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Received on :- 01.07.2020

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Decided on :- 10.01.2023

Duration :- YY—MM—DD
02 06 09

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS AT AURANGABAD, COURT NO.6.
(Before : Sadanand B. Patil)

Summary Criminal Case No. 4935/2020.
Exh. No. 33

Sustainable Agro-Commercial, Finance Ltd. }
1st Floor, 31 Friends Colony,Kokanwadi, }
Station Road, Aurangabad, 431005 }
Through its Authorised Signatory, }
Mr. Maruti S/o. Tukaram Agavane }
Age:- 44 yrs. Occ:- Service. } **Complainant**

Versus

Mr. Bhila Gangaram Patil, }
Age- Major, Occ.: Agriculturist }
R/o. 220, Saygavhan, Tq. Kannad, }
Dist:- Aurangabad. } **Accused**

Complaint for the Offence punishable U/sec. 138 of the Negotiable Instrument Act, 1881.

Appearance:-

Shri. G. U. Bodwade Ld. Adv. for the complainant.

Shri. V.K. Pungle Ld. Adv. for the accused.

J U DG M E N T
(Delivered on 10.01.2023)

The accused is facing trial for an offence punishable under Section 138 of the Negotiable Instrument Act (Hereinafter referred as “the Act” in short) for dishonor of cheque bearing No.942383 of Rs.1,39,732/-.

The brief facts of complainant's case are as under:

02. The complainant company is duly incorporated and registered under the Companies Act, 1956. It is non-banking financial company registered with Reserve Bank of India and having its registered office at 1st floor, Marshal Building, Shoorji Vallabhdas Marg, Ballard Estate, Fort, Mumbai and having several branches throughout Maharashtra and other states also. Out of which one of the branch is located at Aurangabad. The complainant company is engaged in the business of providing financial assistance for agricultural related finance to farmers.

03. According to the complainant, the accused is a farmer. He approached to the complainant company and applied for loan for procuring/ purchasing of Micro Irrigation System. Accordingly, the

complainant Company sanctioned agricultural term loan of Rs.2,18,000/- to the accused for purchase and installation of Micro Irrigation System in his agricultural land. After sanctioned the loan, the accused executed loan agreement and other several related documents in favour of complainant company. The accused agreed to repay the said loan as per scheduled agreed between him and complainant Company. He agreed to repay the said loan in three installments. After stipulated period, he issued signed cheque bearing No.942383 dated 30.01.2020 drawn on The Aurangabad District Central Co-op. Bank, Branch Nagad of an amount of Rs.1,39,732/- towards the repayment of loan amount and interest thereon as per the schedule agreed.

04. The complainant presented said cheque for encashment in its bank namely Axis Bank Ltd., Branch Aurangabad but, the said cheque was dishonored and returned for the reason of 'Funds Insufficient' on 25.02.2020. The Axis bank informed to the complainant company about the dishonour of cheque vide letter dated 06.03.2020. Thereafter, the complainant issued statutory notices to the accused through its Advocate by R.P.A.D. on 16.03.2020 and demanded the cheque amount. In-spite of duly service of notice, the accused failed to pay cheque amount within next 15 days. Hence, the complainant constrained to file this complaint against the accused.

05. After recording statement u/sec. 200 of the Cr. P.C. of the authorized signatory of complainant and perusing all documents

produced on record, cognizance of the offence punishable u/sec. 138 of the N. I. Act was taken against the accused.

06. Thereafter summons were issued against the accused. In response to summons, he appeared. Copy of complainant as well as documents were supplied to him. I have recorded particulars of offence below Exh. 12. The contents of plea are read over and explained to the accused in vernacular, to which he pleaded not guilty and claimed to be tried.

07. The statement of accused u/sec. 313 of the of Cr. P.C. is recorded vide Exh. 28. His defence is total denial and false implication.

08. Ld. Adv. Mr. G. U. Bobhavde submitted his written notes of arguments on behalf of complainant at Exh. 29. Heard arguments in advance of learned advocate Shri. V.K. Pungle for the accused.

09. Following points arise for my determination. I have recorded my finding thereon for the reasons given as under:-

Sr. No.	Points	Findings
1.	Does the complainant prove that cheque No. 942383 (Exh.16) was drawn by accused for legally enforceable debt or other liability?	Yes.
2	Does the complainant prove that the said cheque dishonored for the reason “Fund Insufficient”?	Yes.

