IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2099 OF 2004

Arun Mallappa Ainapura	]
Age 47 years, Occ. Agriculturist	]
Residing at Maruti Chowk	]… Petitioner
Maruti Road, Sangli	] (Org. Accused)

Versus

1]	Suresh Shankarrao Purohit	]
	Age 55 years, Occ. Service	]
	Residing at Mali Colony, Waranali	]
	Road, Vishrambag, Sangli	]… Respondents
		] (Resp. No.1 Org.
2]	State of Maharashtra	] Complainant)

Mr. Ranjeet H. Patil i/by Mr. Kuldeep S. Patil for the Petitioner.
None for Respondent No.1.
Mr. S. H. Yadav, APP for the Respondent No.2 -State.

CORAM : ASHWIN D. BHOBE, J.

DATED : 19 AUGUST 2026

ORAL JUDGEMENT:-

1. Heard, Mr. Ranjeet H. Patil, learned Advocate for the Petitioner and Mr. S. H. Yadav, learned APP for the Respondent No. 2 – State.

2. By this Petition filed on 15th October 2004, under Article 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code 1973, the Petitioner has sought the following substantive reliefs in prayer clauses (a) and (b), reproduced verbatim:-

> *"(a) That the impugned order dated 15.6.2004, passed by the Ld. Sessions Judge, Sangli in Criminal Revision Application No.165 of 2003, and Order dated 1.12.2003, passed by the Ld. J.M.F.C. Sangli in S.C.S. No.3944 of 1994 may be quashed and set aside*
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> *(b) That this Hon'ble Court may pass appropriate writ, order or direction and quash and set aside all the proceeding of Summary Criminal Case No.3944 of 1994 on the file of Ld. J.M.F.C., Sangli."*

3. The subject matter of this Petition is Summary Case No. 3944 of 1994, filed by Respondent No.1 before the Judicial Magistrate First Class, Sangli ("Magistrate"), under Section 138 of the Negotiable Instruments Act, 1881 ("*N.I.Act*"), in respect of cheque No. 131886 dated 25 October 1993 for Rs.1,13,925/-, issued by the Petitioner in favour of Respondent No.1.

4. Summary Case No. 3944 of 1994 was filed on 29.03.1994. The Magistrate took cognizance and issued process against the Petitioner. The summons were served on the Petitioner on 10.02.1995.

5. The Petitioner's plea (Exhibit-35) was recorded on 31.01.1997. After the examination-in-chief of the Respondent No.1 was over, the Petitioner filed an Application (Exhibit-38) under Section 258 of the Criminal Procedure Code, 1973, seeking dismissal of Summary Case No. 3944 of 1994.

6. By Order dated 01.12.2003, the Magistrate rejected the Application at Exhibit-38, recording a finding that the Petitioner had issued the cheque in discharge of a legal liability and that the Application (Exhibit-38) lacked merit. Criminal Revision Application No. 165 of 2003, filed against the Order dated 01.12.2003, was dismissed by the Sessions Court, Sangli ("Sessions Court"), by Order dated 15.6.2004. The Petitioner is before this Court against the Order dated 15.06.2004 passed in Criminal Revision Application No. 165 of 2003 ("impugned order").

7. The following orders passed in this Writ Petition are reproduced below for reference:

A] Order dated 29.10.2004 :-

> *"The learned Counsel for the Applicant contends that even accepting the case of the complainant as it is the legal liability was only in respect of Rs.31,000/- and not the entire amount for which the cheque has been drawn. If it is so, the criminal action under Section 138 of IPC in respect of such instrument cannot be maintainable.*
>
> *Issue notice before admission, returnable after eight weeks.*
>
> *Mr. B.H.Mehta, APP waives service for Respondent No.2.*
>
> *Petitioner to serve remaining Respondent.*
>
> *Ad-interim relief in terms of prayer clause (c)."*

B] Order dated 29.09.2006 :-

> *". Heard Mr. Patil for petitioner.* ***Rule****.*
>
> *2. On the condition that the petitioner deposits in this Court a sum of Rs. 31,000/- within four weeks from today, without prejudice to his rights and contentions, ad-interim order granted on 29th October 2004 to continue till the hearing and final disposal of this petition, with liberty to original complainant to apply for withdrawal of the amount and/or vacating this order.*

