



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 855 OF 2006

Janseva Urban Cooperative Credit
Society, Bhusawal.
Through : Ghansham Dattatraya Fegade,
Age 32 years, Occupation Business,
R/o. Near Pandurang Talkies,
New area Ward, Bhusawal,
District Jalgaon.

... Appellant

Versus

Kiran Rama Nhavkar,
Age : 32 years, Occupation Business,
R/o New Area Ward, Kumbhar Wada,
Bhusawal, District Jalgaon.

... Respondent

.....

Mr. Prathamesh Kundalwadikar h/f Mr. P. R. Katneshwarkar,
Advocate for the Appellant.

Mr. Swapnil S. Patil, Advocate for the Respondent.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 23.09.2026

Pronounced on : 29.09.2026

JUDGMENT :

1. Original complainant, who instituted proceedings under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) has preferred instant appeal, thereby questioning the judgment and order of acquittal dated 08.08.2006 passed by learned J.M.F.C., Bhusawal in Summary Criminal Case No. 2357 of 2004.

2. In short, appellant instituted proceedings under Section 138 of the NI Act against present respondent on the premise that, appellant is a co-operative financial institution. That, respondent accused had borrowed loan to the tune of Rs.48,515/-. That, towards repayment of said loan, accused issued cheque but it was dishonoured with remark as “funds insufficient”. Legal demand notice was dispatched calling upon respondent to pay the cheque amount, but as he failed, above proceedings were instituted seeking action under Section 138 of the NI Act. Complaint was resisted by respondent denying legally enforceable debt to the tune of amount reflected on the instrument in question. Learned trial court, after hearing both sides and on appreciating the oral and documentary evidence, held that complainant failed to prove existence of essential ingredients of Section 138 of the NI Act, and primarily it failed to establish legally enforceable debt, and acquitted the accused by above referred judgment. Hence instant appeal.

3. Learned counsel for the appellant would point out that, appellant is a co-operative financial institution authorized to disburse loan to the borrowers. He pointed out that, accused was also a borrower of loan and had agreed to repay the same by executing

promissory note. That, cheque was also duly issued on demand towards repayment of loan, but the said cheque was dishonoured. Learned counsel emphasized that issuance of cheque or signature over it is not denied. Equally, institution of promissory note is also not denied and thus, according to him, presumption available under Sections 118 and 139 of the NI Act automatically got attracted. That, learned trial court failed to consider and appreciate the same and erred in acquitting the accused. Hence, he urges to allow the appeal by setting aside the impugned judgment.

4. Per contra, learned counsel for the respondent justified the judgment and order of acquittal and prayed to dismiss the appeal for want of merits.

5. Heard. Re-appreciated the entire oral and documentary evidence adduced before the trial court. From the record it is emerging that, complainant adduced his own evidence at Exhibit 14. That apart, the resolution by Board of Directors authorizing institution of complaint, promissory note dated 21.11.2002, cheque in question, bank memo, copy of notice and postal acknowledgment, were duly tendered as documentary evidence.

6. Defence of accused was of misuse of cheque tendered by way of security while borrowing loan. There was specific denial of dues to the tune of Rs.48,515/-.

7. As pointed out by learned counsel for the respondent and on going through the record, it is emerging that in his examination-in-chief, complainant has deposed about accused obtaining loan to the tune of Rs.40000/- and issuing promissory note Exhibit 31 dated 21.11.2002. But very complaint seems to be silent about this. While facing cross, complainant seems to be unable to state exactly how much loan was repaid and how much was due i.e. on the date of issuance of cheque, neither any document was produced to demonstrate that on the date of issuance of cheque, an amount of Rs.48,515/- was due towards accused.

8. Secondly, accused came with a case that, when a borrower of loan fills up the deposit slip along with cheque and deposits it with the complainant society, the complainant society accepts the same and returns counter slip to the depositor. Though this case is not refuted by CW1, he has not produced such counter slip to show that the cheque in question was issued by accused to the complainant society.

9. Further, it appears that the particulars of the cheque regarding amount and the signature of complainant are appearing in distinct ink. Therefore defence of accused that cheque issued by way of security has been misused, stands probalilized.

10. Specific defence of accused was that, loan amount of Rs.24,000/- has been repaid. Here, it was expected of complainant to place on record detailed statement of the loan account but surprisingly the same is not placed on record so as to accept that the dues were to the tune of Rs.48,515/-. Complainant has admitted in cross that legal demand notice does not reflect about demand of Rs.48,515/-.

11. Therefore, with above shortfalls, when actual legal liability has not been demonstrated, indeed essential ingredients of Section 138 of the NI Act being missing, rigors of Section 138 would not get attracted. In the light of difference in the ink for filling up the amount and the signature over the cheque, accused has succeeded in probalilizing his defence about cheque handed over by way of security being misused.

12. Learned trial court has dealt with the case of complainant as well as accused in its entirety. Indeed, as tried to be put forth that when loan is not refuted along with issuance of cheque, presumption available under Section 118 and 139 of NI Act does come into play, but it will not so happen until legally enforceable debt is demonstrated. Here, it is not done so. Hence, no fault can be found in the manner of appreciation as well as findings and conclusion so as to interfere. Hence, following order :

ORDER

The appeal is dismissed.

[ABHAY S. WAGHWASE, J.]