful reference of the case law B.M..... (cited supra) can be taken. Wherein, it has been observed that, “when in the legal notice, specific averment was made by the appellant that the appellant had discharge its obligation under the contract and only

there upon, the cheques were issued and the respondent not even replied to the said notice" i.e. in the facts therein indicated lapse on part of the appellant to respond the notice which contained sufficient details regarding the claim. Herein, the demand notice **Exh.35** would indicate summary of the same claim which is reiterated in the complaint. And, as noted above, the demand notice has not been responded without any justification.

17 Thus, the transaction of advancement of the loan of Rs. 25 lacs and issuance of the cheque for the purpose of repayment of the same is certainly excluded from the definition of the loan.

18 The afore-stated view has been well supported as per the preposition which has been laid down in case law **Mour Marbles Industries Pvt Ltd V/s Motilal Laxmichand Salecha HUF, Proprietor of M/s. Mala Investments through its Karta Motilal Laxmichand Salecha & Others,** 2018 SCC OnLine Bom 1387, 11.06.2018.

18/2 In Mour Marbles…. the Hon'ble the Bombay High Court has observed that **the appellant/defendant was admittedly a Private Limited Company which would be under liability to make the payment of the money underlying the dishonoured cheque to the respondent/plaintiff as provided under section 30 of the Negotiable Instruments Act.**

In paragraph no.14 it has been observed that a cheque of large amount of Rs.1,86,78,313/- which is a negotiable instrument (other than a Promissory Note) was issued by the appellant/defendant, **which clearly falls within the provisions of Clause (j) of section 2 (13)**

of the Act, so as to dis-include such advance from being leveled as a loan under the Act. The transaction was thus completely outside the Act.

18/3 As noted earlier, it has been brought on record that the complainant and the accused have been transacting for a considerable period during 2009 to 2015. More so, the complainant has deposed that said transaction was worth Rs.4 crores. The accused have not challenged the aspect of the nature of Partnership firm of accused no.1. That apart, the cheque in question was placed in possession of the complainant while endorsing an acknowledgment i.e. acceptance of earlier liability, by way of renewal of the Bill of Exchange **in June 2015.** Hence, the cheque i.e. a negotiable instrument was issued by the accused against advancement of the money on the basis of the negotiable instrument in 2013. Hence, the act of advancement of the money in favour of accused no.1 has not been covered under the defining term of the loan as per **the Maharashtra Money Lending (Regulation) Act 2014**.

19 In Nanda…., the accused borrowed cash amount on the basis of Promissory Notes. In Anil…., it was revealed that the complainant did not have capacity to lend the amount of Rs.4 lacs to the accused and said conclusion was drawn in view of the version of DW1 i.e. an employee of the Income Tax department. In Monica…., the money was paid to the accused through RTGS and cash modes on the basis of a Memorandum of Understanding. In Rajkumar Santoshi…., it has been observed that there are instances wherein ordinary laymen

take such loans. **Herein, as stated above, the complainant and the accused apparently are from business community**. More so, the complainant has admitted that **there were several instances of transactions with the accused since 2009 to 2015 with regard to almost of three and half to four crores**. Said statement during his cross-examination, has not been negated by way of rebuttal on part of the accused. Hence, with the greatest respects to the observations laid down in the case laws (cited supra on behalf of the accused) I am of the humblest opinion that the facts of the present case are slightly different.

20 The accused have failed to bring on record requisite evidence to indicate that the loan amount has been fully repaid in accordance with the Bill of Exchange **Exh.32**. The accused have not brought such circumstance on record during cross-examination of the complainant, their statement **Exh.69**, during versions of Milind DW1, P. Ramakrishna DW2. They have failed to establish that the cheque has been obtained from their custody without following due process of law thereby denying the authority of the complainant as the holder in due course. As a result, this point is answered as proved.

<u>AS TO POINT NOS. 2 TO 4 :</u>

21 The complainant has deposed that the cheque **Exh.33** was drawn on the account of the accused maintained with the **Axis Bank Ltd**, Goregaon (E) branch, Mumbai. He has deposed that it was presented at the Bank of Baroda, Lalbaug, Mumbai for encashment.

22 The cheque **Exh.33** indicates that it has been issued on

23.09.2015. The bank return memo **Exh.34** indicate that it was returned with remarks "Funds Insufficient" on 24.09.2015. There are special presumptions under Section 118 of the Act with regard to the endorsements of date, consideration on a Negotiable Instrument. Plus, Section 146 of the Act authorizes the court to presume prima facie evidentiary value of the bank slip. Therefore, the date, endorsements appearing on the cheque **Exh.33**, the bank return memo **Exh.34** do have such evidentiary value. The accused have not disputed said factors during cross-examination of the complainant and have not adduced defence evidence to rebut said presumptions. Having calculated said period of issuance of the cheque, presentation of the same for realization; it would be an indicator that the cheque **Exh.33** has been presented within the validity period.

23 The complainant has deposed that the cheque **Exh.33** stood dishonoured with remarks "Funds Insufficient". The oral evidence is supported by way of the bank return memo **Exh.34**. It indicates that the cheque **Exh.33** could not be honoured for the remarks "Funds Insufficient". The bank memo does bear the seal and signature of concerned bank. It does have evidentiary value vide Sections 118, 146 of the Act. These factors have not been washed out during cross examination or their statement under section 313 of the Code by the accused.