3	Does the complainant prove that the notices sent for demand of cheque amount within 30 days from the date of dishonour of cheque?	Yes.
4	Does complainant prove that the accused failed to pay cheque amount within 15 days after receipt of notice?	Yes.
5	Whether the accused has committed an offence punishable under section 138 of the N. I. Act?	Yes.
6.	What order?	As per final order

REASONS

Evidence of Complainant company.

10. To prove the case, the complainant company examined only its authorized officer Mr. Maruti Tukaram Agavane as C.W.-1. He reiterated the contents of complaint in his evidence affidavit Exh. 4. Beside the oral evidence, the complainant company relied on following documents;

i) Cheque No. 942383 dated 30.01.2020 at Exh. 16,
ii) Cheque returned memo dated 25.02.2020 at Exh. 17,
iii) The letter issued by Axix Bank, branch Aurangabad dated 06.03.2020 in respect of cheque returned unpaid at Exh.18
iv) Notice issued to the accused dated 16.03.2020 at Exh. 19,
v) R.P.A.D. receipt at Exh.20,

vi) Track consignment report at Exh.21,

vii) Certified copy of board resolution dated 11.02.2017 at Exh. 22,

viii) Certified copy of board resolution dated 22.02.2019 at Exh. 23,

ix) Facility Letter dated 15.06.2016 at Exh. 24,

x) Certified copy of loan account extract at Exh. 25,

xi) The supporting certificate of loan account extract is at Exh.26,

11. On the other hand, the accused did not lead oral or documentary evidence in his defence.

Point No.1:-

12. At the out set, it significant to note here that, the complainant company is legal entity. Its officers are change from time to time. The complainant company in its meetings of board of directors dated 11.02.2017 and 22.02.2019 has passed resolutions (Exh. 22 and 23) and delegated its power to Mr. Maruti Agavane and other legal officers and severally authorized to look after the legal affairs of complainant company. Mr. Maruti Agavane filed this complainant and his evidence as per authority delegated him. The accused has not challenged the authority of Mr. Maruti Agavane.

13. C.W-1 Maruti Agavane deposed that, accused applied for loan for the purpose of purchase and install micro irrigation system in his land. Accordingly, the complainant company sanctioned and disbursed term loan of Rs. 2,18,000/-. Accused agreed to repay the

loan amount with interest. He executed relevant documents in favour of Company. In discharge of the liability to repay the agreed installment of loan amount, the accused issued the cheque bearing No. 942383, dtd. 30.01.2020 of Rs. 1,39,732/-(Exh. 16) drawn on The Aurangabad District Central Co-operative Bank Ltd., Branch Nagad. He further deposed that, the cheque was presented for encashment in complainant's banker Axis bank Ltd., Branch Adalat Road, Aurangabad but it was dishonor for reason of 'funds insufficient' vide memo dated 25.02.2020 (Exh.17). Therefore, on 16.03.2020 the complainant company issued a statutory notices to the accused through R.P.A.D. and demanded cheque amount. Copy of said notice is at Exh.18. Notice is duly served on the accused on 18.03.2020. In-spite of duly service of demand notices, the accused failed and neglected to make payment within stipulated period. Thus the accused committed an offence punishable u/s. 138 of the N. I. Act.

14. Cross-examination of C.W.1- Mr. Agavane is in formal nature. In cross-examination, he stated that he is working in the complainant company as legal Manager since 07.11.2016. Personally, he has not taken signatures of accused on the loan sanction letter. The accused had sought the loan from Kannad Branch of Company. After sanctioning the loan, the accused executed mortgage deed in favour of company. The accused had received subsidy Rs.83,118/- and he also deposited Rs.80,000/- in his loan account. However, the suggestive questions asked to Mr. Agavane such as 7 blank cheques were taken from the accused,

interest rate is not calculated as per Reserve Bank's Rules, there is no due an amount of Rs.1,43,613/- from the accused are categorically denied. There is no signal suggestion that the accused has not applied for loan, he has not taken loan from complaint company, he has not executed any loan documents in favour of complainant company, facility letter entries in loan account extract are illegal etc.. Not only that it is not challenged that cheque in dispute was presented for encashment, some was returned unpaid due to insufficient balance in accused's account, thereafter demand notice issued by complainant company, he received said notice, but failed to pay cheque amount.

