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IN THE COURT OF ADDL. SESSIONS JUDGE, THANE

(Before: V. G. Mohite, Additional Sessions Judge, Thane)

Criminal Appeal No.41/2024.**Exh.No.**

Shri. Suhas Uttam Shinde
Age – 50 years, Occ.- Journalist,
R/o. - Flat No.702, C Wing,
Siddheshwar Park, Parsik nagar, ... **Appellant**
Kharegaon, Kalwa (W)-400 605. (Original accused)

Versus

- 1] Mrs. Vaishali Nitin Shimpi
Age – 50 years, Occ. - Service
R/o. - Parivar Darshan, ... **Respondent No.1**
Mahagiri, Thane (W). (Original complainant)
- 2] The State of Maharashtra
(Through Public Prosecutor,
Thane. ... **Respondent No.2**

Shri. N. T. Pashilkar, Advocate for the Appellant.
Shri. Jaideep V. Thakker, Advocate for Respondent No.1

WITH**Criminal Revision No.92/2024.**

Mrs. Vaishali Nitin Shimpi
Age – 50 years, Occ. - Service
R/o. - Parivar Darshan, ... **Petitioner**
Mahagiri, Thane (W). (Original complainant)

V/s.

Shri. Suhas Uttam Shinde
Age – 50 years, Occ.- Journalist,
R/o. - Flat No.702, C Wing,
Siddheshwar Park, Parsik nagar,
Kharegaon, Kalwa (W)-400 605.

... **Respondent**
(Original accused)

Shri. Jaideep V. Thakker, Advocate for the Petitioner.
Shri. N. T. Pashilkar, Advocate for the Respondent.

J U D G M E N T

(Delivered on – 31/07/2026)

1] The appellant / accused filed appeal under Sec. 374 of Cr.P.C. / Sec. 415 of B.N.S.S. against the judgment and order of conviction dated 23.08.2024 for the offence punishable under Sec. 138 of Negotiable Instruments Act, in S.C.C.No.6932/2022 decided by the learned 5th Joint CJSD & Addl. CJM, Thane.

2] Whereas, the revisioner petitioner / complainant has filed present Revision Petition u/s 397 of Cr.P.C. / Sec. 438 of BNSS challenging merely the inadequate sentence of punishment awarded by the Magistrate to respondent / accused.

3] The brief facts of the case are as under :

The complainant/respondent no. 1 had filed private complaint against the appellant/accused for the offence punishable u/s. 138 of N.I. Act. It is contended by the complainant that as per the request of accused, she has

advanced friendly loan of Rs.15,00,000/- to him. The accused has issued three cheques of Rs.4,00,000/- each and one cheque of Rs.3,00,000/- towards repayment of loan. However, as per the request of accused, she has not deposited said cheques and extended the period of repayment. Thereafter, the appellant/accused issued disputed two cheques bearing No.969046 and 908942 dated 30.03.2022 of Rs.4,00,000/- each, drawn on Thane Janata Sahakari Bank Ltd, Vartaknagar Naka Branch, Thane towards discharge of part liability. The complainant has presented said cheques for encashment through Thane Bharat Sahakari Bank Ltd., Chendani Koliwada Branch, Thane However said cheques were dishonored for “insufficient funds” and returned back on 18.06.2022 with bank memo.

4] Then, complainant had sent legal notice dated 30.06.2022 by R.P.A.D. to accused and demanded amount of said two cheques. The appellant/accused received said notice on 02.07.2022. He has sent reply notice dated 11.07.2022 and denied the liability. In spite of service of demand notice dated 30.06.2022, the accused failed to pay the amount of cheques within stipulated period. Therefore, the complainant filed complaint against appellant/accused.

5] The trial court has recorded plea of accused, punishable u/s.138 of the Negotiable Instruments Act. The accused pleaded not guilty and claimed to be tried.

6] The complainant has filed her evidence affidavit for

proving the case. She has also relied upon following documents

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- a] Bank statement [Exh.15 to 18]
- b] Disputed two cheques [Exh.20 & 21]
- c] Bank return memos [Exh.22 & 23]
- d] Demand Notice [Exh.24]
- e] Postal receipts [Exh.25 to 30]
- f] Postal acknowledgments [Exh.31 to 33]
- g] Notice reply by accused [Exh.38]
- h] Loan agreement dt. 30.04.2021 [Exh.41]
- i] IT return & balance-sheet of complainant for the year 2021-2022 [Exh.51 colly].

