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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 142 OF 2026

SANDIP HARISHCHANDRA DEVIDAS … **APPLICANT**

~ VERSUS ~

THE GOKUL URBAN CO-OPERATIVE CREDIT SOCIETY LTD. & ANR. … **RESPONDENTS**

APPEARANCES:

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for the Applicant — ***Mr. Salil Lawande under Legal Aid Scheme***

for Respondent No. 2 — ***Mr. Somnath Karpe, Additional Public Prosecutor with Mr. Anand Shirodkar***

CORAM : AMIT S. JAMSANDEKAR, J.

RESERVED ON : 8th OCTOBER 2026

PRONOUNCED ON : 2nd NOVEMBER 2026

ORDER:

1. Heard the learned Counsel for the Applicant.

2. By the present Criminal Revision Application, the Applicant has challenged the Judgment and Order dated 04.10.2023 (**the impugned judgment**) passed by the Additional Sessions Judge, Panaji, sitting at Ponda, (**Sessions Court**) in Criminal Appeal No. 113/2023, whereby the Appeal preferred by the Applicant came to be dismissed and the conviction and sentence imposed by the Judicial Magistrate First Class at Ponda (**the JMFC**), vide Judgment and Order dated 04.03.2023 in Criminal Case No. 472/OA/NIA/2018/B, came to be confirmed.

3. The brief facts leading to the present Application are as follows:

(A) The 1st Respondent, a registered Co-operative Credit Society, had instituted a proceeding against the Applicant under Section 138 of the Negotiable Instruments Act, 1881 (***the N.I. Act***) before the JMFC. The Respondent, a Co-operative Credit Society, had instituted a proceeding against the Applicant under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (***the N.I. Act***),

which was registered as Criminal Case No. OA/11/NIA/2019/A before the JMFC.

(B) The 1st Respondent's case is that the Applicant, being one of its members, had obtained a loan of Rs.2,50,000/-, to be repaid at an interest rate of 14% per annum in instalments of Rs.8,544/- according to the terms and conditions stipulated in the loan agreement.

(C) As per the 1st Respondent, the Applicant committed default in repayment, pursuant to which the Applicant issued a cheque bearing number 079766 dated 18.05.2018 drawn on Corporation Bank, Curchorem Branch for an amount of Rs.5,89,000/-. The cheque was returned dishonoured due to insufficient funds.

(D) The 1st Respondent thereafter issued a demand notice dated 29.05.2018. It is contended by the 1st

Respondent that the Applicant failed and neglected to pay the cheque amount and therefore, the 1st Respondent instituted a complaint under Section 138 of the N.I. Act against the Applicant.

(E) During the trial, the 1st Respondent examined only one witness (its Authorised Representative-CW1), who tendered his affidavit in evidence and was subjected to cross-examination by the Advocate for the Applicant. The Applicant did not lead any evidence, following which the Applicant's statement under Section 313 of the Code of Criminal Procedure, 1973 (***Cr.P.C.***), was recorded, wherein the Applicant denied the case of the 1st Respondent. The Applicant took the defence that a false case had been filed against him and that he was wrongly implicated in the matter.

(F) The JMFC convicted the Applicant for the offence punishable under Section 138 of the N.I. Act and

sentenced him to undergo simple imprisonment of seven months and to pay compensation of Rs.6,19,000/- with a default sentence of seven months' simple imprisonment.

(G) The Applicant preferred Criminal Appeal No. 113/2023 before the Sessions Court, wherein the Sessions Court dismissed the Appeal and confirmed the Judgment and Order passed by the JMFC.

(H) The Applicant has, therefore, challenged the same in the present Application.

4. The Applicant sought assistance through the Legal Aid Scheme, and Advocate Abhishek Sawant was appointed to represent the Applicant. The Application for condonation of delay [CRMA No. 45/2024] was disposed of by condoning the delay on 18.06.2024.

5. Additionally, the Applicant had filed an Application for suspension of sentence [CRMA No. 222/2024 (Filing)] which was allowed on 18.06.2024 on the condition that the Applicant shall execute a personal bond of Rs.10,000/- with one surety of the like amount to the satisfaction of the JMFC and the Applicant was directed to deposit 10% of the cheque amount before this Court within two weeks. In view of the aforementioned directions, the Applicant deposited before this Court Rs.62,000/- vide D.D. No. 636023 dated 17.07.2024. Following the same, the said Application was disposed of on 10.04.2026.