15. Thus, it is the defence of the accused that, the complainant company had not obtained 7 blank cheques for the security of loan, there is no legally enforceable debts. On the date of the cheque, an amount Rs. 1,39,732/- was not due from the accused. The complainant misused blank cheque which was taken from the accused and filed this false complaint.

16. Before going into the merit of case, it is necessary to deal with some legal principle regarding presumptions contemplated in Sections 118 (a) and 139 of the N. I. Act. Sec. 118 of the N. I. Act provides 7 types of presumptions, out of that, clause (a) provides that, until the contrary is proved, that the every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been acceptable, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for

consideration. Whereas u/Sec. 139 provides that, it is to be presumed that, in absence of any contrary evidence, that the complainant received the cheque for discharge, in whole or in part, of a debt or other legal liability. In **Basalingappa Vs. Mudibasappa reported in AIR 2019 SC 1983, the Hon'ble Supreme** has summarized the presumptions under Section 118-(a) and 139 of the Act as follows:-

> *i. Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.*
>
> *ii. The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.*
>
> *iii. To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely,*
>
> *iv. That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive*

burden. v. It is not necessary for the accused to come in the witness box to support his defence.

17. The presumptions under Section 118(a) and 139 of the N. I. Act in favour of holder of the cheque. However, these presumptions rebuttable and accused can rebut it without entering into witness box, through cross-examination of the prosecution witnesses etc.. If the accused succeeded to rebut the presumptions u/sec. 139, then burden will shifted on the complainant to prove the legally enforceable debt. In **Rangappa vs Sri. Mohan, reported as 2010 (11) S.C.C. 441,** the Hon'ble Supreme Court observed that,

"Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption Under Section 139 is a device to prevent undue delay in the course of litigation."

It is further held that,

"Section 139 of the Act merely raises a presumption in regard to the second aspect of the matter. Existence of legally recoverable debt is not a matter of presumption u/s 139. It merely raises a presumption in favour of holder of the cheque that the same has been issued for discharge of any debt or other liability."

18. The presumptions under both these sections are rebuttal. To rebut the presumptions, the accused should bring on record such facts and circumstances that the consideration and debt did not exist or their non-existence. Standard of proof for accused to rebut presumptions u/sec. 118 and 139 does not require beyond reasonable doubt, 'Preponderance Of Probabilities' is suffice. The Hon'ble Apex Court in case of **M/s. Kumar Exports v/s. M/s. Sharma Carpets, reported in (2009) 2 S.C.C. 513** laid down the procedure as to how the accused can rebut the presumption under Section 118 and 139 of the Act,

> *“The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing*

of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial.

Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, thereafter, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue".

19. Thus, this is the settled position of law regarding presumptions and procedure for its rebuttal. Therefore, while dealing with cases u/sec. 138 of the N. I. Act, it is obligatory on the part of Court to follow it. Admittedly, the accused has not adduced oral or documentary evidence. He fully relied on the cross-examination of C.W.-1 Maruti Agavane. In cross-examination he clearly admitted that he had applied for loan in the Kannad Branch of complainant Company. He has executed Mortgage Deed in favour of complainant company. The subsidy Rs.83,118/- given by Government is adjusted in loan account, further he deposited Rs.80,000/- towards repayment of loan. Thus, it is not disputed that the accused has taken loan Rs.2,18,000/- from the Cash Credit for purchasing and installing Micro Drip Irrigation system in his land.

20. The defence taken by the accused that complainant company had taken 7 blank cheques for security of loan, but the complainant company misused one of these cheque and filed this complaint.