7] The learned Magistrate has recorded the statement of the accused under Sec. 313 of Cr. P.C. He had denied his liability to pay the amount of cheques. According to him, he has made online repayment of Rs.2,50,000/- in the account of complainant and also paid more than Rs.7,00,000/- in cash to the husband of complainant and thereby restricted his liability to the extent of Rs.5,50,000/- only.

8] After hearing both the sides and considering the evidence placed on record, the trial court has convicted the accused vide sec. 255 (2) of Cr.P.C. for the offence punishable u/s. 138 of N.I. Act and sentenced to suffer S.I. for six months and to pay fine of Rs.6,75,500/- in default S.I. for two months. It is further directed to pay the fine amount within two months from the date of order, which shall be payable to the complainant as compensation under Section 357(3) of Cr.P.C.

9] Being aggrieved and dissatisfied with the judgment

and order of conviction u/s. 138 of N.I. Act, passed by trial court, appellant/accused has preferred this appeal.

10] Whereas, the revisioner petitioner / complainant has filed present Revision for enhancement of punishment awarded by the trial court. According to her, the Magistrate has not awarded appropriate punishment as provided by the statute. Hence, she prayed to enhance the punishment of imprisonment upto two years and fine to the extent of double the amount of dishonoured cheques along with further interest @ 9% p.a. thereon from the date of order till its realization.

11] Heard both sides at length. Whereas, the advocate for appellant / accused has also filed written notes of arguments vide Exh.13 wherein he has referred following citations :

- (A) **Sanjay Yadhavraoji Makode V/s. Suhas Prakash, 2019 ALL MR (Cri) 2813.**
- (B) **Meera Chiplunkar V/s. Ashalata Rawji Kondikar, 2015 ALL MR (Cri) 4721.**
- (C) **Shaikh Jalal and others V/s. State of Goa, 2016 DGLS (BOM) 1253.**

12] The appellant/accused has further relied upon following citations :

- (I) **N Vijay Kumar V/s. Vishwanath Rao N., 2025 ALL MR (Cri) 3254 (SC)** wherein after discharge of the onus of the presumption under Section 118 and 139 of N.I. Act by the accused, the complainant has

failed to discharge burden of proof lies upon him to prove the offence and thereby the accused was acquitted from the case.

- (II) **Anss Rajashekar V/s. Augustus Jeba Ananth, AIR 2019 SC 942**, wherein the accused was acquitted for the offence under section 138 of N.I. Act by holding the probabilities of absence of legally enforceable debt due to failure of complainant to establish source of funds utilized for disbursal of a loan to accused.
- (III) **Girdhari Parmanand Motiani V/s. Vinayak Bhagwan Khavnekar and Ors., 2016 ALL MR (Cri) 1909**, wherein the defence of issuance of blank cheques to complainant has been accepted by taking into consideration the facts of consecutive serial numbers of two cheques, but difference of their dates of more than one year.
- (IV) **Sudarshan Chemical Industries Ltd. V/s. Shoban Pigments and others, 2015(2) DCR 737**, wherein the accused was acquitted by holding that the complainant has suppressed the facts about the actual transaction with accused and understanding about issuance of blank signed cheque.
- (V) **Pinak Bharat and Company V/s. Anil Ramrao Naik and Ors., AIR Online 2022 BOM 624**, wherein it was held that adding date for payment on cheque subsequently by complainant without consent of accused amounts to material alteration and renders cheque void.
- (VI) **Venkatesh Bhat V/s. Rohidas Shenoy, 2010 Cri. L.J. 1061**, wherein it was held that cheque was issued by accused to complainant under an agreement between them – If there was any violation of terms of agreement by accused, remedy open to complainant to take appropriate steps before Civil

Court and not criminal Courts.

13] In the light of the contentions of the parties, following points arises for my determination. I have recorded my findings and reasons thereon, as under :-

POINTS	FINDINGS
01. Whether complainant/respondent no. 1 proves that, appellant/accused has committed the offence punishable under sec. 138 of the N.I. Act ?	In the affirmative
02. Whether judgment and order of trial Court in SCC No. 6932/2022 needs any interference as called for by the appellant / accused in appeal or by the petitioner / complainant in revision ?	In the affirmative as called in revision
03. What order ?	As per final order.

