

MHSN110000622017



ORDER BELOW EXH.1 IN
CRI.M.A.NO.19/2017
(Nagesh Anant Dudhal Vs Jayendra Ashok
More)

1. The complainant has filed complaint and requested to issue process against the accused for the offence punishable under Section 405, 406, 464 of the Indian Penal Code.
2. It is contention of the complainant that, on 01/01/2011, he has entered in agreement of sale for the vehicle bearing No.MH.10.Z.2596 with accused. The complainant had taken the possession vehicle on the basis of agreement but after some time due to some financial difficulties complainant was unable to perform his part of contract. Accordingly, the complainant had given the amount to the proposed accused Jayendra More for the period the vehicle was used by complainant. Accordingly, the contract was repudiated.
3. At the time of execution of agreement complainant had given three cheque bearing No.021334, 021336, 021337 as security. After repudiation of contract, complainant forgot to take back the three cheque which were given as a security to the proposed accused i.e. Jayendra More. Jayendra More presented all the three cheque which was dishonoured, and legal notices were received to the complainant. At that time, complainant

came to know first time that cheques were misused by Jayendra More.

4. Jayendra More has mentioned false contents and amount in the cheques and misused the cheques, which were given as a security by preparing false document. Hence, prayed to prosecute accused under Section 405, 406, 464 of Indian Penal Code.

5. Verification of complainant was recorded. The complainant has filed copy of complaint before Police Inspector, Atpadi Police Station, copy of postal receipt through which complaint was sent, copy of complaint in S.C.C.No.176/2015 filed by Jayendra More against the present accused under Section 138 of the Negotiable Instrument Act, copy of list of documents in S.C.C.No.176/2015, copy of agreement to sale, copies of notice issued by Jayendra More.

6. Heard Ld advocate for the complainant. The complainant is requesting to prosecute Jayendra More for misusing the instruments which were in his custody as a security at the time of execution of contract between them. It is pertinent to note here that, it is matter of record that, Jayendra More has filed complaint under Section 138 of the Negotiable Instrument Act against Nagesh Dudhal for dishonouring of cheque No.021336. It is settled principle of law that for initiating

proceedings against 138 of the Negotiable Instrument Act there is no need having *mens-rea*. While prosecuting under Section 405, 464, 420 which may criminal offence must have criminal intention i.e. *mens-rea* Section 405 of Indian Penal Code also makes a criminal offence when any person who has been entrusted with any property dishonestly misappropriates or converts for its own use shall be said to be committed offence of criminal breach of trust.

7. When the parties entered into an agreement and one party agrees to make payment in place of liability, then the element of entrustment of such property gets merged with issuance of cheque. In such position unless there is specific provision in the contract, if the cheques are not honoured then the agreement shall stand rescinded automatically and the position to be revert to the original, it cannot be said that, even after taking cheques, the element of entrustment would survive.

8. On perusal of the contract executed between parties there is no such condition mentioned as discussed above which would attract criminal offence against Jayendra More. The complainant has prima-facie not brought on record any material ingredient which would show Jayendra More was having a dishonest intention from inception. As the complainant has admitted the contract it cannot be said that, the intention of Jayendra More was to cheat or commit criminal breach of trust.

9. The contentions in the complaint at the most can be a part of defence in the proceedings under Section 138 of the Negotiable Instrument Act. In the proceedings of 138 of the Negotiable Instrument Act Nagesh Dudhal is expected to rebut the presumption under Section 118 and 139 of the Negotiable Instrument Act on the principle of preponderance of probabilities. It is by not stretch of imagination it is expected by Nagesh Dudhal to prosecute Jayendra More, where *mens-rea* is missing and the contentions raised in the complaint are part of his defence. The complainant has prima-facie miserably failed to bring on record and prove the material ingredients under Section 405, 406, 464 of Indian Penal Code.

10. Considering all these facts and circumstances, matter before me and legal aspect, I am inclined to pass following order.

ORDER

1. Complaint stands dismissed under Section 203 of the Code of Criminal Procedure.
2. Accordingly, matter is disposed off.

Date:- 21/05/2026
Place:- Atpadi

(R. B. Kulkarni)
Judicial Magistrate First Class
(Court No.2) Atpadi.

Certificate

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer - Arun S. Yadav

Court - Jt. Civil Judge Jr.Dn. Atpadi.

Date - 21.05.2026

Order signed by the

Presiding Officer on - 21.05.2026

Order uploaded on - 21.05.2026