21. The complainant has produced cheque no.942383 dtd. 30.01.2020 at Exh.16. The accused has neither challenged his signature, nor the account number mentioned in cheque (Exh.16). But, he has raised his defence that, at the time of sanction of loan, the complainant company had taken blank cheque and by misusing amongst one blank cheque, this complaint is filed. However, C.W.1-Mr. Agavane denied in his cross-examination that Company had taken seven blank cheques from the accused. On perusal of the entire cross-examination the accused has not disputed his signature thereon. In that regard I have taken support of the Judgment passed by Hon'ble Supreme Court i***n Bir Singh v. Mukesh Kumar*, (2019) 4 SCC 197** Wherein, it is held that,

> *"**36.** Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."*

22. The accused is not disputing that he has issued cheques to the complainant Company. Only he is disputing that his cheque is misused and filed this complaint. In view of my aforesaid discussion, the accused has not disputed his signature on the cheque Exh.16. Therefore, assuming that the accused had issued blank cheques, it would attract the presumption u/sec.139 of the N.I. Act that cheque was issued in discharge of legally enforceable debt or liability.

23. So far as defence of the accused that cheque was issued for security of loan, Hon'ble Apex Court in **Sripati Singh (since deceased) through his son Gourav Singh Vs. State of Jharkhand and other, - 2021 S.C.C. Online S.C.1002,** wherein it is held that,

> " *20. In the background of the factual and legal positions taken note supra, in the instant facts, the appellant cannot be non suited for proceeding with the complaint filed u/sec. 138 of N.I. Act, merely, due to the fact that the cheques presented and dishonoured are shown to have been issued as security, as indicated in loan agreement. In our opinion, such contentions would arise only in a circumstance where the debt has not become recoverable and the cheque issued as security has not matured to be presented for recovery of the amount, if the due date agreed for payment of debt has not arrived.*"

24. Considering the aforesaid opinion of Hon'ble Supreme Court, the loan of Rs.2,18,000/- was sanctioned and disbursed to the accused. The accused accepted the terms and conditions mentioned in facility letter (Exh.24) and agreed to repay the loan amount in three installments as per Annexure II of facility letter. According to Annexure II, the first installments of repayment was on 25.05.2017, second installment of repayment was on 25.05.2018 and third installment of repayment was on 25.05.2019.

25. Learned Advocate for the accused argued that the Government had given a subsidy of Rs.83,118/- to the accused

which was adjusted in loan account, so also the accused had deposited RS.80,000/- towards repayment of loan amount. Therefore, on the date of cheque, there was not recoverable amount due which is mentioned in cheque.

26. The complainant company produced loan account extract (Exh.25) on record. It shows that on 28.04.2017, Rs.83,118/- received. Said amount is adjusted in due amount. Thereafter, on 10.07.2018, Rs.80,000/- received and adjusted in due amount. Except these two amount there is no further entry of repayment of loan. On carefully perusing of entire loan account extract (Exh.25), it seems that on 30.01.2020, there was total due amount Rs.1,42,613/- including interest. The cheque in dispute is of dated 30.01.2020. The amount mentinoed in cheque is Rs.1,39,732/- i.e. the amount is not excess than due amount. So also the due dates of payment of loan installments had already passed.

27. Cheque in dispute is of Rs.1,39,732/-. On bare reading of section 138, it seems that "*any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability*". Therefore, any cheque drawn for the whole amount or any part of that amount covers that said cheque is issued for the legally enforceable debt. In the case in hand, on the date of cheque, there was an amount of Rs.1,42,613/- due from the accused as per loan account extract (Exh.25). The cheque (Exh.16) is of Rs.1,39,732/-. Therefore, it seems that the cheque is issued for part payment of loan amount.

Though, an amount of Rs.1,39,732/- not mentioned in loan account extract on dtd. 30.01.2020, it does not mean that on that day there was no due amount of Rs.1,39,732/-.

28. Considering, the evidence lead on behalf of the complainant and cross-examination of C.W.1 taken on behalf of the accused, the complainant established that the accused approached to the complainant company for the loan for the purpose of installation of Micro Drip Irrigation Set in his land. Accordingly, the complainant company sanctioned and disbursed an amount of Rs.2,18,000/- to the accused. The accused issued signed cheque for the repayment of loan amount. Thus, the presumption u/sec.118 (A) and 139 of the N.I. Act are rightly attracted in favour of the complainant. Per contra, the accused miserably failed to rebut the presumptions by raising probable defence. Therefore, I have come to the conclusion that the cheque (Exh.16) was issued by the accused for the repayment of loan i.e. legally recoverable debt. In result, I recorded my findings to point no.1 in the affirmative.