REASONS

AS TO POINT NOS. 1 & 2 -

14] Dishonour of a cheque is by itself not an offence under sec. 138 of N. I. Act. To come within the purview of this section, following requirements have to be fulfilled.

1. *The cheque has to be issued towards payment of an amount of money for the discharge in whole or in part of any debt or any other liability;*
2. *The cheque is returned by the bank unpaid;*
3. *The reason for non-payment of the cheque should be insufficiency of funds or amount of cheque*

exceeding the amount arranged to be paid from the account.

But before the offence can be said to be made out the proviso to the section requires that-

(a) The cheque must be presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier.

(b) The payee or the holder in due course of the cheque makes a demand for the payment of amount of money under the information received by him from the bank regarding dishonour of the cheque

(c) The drawer of the cheque fails to make payment of the amount of money within 15 days of the receipt of said notice.

15] In present case the complainant (PW-1) has recorded her evidence to prove the case against the accused. She has reiterated the contentions raised in her complaint. Her evidence is challenged on behalf of accused by way of cross examination. During cross examination it has come on record that she is doing interior beautification business by name 'Decor Point' and she is earning Rs.3,50,000/- to Rs.4,00,000/- per year from it. Her husband also used to credit the amount in her bank account. She has advanced loan of Rs.15,00,000/- to accused from her personal bank account. In addition to that, she also advanced Rs.4,00,000/- to accused on 08.09.2021. Whereas, she has denied the defence of accused that he has taken the amount of Rs.15,00,000/- from her husband in cash and he has repaid said amount with interest to her husband. She has further denied that her financial position is not sound and she has not advanced any amount to accused.

16] Both parties have not denied the execution of agreement dated 30.04.2021 [vide Exh.41] relates to monetary transactions in between them. However, on that day i.e. 30.04.2021 actual payment was not disbursed from the account of complainant to accused. Therefore, four cheques [vide Exh.45 to 48] referred in the agreement has no any concern with present complaint. Therefore, the decision in the case of **Venkatesh Bhat** (supra) is not supported to the defence of accused for knocking the door of civil court to get recovery of the amount.

17] Whereas, the copies of the bank statements of complainant [vide Exh.15 to 18] shows the actual payment in the account of accused. As per said statement, the amount of Rs.4,00,000/- on 05.05.2021, Rs.4,00,000/- on 03.06.2021, Rs.4,00,000/- on 05.07.2021 and Rs.3,00,000/- on 04.08.2021 were transferred in the bank account of accused. These bank transactions shows transfer of Rs.15,00,000/- in the account of accused and he has withdrawn the same. In addition to that, on 08.09.2021 the complainant has also transferred Rs.4,00,000/- from her bank account in the account of accused and he has withdrawn the same.

18] The bank statements [vide Exh.15 to 18] shows the actual payment of Rs.15,00,000/- in the account of accused since 05.05.2021 till 04.08.2021. Receipt of said amount in the bank account is not denied by the accused. But, he claims that

he has refunded said amount in cash to the husband of complainant. Once the acceptance of the amount by the accused is admitted, then onus shifts upon him to prove its repayment. However, except his oral words he has not adduced reliable evidence to prove its repayment either to complainant or her husband.

19] The disputed two cheques [vide Exh.20 and 21] of Rs.4,00,000/- each were issued on 30.03.2022. The accused has admitted his signatures on both cheques. The complainant is the holder of cheques. Therefore, the presumptions under sec. 118 and 139 of N. I. Act, are in favour of complainant. The appellant/accused has not rebutted said presumption by adducing cogent evidence or by achieving the admission while cross-examination of complainant. On this background, it is clear that, the appellant/accused had issued disputed cheques [vide Exh.20 & 21] to discharge his part legal liability. Hence, the decision in the case of **N Vijay Kumar** (supra) is not supported to the defence of accused.

20] Admittedly the disputed cheques [vide Exh.20 and 21] are of consecutive serial numbers. However, both cheques were issued on the same date i.e. 30.03.2022 with the signature of accused. I do not find any alteration or addition on the cheques. In these circumstances, the decisions in the case of **Girdhari Parmanand Motiani** and in the case of **Pinak Bharat** (supra) are not supported to the defence of accused.