6. Further, vide order dated 13.08.2024, it was recorded thus:

> *"Heard Mr. Sawant for the Applicant. He submits that he was appointed on legal aid basis, however, after passing of the order by this Court, he tried to contact the Applicant, but there was no response. He accordingly, informed vide letter dated 10.07.2024 and returned the brief. He further submits that he has verified from the office of Goa State Legal Services Authority and found that the file was taken back by the Applicant from the office of Goa State Legal Services Authority and therefore, no other Advocate from the Panel is appointed."*

7. Following the same, on 27.08.2024 Advocate Abhijit Gosavi was appointed to represent the Applicant through Legal Aid Scheme and on 03.09.2024 it was submitted that the Applicant has failed to contact Mr. Gosavi. Subsequently, since the Applicant stated on 30.09.2024 that he did not have all the relevant papers, records and proceedings from the JMFC and Sessions Court, they were called for.

8. The Revision Application was then listed for hearing on 06.05.2026, 04.07.2026, 27.07.2026 and 03.08.2026; however, the Applicant failed to appear before this Court. In view thereof, on 03.08.2026 Advocate Salil Lawande was appointed through the Legal Aid Scheme to represent the Applicant by recording thus:

> *"None for the Applicant.*
>
> *2. Record indicates that the Applicant has persistently remained absent in the proceeding after obtaining interim protection. Order dated 4.7.2026 is not complied with.*
>
> *3. In view thereof, Member Secretary of the Goa State Legal Services Authority is directed to appoint Mr. Salil Lawande,*

Advocate to represent the Applicant. Registry is further directed to provide one set of paper book to the learned Advocate and waive all office objections and register the Application."

9. Notice was issued to the 1st Respondent on 29.04.2024 and the office note indicates that notice was served upon the 1st Respondent, however, no appearance was marked on behalf of the 1st Respondent. On 10.04.2026, notice was issued once again to the 1st Respondent, but till date the 1st Respondent has not appeared before this Court. In view of the same, since ample opportunity was provided to the 1st Respondent, I have heard the Revision Application in the absence of the 1st Respondent.

10. Heard Mr. Salil Lawande for the Applicant and Mr. Somnath Karpe, Additional Public Prosecutor for the 2nd Respondent.

11. Mr. Lawande submitted that both the learned JMFC and the Appellate Courts have made a fundamental error in their approach to the statutory presumptions under Sections 118(a) and 139 of the N.I. Act. The statutory presumption is undoubtedly available to the

Complainant (1st Respondent herein) at the threshold; however, it is rebuttable and cannot be elevated to conclusive proof of the precise amount claimed by the Complainant. He submitted that the present case is not one where the Applicant merely offers a bald denial. The 1st Respondent's own evidence, when tested in cross examination, reveals substantial circumstances rendering the alleged liability of Rs.5,89,000/- doubtful and requiring the evidentiary burden to revert to the 1st Respondent.

12. It is submitted that the Appellate Court itself records that the entire loan disbursed was Rs.2,50,000/- and that the loan was repayable by 2014 and that as on 30.09.2016 an amount of Rs.5,01,789/- was allegedly due. It was further recorded that interest at 14% was charged after 30.09.2016 until the date of the cheque. He submitted that the 1st Respondent, therefore, had to establish by cogent and reliable documentary evidence how a loan of Rs.2,50,000/- accumulated into an alleged legally recoverable liability of Rs.5,89,000/-.

13. He submitted that a criminal conviction cannot rest upon an unexplained mathematical progression from a principal amount of

Rs.2,50,000/- to a cheque of Rs.5,89,000/- merely because the signature on the cheque is admitted. The statutory presumption may presume consideration and liability in the first instance; it does not dispense with the requirement that once a probable defence emerges from the Complainant's own evidence, the Complainant must establish the liability as a matter of fact.

14. He submitted that the JMFC specifically proceeded on the premise that the Applicant had not led his evidence and the Sessions Court placed emphasis on the fact that the defences were merely suggested during cross-examination and were not developed by independent evidence. It is submitted that this approach overlooks the settled principles of law. Neither is the Accused (Applicant) required to prove his defence beyond reasonable doubt, nor is the Accused required, as an inflexible rule, to step into the witness box. He submitted that the defence did not merely ask the Court to believe an unsupported story. It attacked the very quantum and legal basis of the alleged liability including the extraordinary escalation from Rs.2,50,000/- to Rs.5,89,000/-.