24 The complainant has deposed that the demand notice **Exh.35** has been issued calling upon the accused to repay the cheque amount. The notice **Exh.35** indicates claim that, the accused owed an

amount of Rs. 25,00,000/- on **23.09.2015** i.e. the date of the instrument and on **08.10.2015 i.e. the date of the notice to the complainant**, for which the cheque **Exh.33** has been issued. The bank return memo **Exh.34** indicates that the cheque **Exh.33** stood dishonoured on 24.09.2015 and the notice **Exh. 35** (as per the dispatch receipts **Exh.36**) was issued on 08.10.2015. The postal receipts **Exh.36** do support said events. The postal receipts **Exh.36** and the acknowledgment receipts **Exh.37** cumulatively indicate that the notice was addressed and properly dispatched to the accused. In rebuttal, the accused have failed to show otherwise. The complainant has with stood to his version during cross-examination on said aspects.

25 The accused have failed to bring on record necessary oral, documentary evidence to show that they made the payment of the cheque amount within 15 days from receipt of the demand notice as per Sections 138 (a)(b)(c) of the Act. Hence, point nos. 2 to 4 are answered as proved.

AS TO POINT NO. 5 :

26 Accused no.2 is the signatory as is evident from the pleadings and the cheque **Exh.33**. The complainant has deposed that accused no.3 has been responsible for and participated in the day to day affairs of accused no.1 firm. He has withstood to his version on said aspect and the same has been supported by other evidence on record. Hence, accused nos.1 to 3 have been held guilty for commission of the offence. Hence, I pause here. Heard. It is submitted for the accused that lenient view may be taken since accused no.1 has stopped its

operations. It is submitted for the complainant that maximum punishment be awarded since the complaint is almost ten years old, he has relied upon the case law **Atharva Agro Chemical Pvt Ltd Vs. Gopal Chand Barik and Ors,** Criminal Misc. Petition Nos.357 and 233 of 2013. He has brought attention towards paragraph no.18 therein to support his submissions that the complainant is required to be compensated in proportion to the length of trial and considering ignorance of the accused to repay the amount in question.

27 Section 138 of the Act has been incorporated to have deterrent force against the defaulters in contractual relations. Herein, it has been brought on record that the complainant and the accused did have several transactions for considerable period during 2009 to 2015. Having considered said aspects, this is not a fit case to invoke remedy for the punishment i.e. imprisonment in true sense. Hence, it can be reasonably dealt with by awarding fine amount, which can be paid to the complainant towards compensation for the costs, which have been incurred on part of the complainant.

28 The complainant has alleged about disbursal of the sum of Rs.25,00,000/-. He has deposed about receipt of certain interest component with regard to the loan amount. No clarification has been placed on record about the exact amount received against the principle amount by the complainant so far except production of the bill memo, slip memo **Exhs.30, 31**. Similarly, no such details have also been placed on record by the accused. The interest component @ 9% p.a. on the cheque amount therefore would be reasonable. The duration of trial is

approximately more than nine years. Hence, on calculation it would make Rs.45,25,000/-.

29 The complainant has brought on record that accused no.1 is registered Partnership firm. He has also deposed that accused no.1 did have the transaction of around Rs.4 crores with him during 2009 to 2015. That apart, no such financial distress situation has been brought on record on part of the accused. Hence, the fine amount i.e. round figure of Rs.40,00,000/- would be proper and looking into the factual aspects as brought on record, the same can be recovered from accused nos.1 to 3. Since, accused no.3 is not the signatory of the cheque, the default sentence against him can be waived so far as his role is concerned. As a result, following order is passed.

ORDER

1. Accused nos.1 to 3 stand convicted for the offence punishable under Section 138 r/w 141 of the Negotiable Instruments Act under Section 255 (2) of the Code of Criminal Procedure.

2. Accused nos.1 to 3 are sentenced to pay fine amount of Rs. 40,00,000/- (Rupees Forty Lacs) only. And in default, accused no.2 Kamleshkumar Jain to undergo simple imprisonment for the period of 6 (Six) months.

3. The fine amount, if recovered be paid to the complainant towards compensation under Section 357 of the Code of Criminal Procedure.

4. The accused to surrender their bail bonds.

5. Copy of this judgment and order be given free of costs, forthwith to the accused.

(Judgment dictated and pronounced in open Court).

VAIBHAVRAJ BAPUSAHEB GULVE PATIL
Digitally signed by VAIBHAVRAJ BAPUSAHEB GULVE PATIL
Date: 2025.04.11 17:56:10 +0530

(V.B. Gulve-Patil),
Date: 11.04.2025 Judicial Magistrate First Class,
20th Court, Mazgaon, Mumbai.

Judgment dictated on :- 11.04.2025
Judgment transcribed on :- 11.04.2025
Judgment signed on :- 11.04.2025

VAIBHAVRAJ BAPUSAHEB GULVE PATIL
Digitally signed by VAIBHAVRAJ BAPUSAHEB GULVE PATIL
Date: 2025.04.11 17:56:16 +0530

(V.B. Gulve-Patil),
Date : 11.04.2025 Judicial Magistrate First Class,
20th Court, Mazgaon, Mumbai.