> *3. Needless to state that in default of compliance, ad-interim order to stand vacated forthwith without reference to court. Hearing expedited."*

8. Apparently, the Petitioner did not comply with the requirement to deposit Rs.31,000/- as ordered by this Court on 29.09.2006, resulting in the order dated 22.11.2006, which reads thus:-

> *"1. On 06/11/2006 time to deposit the money was extended by two weeks. Mr. Patil states that the amount is not deposited even in the extended period of two weeks. In view of this, ad-interim order passed on 29/09/2006* ***stands vacated****. Office to communicate the Judicial Magistrate, First Class, Sangli that the stay order passed by this Court in Summary Case No. 3944/1994 stands vacated. Case to proceed."*

9. Mr. Ranjeet Patil, learned Advocate for the Petitioner, submits that the Petitioner's liability in respect of the cheque in question, issued to Respondent No. 1, is Rs.31,000/-. To clarify, he submits that although the cheque issued to Respondent No. 1 is for Rs.1,13,925/-, the Petitioner's liability towards Respondent No. 1 is limited to Rs.31,000/-, and therefore does not constitute any legally enforceable debt or liability. Accordingly, he submits that the proceedings bearing S.C.C. No. 3944 of 1994 should have been stopped under Section 258 of the Criminal Procedure Code, 1973.

10. Perused the records with the assistance of the learned Advocates for the parties.

11. The Petitioner admits that he drew the cheque for Rs. 1,13,925/- in favour of Respondent No. 1 and that his signature appears on the cheque. Accordingly, the Court must *presume* that the cheque was issued to discharge a legally enforceable debt or liability. Thus, the essential ingredients of Section 138 of the N.I.

Act are duly satisfied by Respondent No. 1. The Petitioner's rebuttal of the statutory presumption can be made only at the trial.

12. The Sessions Court, in Criminal Revision Application No.165 of 2003 and the Magistrate, in S.C.S. No.3944 of 1994, have addressed the aforesaid issue. The Petitioner has failed to show any perversity or illegality in the impugned order dated 15.06.2004 passed in Criminal Revision Application No.165 of 2003, which in turn upholds the Order dated 01.12.2003 in Summary Case No. 3944 of 1994.

13. In ***Renuka Vs. State of Maharashtra & ors***[1]***,*** the Hon'ble Supreme Court has held as under:-

> *"8. It is to be borne in mind that at the stage of issuance of process by the learned Metropolitan Magistrate, what is prima facie required to be seen is the issuance of cheque by the drawer in favour of the complainant, its dishonour on presentation by the payee, issuance of statutory notice under Section 138 of the N.I. Act and filing of the complaint within the prescribed statutory period. If the drawer does not dispute issuance of such a cheque nor does he deny his signature on the dishonoured cheque, the statutory presumption as contemplated under Section 139 of the N.I. Act comes into play. As a result, the burden would shift on the drawer of the cheque to prove that the cheque was not issued for any legally enforceable debt or liability. This exercise has to be undertaken during the trial either by relying upon the material brought on record by the complainant or by the drawer leading evidence in rebuttal. At the stage of issuance of process, the statutory presumption under Section 139 of the N.I. Act cannot be dislodged in a summary manner merely by contending that the cheque issued was not for any legally enforceable debt or liability.*
>
> *9. We may in this regard refer to two decisions of this Court that have reiterated the view that once the basic ingredients of Section 138 of the N.I. Act are duly satisfied by the complainant, the rebuttal of statutory presumption by the drawer can only be made during the course of trial.*

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In Rangappa v. Sri Mohan3, it has been explicitly reiterated that the presumption mandated by Section 139 of the N.I. Act includes the presumption as regards existence of a legally enforceable debt or liability. It has been held that Section 139 is an example of a reverse onus clause that has been included in furtherance of the legislative object of improving the credibility of negotiable instruments. The presumption is rebuttable and the accused can raise a defence wherein the existence of a legally enforceable debt or liability can be contested.