21] The complainant is the proprietor of interior beautification business by name 'Decor Point'. She is earning Rs.3,50,000/- to Rs.4,00,000/- per annum from such business. Her husband also used to give money to her. She has produced her bank statement and income tax documents showing her financial position. In these circumstances, the decisions in the case of **Anss Rajashekar** and in the case of **Sudarshan Chemical** (supra) are not supported to the defence of accused.

22] The material placed on record further shows that the complainant is the holder of cheques. She has presented the same for its encashment. She was not bound to ask the permission of accused before depositing the same in the bank. However, said cheques got dishonoured for the reason 'funds insufficient' in the account of accused. The bank has given memos dated 18.06.2022 [vide Exh.22 and 23] with such endorsements. Accused has not rebutted presumption arisen under Section 146 of N.I. Act.

23] After receipt of the intimation of the dishonour of cheques, the complainant has sent legal notice dt. dt.30.06.2022 by registered post to the appellant/accused and demanded cheques amount. After receipt of said notice, accused sent reply notice dated 11.07.2022 and denied his liability. He has also not made the payment of cheques within stipulated period.

24] In the conclude, it is noted that, the disputed

cheques were issued to discharge the legal liability and same were dishonoured for the reasons 'funds insufficient'. In spite of service of demand notice, appellant/accused has not made payment of cheques within 15 days. Therefore, he has committed offence punishable under Sec. 138 of N.I. Act. Trial Court has rightly appreciated evidence placed on record and held guilty the appellant/accused for the offence punishable under Sec. 138 of N.I. Act. Therefore, the findings recorded by trial court are hereby confirmed.

25] Section 138 of N.I. Act provides the punishment with imprisonment for a term which may extend to two years or with a fine which may extend to twice the amount of cheque or with both. However, it appears that the Trial Court has awarded inadequate punishment by taking into consideration the facts of the case and the monetary transactions between the parties. Therefore, the interference of this court is required as prayed in the revision to award enhanced punishment to the accused.

26] No doubt, during pendency of the case, the accused has refunded Rs.2,50,000/- to complainant and thereby the liability of Rs.5,50,000/- remained with the accused. In these circumstances, the Trial Court has rightly awarded the compensation of Rs.6,75,500/- by taking into consideration the interest @ 9% p.a. on the outstanding amount. Therefore, the interference of this court is not required on this point. The finding recorded by the Trial Court on the same are hereby confirmed. Hence, I answer point No. 1 in the affirmative and

point No. 2 accordingly.

27] Today, both proceedings are fixed for judgment. The complainant and her advocate are present. The advocate of appellant/accused also present in the first half. However, the appellant/accused remained absent. His advocate intended to file exemption application. However, the court has directed him to keep present the appellant/accused at the time of judgment. He has assured to keep him present in the second half. However, the appellant/accused and his advocate are absent before the court. It appears that the appellant/accused deliberately remained absent to avoid the sentence of imprisonment after dismissal of his appeal. In these circumstances, instead of postponing the judgment, it can be pronounced in absence of appellant/accused by giving directions to trial court to secure his presence by issuing NBW against him and then sending him in jail with conviction warrant. Hence, I proceed to pass following order :

ORDER

1. The appeal filed by accused is here dismissed.
2. The revision filed by complainant is allowed and the order of conviction passed by trial court is altered as follows :
 - (a) The accused is hereby sentenced to suffer S.I. for two years and to pay fine of Rs.6,75,500/- in default S.I. for six months for the offence punishable under Section 138 of N.I. Act.

(b) The accused is further directed to pay the fine amount of Rs.6,75,000/- to the complainant as compensation as provided by Section 357(3) of Cr.P.C. with interest @ 9% p.a. from the date of judgment of the Trial Court till its realization.

3. Record and proceeding of the trial court be sent back.
4. The trial court is directed to secure the presence of appellant/accused by issuing NBW against him and then send him in jail with conviction warrant.
5. Inform Trial Court accordingly.
6. The original judgment be kept in appeal proceeding and its true copy be kept in the revision proceeding.

Dictated and pronounced in open Court.

Date : 31.07.2026.

[V. G. Mohite]
Additional Sessions Judge,
Thane.