15. Mr. Lawande further submitted that there is a fundamental distinction between (A) presuming that a cheque was issued towards a legally enforceable liability and (B) conclusively presuming that the exact sum written on the cheque represented the legally recoverable liability. He submitted that since the 1st Respondent's case was that the original loan was of Rs.2,50,000/- and the cheque amount was Rs.5,89,000/-, the 1st Respondent had to satisfactorily demonstrate the contractual basis, interest computation, outstanding principal and the precise computation by which the alleged liability reached to Rs.5,89,000/-. It is submitted that both the Courts effectively reversed this burden and required the Applicant to disprove the 1st Respondent's computation.

16. He submitted that the Applicant does not dispute that the cheque bears his signature and this has been recorded by the Sessions Court. However, the admissions of signature merely trigger the statutory presumption; it does not constitute an admission of the correctness of the amount, the circumstances in which the cheque was completed or the exact legally recoverable liability.

17. I have heard the Applicant's submissions and perused the record.

18. There are concurrent findings of facts against the Applicant. The Applicant, being a member of the 1st Respondent Society, had admittedly obtained a loan of Rs.2,50,000/- through its service branch at Ponda. As per the loan agreement dated 17.02.2011, the loan was repayable at the rate of 14% per annum in instalments of Rs.8,544/-. Admittedly, the Applicant had issued a cheque dated 18.05.2018 of Rs.5,89,000/- in favour of the 1st Respondent and his signature on the same is not disputed.

19. Evidence records that the said cheque was returned with an endorsement "funds insufficient" and subsequently, a demand notice dated 29.05.2018 was sent calling upon the Applicant to pay the cheque amount. The Applicant did not reply to the said notice, as a result of which proceedings under Section 138 of the N.I. Act were instituted against the Applicant.

20. From the records, it can be seen that the Applicant did not lead any evidence and merely denied the case of the 1st Respondent in his 313 statement by stating that a false case has been registered against him and that he is wrongly implicated under Section 138 of the N.I. Act.

21. The submissions made by Mr. Lawande in respect of presumption and liability of the Applicant are already dealt with by the learned JMFC and the Sessions Court. There are concurrent findings of fact with respect to those issues. Admittedly, the Applicant has not disputed the signature on the cheque. The submissions of Mr. Lawande that there is a huge difference between the loan amount and the cheque amount is without considering the agreed interest on the loan. Therefore, I reject all his submissions which are linked to the submissions that there is a huge difference between the loan amount and the cheque amount. I have considered all the submissions of Mr. Lawande to the extent to which they can be considered in revisional jurisdiction. The revisional jurisdiction cannot be turned into a first appeal proceeding. There is no violation of principles of natural justice.

22. Therefore, considering the overall circumstances, the findings of the JMFC and the Sessions Court, and the grounds raised by the Applicant in the Application, I find no infirmity in the orders passed by both the Courts. I do not find that the Judgments and Orders passed by the JMFC and the Sessions Court are arbitrary or perverse.

23. Therefore, the Revision Application deserves to be dismissed and **accordingly it is dismissed**.

24. The substantive sentence awarded to the Applicant was suspended by this Court vide order dated 18.06.2024 passed in Criminal Miscellaneous Application No. 222 of 2024 (F), the same stands vacated. Hence, the Police Inspector, Sanguem Police Station, is ordered and directed to arrest the Applicant and produce him before the Judicial Magistrate First Class at Ponda in Criminal Case No. 472/OA/NIA/2018/B.

25. The Registry of this Court, as well as the Superintendent of the Trial Court, shall take necessary steps to remit/transfer the amount deposited by the Applicant, if any, together with the interest accrued thereon, to the 1st Respondent-The Gokul Urban Co-operative Credit Society Ltd., upon due identification and verification of the recipient.

26. The Registry shall return the R & P to the concerned Court.

27. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.]

Signed by: VAIGANKAR ESHA SAINATH
Designation: Personal Assistant
Date: 02/11/2026 16:01:52