In Rajesh Jain v. Ajay Singh4, it has been held as under:

"34. The NI Act provides for two presumptions: Section 118 and Section 139. Section 118 of the Act inter alia directs that it shall be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that 'unless the contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liability'. It will be seen that the 'presumed fact' directly relates to one of the crucial ingredients necessary to sustain a conviction under Section 138.

35. Section 139 of the NI Act, which takes the form of a 'shall presume' clause is illustrative of a presumption of law. Because Section 139 requires that the Court 'shall presume' the fact stated therein, it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. But this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary as is clear from the use of the phrase 'unless the contrary is proved'.

36. The Court will necessarily presume that the cheque had been issued towards discharge of a legally enforceable debt/liability in two circumstances. Firstly, when the drawer of the cheque admits issuance/execution of the cheque and secondly, in the event where the complainant proves that cheque was issued/executed in his favour by the drawer. The circumstances set out above form the fact(s) which bring about the activation of the presumptive clause. [Bharat Barrel v. Amin Chand] [(1999) 3 SCC 35 : (1999) 97 Comp Cas 786]

> *xxxxxxxxxxxxxxxxxx*
>
> *38. As soon as the complainant discharges the burden to prove that the instrument, say a cheque, was issued by the accused for discharge of debt, the presumptive device under Section 139 of the Act helps shifting the burden on the accused. The effect of the presumption, in that sense, is to transfer the evidential burden on the accused of proving that the cheque was not received by the Bank towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further."*

10. A perusal of the revisional order passed by the learned Judge of the Sessions Court indicates that he has given much importance to the fact that the agreement dated 12th January 2022 was not signed by the second respondent and, hence, the issuance of the cheque in question was not for any enforceable debt. He also appears to have given importance to the dispute between the appellant and her husband by stating that it was a matrimonial dispute and civil litigation between the said parties was pending in various Courts. In our view, the learned Judge misdirected himself when he proceeded to give more weightage to the document dated 12th January 2022 and in the process, ignored the fact that the basic ingredients for attracting the provisions of Section 138 of the N.I. Act had been duly satisfied by the appellant, at least for issuance of process. The drawing of the cheque by the second respondent, its presentation and subsequent dishonour at the instructions of the second respondent is not in dispute. The second respondent does not also dispute that he had issued the said cheque and that it was duly signed by him. The issuance of statutory notice as well as filing of the complaint within the prescribed period are also not in dispute. In such a situation, when the basic ingredients of Section 138 stand duly satisfied and the statutory presumption under Section 139 gets triggered, coming to a conclusion that the cheque was not issued for a legally enforceable debt at the pre-trial stage itself without granting an opportunity to the complainant to substantiate her case by leading evidence would amount to ignoring the statutory presumption that the cheque had been issued for a legally enforceable debt or liability. As a consequence, the presumption under Section 139 of the N.I. Act gets washed away even prior to commencement of the trial. We are of the view that in the facts of the present case, the dismissal of the complaint as a consequence of setting aside the order issuing process is totally unjustified in the absence of any material being brought on record by

> *the second respondent to rebut the statutory presumption and prove his contention that the cheque was issued not towards any enforceable debt or liability.*
>
> *Since we are inclined to restore the complaint for being tried on merits, it is not necessary to deal with the decision in Sunil Todi (supra) in detail. Suffice it to observe that even in the said decision, it has been held that disputed questions as regards existence of outstanding liability are questions of fact that have to be determined at the trial on the basis of evidence.*
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> *11. For all these reasons, we are of the view that the learned Judge of the Sessions Court committed an error in setting aside the order dated 17th June 2022 passed by the learned Metropolitan Magistrate issuing process under Section 138 of the N.I. Act. The High Court also fell into error in upholding the order passed by the learned Sessions Judge. Accordingly, both the aforesaid orders are set aside. The complaint filed by the appellant being CC1831/SC/2022 stands restored for its adjudication on merits."*

14. This Petition is without merit.

15. Though this Petition warrants dismissal with costs, Mr. Ranjeet Patil, learned Advocate for the Petitioner, persuades the Court not to impose costs.

16. Rule is discharged. Criminal Writ Petition No.2099 of 2004 is dismissed.

17. No orders as to costs.

(ASHWIN D. BHOBE, J.)