AS TO POINT NO.2

29. According to the complainant the cheque given by the accused presented for encashment in its account of Axis Bank on 01.02.2020. However, it is returned unpaid with a reason “funds insufficient” vide return memo dated 25.02.2020. The return memo is at Exh.17. Section 146 of the N. I. Act provides that '*the court shall, in respect of every proceeding under this chapter, on production of Bank’s slip or memo having thereon the official remark denoting*

that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved'. Considering said provision, the cheque return memo issued by the Aurangabad District Central Co-operative Bank, Branch Nagad (Exh.17), it bears the official mark of the Bank. Specifically, it is mentioned the reason of return that “funds insufficient”. Therefore, the presumption u/sec. 146 is in favour of the complainant, but it is again rebuttable presumption. However, on perusal of entire defence and cross-examination taken on behalf of the accused, nothing is brought on record by the accused to rebut the presumption in respect of cheque return memo (Exh.17). Therefore, from the cheque return memo (Exh.17), it reveals that the cheque number 942383 (Exh.16) was dishonoured for the reason of “funds insufficient” in the account of accused. Consequently, I recorded my findings on point no.2 in the affirmative.

AS TO POINT NOS.3 TO 5:

30. On perusal of entire cross-examination, no single question has been asked that the notice is not issued or served on the accused. According to the Complainant Company after received unpaid cheque and memo therewith, immediately on 16.03.2020 the notice for demand of cheque amount was issued to the accused through R.P.A.D., the notice is at Exh.19. The receipt of R.P.A.D. given by postal authority is produced is at Exh.20. However, the acknowldgment receipt is not produced on record. Onthe contrary, the track consignment report (Exh.21) produced, which shows that the notice issued through R.P.A.D. No.RM359469327IN was

delivered to the addressee at Saigavan B.O. on 18.03.2020. Learned Advocate for the complainant placed reliance on the presumption u/sec. 27 of the General Clauses Act. Hon'ble Apex Court while dealing with a case relating to service of notice under Sec. 138 of N.I. Act in **K. Bhaskaran Vs. Sankaran Vaidhyan Balan and another (1999) 7 SCC 510** observed as under:

> " *The principle incorporated in Sec. 27 therein could profitably be imported in a case where the sender had dispatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the addressee, unless he proves that it was not really served and that he was not responsible for such non-service. But that could be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address*".

31. The accused has not challenged that the notice (Exh.19) is served on him on 18.03.2020. Though, the acknowledgement receipt not produced on record, the complainant company issued notice on correct address of the accused, which is duly served. Therefore, I hold that the statutory notices u/sec. 138 (b) is duly served on the accused. However, despite service of notice, he failed to pay cheque amount to the complainant company within statutory period of 15 days from the received of notice. Therefore, I hold that after completion of said 15 days the accused has committed an

offence punishable u/sec. 138 of the N.I. Act. Consequently, I answered point nos. 3 to 5 in the affirmative.

AS TO POINT NO.6:

32. In view of my aforesaid discussion on point nos. 1 to 5, it reveals that the accused had issued cheque bearing No. 942383 dated 30.01.2020 of an amount of Rs.1,39,732/- for the repayment of loan amount. On presentation of said cheque for encashment, it was returned unpaid due to "funds insufficient" in the accused's bank account. In- spite of notice served, the accused failed to pay the cheque amount within 15 days from the service of notice. Thereafter, this complaint has been filed within the limitation. Considering the evidence lead by the complainant Company and defence taken by the accused, the accused failed to rebut the presumptions given u/sec.118 and 139 of the N.I. Act. Therefore, it is proved that the accused has committed an offence punishable under sec.138 of N.I. Act. Hence, he is liable to be punished for the said offence. Therefore, before giving the sentence, it is required to hear the accused on the point of sentence.

33. I heard the accused and his learned advocate on the point of sentence, they argued that the accused is old aged farmer. He has no any intention behind the offence, due to natural calamities, he could not get expected income from his agricultural land. Hence, learned advocate for the accused requested to release the accused by imposing fine only.

34. On the contrary, learned Advocate for the complainant company argued that the accused committed an offence with a view to dupe the financial company. The complainant Company suffered huge financial loss. Hence, the accused be punished the maximum imprisonment as provided in law and compensation be awarded the twice to the cheque amount.

