MHNS240008182025	**SCC No. 203/2025** **Vishvas Sonavane** **V/s.** **Bhaskar Dhabale)**

ORDER BELOW EXH.1

The complainant has prayed for issuance of process against the accused under Section 138 of the Negotiable Instruments Act **(In short NI Act)** and u/s 420 of Indian Penal Code **(IN Short IPC).**

2. The complainant contended that he and accused were well acquainted. In January 2022, the accused sought financial assistance for agriculture, business, and house construction. Accordingly, the complainant advanced Rs. 9,00,000/-. The accused was under obligation to repay said amount within six months. In December 2024, the accused issued a cheque bearing no.027241 of Rs.7,00,000/-. He promised to pay the remaining Rs. 2,00,000/- in cash in February 2025. The complainant deposited said cheque in the his account at Union Bank of India, Satana Branch. However, the same was dishonoured on 01/02/2024 with the remark "Signature Differs." It was revealed that the cheque was drawn on an Axis Bank account belonging to the accused's wife. The accused knowingly issued a cheque from his wife's account without proper authority. He himself has signed the said cheque. Legal notice dated 01/03/2024 was issued and duly received by the accused. However, he failed to repay the cheque amount within the prescribed period. Hence, the complainant filed the present case.

3. The accused appeared and resisted complaint by filing say (Exh.9). He contended that there was no financial transaction between them. He has never issued the cheque in question. The essential ingredients of Section 138 of the NI Act are not satisfied. Hence, prayed to reject the complaint.

4. Heard Ld. Advocates of the parties at length. The complainant relied on ruling **Sazid Khan v. State of Haryana & Anr.** CRM-M-31873-2018. In which Hon'ble Punjab & Haryana High Court held that mere pendency or filing of a complaint under Section 138 of the Negotiable Instruments Act does not bar criminal prosecution under the IPC, such as Sections 420, 406, or 120-B, if the factual allegations disclose independent criminal intent. Further, the complainant has relied upon ruling of **V. Narayanasamy vs Shri Ajay Chandrakar** Criminal Misc Petition no.98/2011 where the Hon'ble Chhattisgarh High Court held that Conversion of a summons trial into a warrant trial under Section 259 CrPC is discretionary. Such conversion should be allowed only when the Magistrate finds it necessary in the interest of justice, considering the nature and seriousness of the case.

5. The Ld. Advocate of the accused relied on ruling **Alka Khandu Avhad v. Amar Syamprasad Mishra & Anr. Criminal Appeal No. 258 of 2021**. In which Hon'ble Supreme Court held that for an offence under Section 138 of the Negotiable Instruments Act, the most fundamental requirement is that the cheque must be drawn on an account maintained by the accused. If the cheque is not issued from the accused's own bank account, the very first ingredient of Section 138 fails. Further, he relied on ruling **Jugesh Sehgal v. Shamsher Singh Gogi 2009 STPL 12584 SC**. In which Hon'ble Supreme court held that the offence under Section 138 NI Act can be made out only against the person who maintains the account from which the cheque is drawn. If the dishonoured cheque is issued from an account belonging to someone else, prosecution under Section 138 cannot be sustained.

6. Perused record. The complainant seeks issuance of process against the accused for the offence punishable under Section 138 of the N I Act and Section 420 of the I.P.C. At this stage, it is required to examine whether the averments made in the complaint and the material placed on record disclose prima facie ingredients of the alleged offences. As for offence under Section 138 of the N I Act is concerned, one of the essential ingredients is that the cheque must be drawn by the accused on an account maintained by him with a banker. Admittedly, the disputed cheque was drawn on an account maintained with Axis Bank which belongs to the wife of the accused. The complainant has specifically stated that the cheque was issued from the account of the accused's wife and that the accused himself had signed the cheque. Further, the disputed cheque was not drawn on the bank account maintained by the accused himself. The essential ingredient required to constitute an offence under Section 138 of the NI Act is not satisfied. Therefore, the rulings **Alka Khandu Avhad supra** and **Jugesh Sehgal supra** are applicable to fact of the presence case. Therefore, the complainant has failed to make out a prima facie case for issuance of process against the accused under Section 138 of the Negotiable Instruments Act.

7. Furthermore, the contention of complainant primarily discloses a monetary transaction between them. Further, it is contention that the complainant advanced a sum of money to the accused. The accused issued the cheque for repayment which was subsequently dishonoured. There are no specific averments showing that the accused had a dishonest intention from the very beginning of the transaction. The complaint does not disclose any material to show that the accused induced the complainant to part with money by deception at the inception. The allegations in the present complaint essentially disclose a civil dispute arising out of a monetary transaction. Resultantly, the essential ingredients of the offence punishable under Section 420 of the IPC is not constituted in present matter. In the backdrop, the principle laid down in the **Sazid Khan and V. Narayanasamy supra** rulings cannot be applied to the facts of the present case. Therefore, the complaint does not disclose sufficient grounds for proceeding against the accused for the offences punishable under Section 138 of the NI Act or Section 420 of the IPC. Hence, following order.

O R D E R
The complaint is dismissed as per section 203 of Code of Criminal Procedure,1973.

MADHUSUDAN DINKAR MAHADIK

Digitally signed by MADHUSUDAN DINKAR MAHADIK
Date: 2026.04.01 17:23:24 +0530

Date : 01/04/2026.

(Madhusudan Dinkar Mahadik)
Judicial Magistrate First Class,

Satana.