35. Admittedly, the accused is farmer. His age is about 80 years. He had obtained loan for development of his land by installing the Micro Drip Irrigation System. However, due to some natural calamities he could not get expected income from his agricultural land. The punishment provided for the offence punishable u/sec. 138 of N.I. Act is imprisonment for a term, which may extend to two years, or with fine which may extend to twice the amount of the cheque or with both. Therefore, considering the financial position of the accused, the nature and reason of loan transaction, I have come to the conclusion that it will just and proper to impose the sentence till rising the court and fine.

36. Sub-section 1 of Section 357 of the Criminal Procedure Code provides that, where the court imposes a sentence of fine or a sentence of which fine forms a part, the court may direct the fine amount to be applied in the payment to any person of the compensation for any loss or injury caused by the offence, when the compensation is, in the opinion of the court, recoverable by such person in a Civil court. Thus, if compensation could be paid from out of the fine, there is no need to award separate compensation. In

the case in hand, the complainant company is the financial institution. The company facilitated the loan to the accused for development of his land. However, he failed to repay the loan amount as agreed. Due to failure of the accused, the complainant company suffered financial loss, which can be compensated from the fine amount.

37. While deciding the quantum of compensation, Hon'ble Apex Court has discussed and expressed several aspect to determine the amount of compensation and interest on the cheque amount in the Judgment of **R.Vijayan Vs. Baby and another, AIR 2012 SC 528,** wherein it is observed that,

> *"as the provision of Chapter XVII of the Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uni-formally exercised the power to levy fine upto twice the cheque amount (keeping the view the cheque amount and the simple interest thereon at 9 % p.a. as the reasonable quantum of loss) and directed payment of such amount as compensation. Directions to pay compensation by way of restitution in regard to loss on account of dishonoured of cheque should be practicable and realistic, which would mean not only the payment of cheque amount but interest thereon as a reasonable rate, uniformity and consistency in deciding similar cases by different court, not only*

increase the credibility of cheque as negotiable instrument, but also the credibility of courts of justice".

38. Considering the guidelines and expectations by Hon'ble Supreme Court in aforesaid Judgment, I have come to the conclusion, it will just and proper to impose the fine with the interest 9 % p.a. on the cheque amount. And, if said fine amount awarded to the complainant company as compensation will meet the end of justice. In the case in hand the amount of cheque is Rs.1,39,732/-. Said cheque was issued on 30.01.2020, therefore since the date of cheque if the interest calculated for the period of 3 years, it comes Rs. 37,728/- on the cheque amount of Rs.1,39,732/-.Thus, the total amount of fine comes to Rs.1,77,460/-. Therefore, I have come to the conclusion that the accused is liable to pay compensation of Rs. 1,77,460/-. Consequently, I proceed to pass the following order:

ORDER

1. The accused namely Bhila Gangaram Patil is hereby convicted u/sec.255 (2) the Code of Criminal Procedure for offence punishable under section 138 of the Negotiable Instrument Act and sentenced to suffer imprisonment till rising the Court and fine of Rs.1,77,460/- (Rs. one lac seventy seven thousand four hundred sixty only).

2. As per Section 357 (1) of the Code of Criminal Procedure, the accused is directed to pay fine amount Rs.1,77,460/- (Rs. one lac seventy seven thousand four hundred sixty only) as compensation to the complainant company within three months from today, in default to suffer simple imprisonment for 3 months.

3. The accused to surrender his bail bonds.

4. The original cheque, bank memo and other original documents be returned to the complainant after appeal period is over.

5. The copy of this Judgment shall be given to this accused free of costs forthwith.

(Dictated and pronounced in open court.)

Digitally signed by SADANAND BABURAO PATIL
Date: 2023.01.12 15:05:11 +0530

(S. B. Patil)

Date: 10.01.2023

Judicial Magistrate First Class,
(Court No.6) Aurangabad.

CERTIFICATE

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

Name of the Stenographer	:	G.K.Jadhav
Court	:	6th Jt. Civil Judge, J. D. Aurangabad.
Date	:	10.01.2023
Order signed by the presiding officer on	:	12.01.2023
Order uploaded on	:	12.01.2023