Esha

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 131 OF 2026
WITH
CRIMINAL MISC. APPLICATION NO. 481 OF 2022 (F)
IN
CRIMINAL REVISION APPLICATION NO. 131 OF 2026

SANIL SHASHIKANT DESAI … **APPLICANT**

~ VERSUS ~

THE SADA URBAN CO-OPERATIVE CREDIT SOCIETY LTD. … **RESPONDENT**

APPEARANCES:

---

for the Applicant	***Mr. Shane Coutinho under Legal Aid Scheme***
for the Respondent	***Mr. Jatin Ramaiya with Ms. Komal Naik***

CORAM : AMIT S. JAMSANDEKAR, J.

RESERVED ON : 9th OCTOBER 2026

PRONOUNCED ON : 27th OCTOBER 2026

ORDER:

1. Heard the learned Counsel for the Applicant and the learned Counsel for the Respondent.

2. By the present Criminal Revision Application, the Applicant has challenged the Judgment and Order dated 23.11.2021 (***the impugned judgment***) passed by the Additional Sessions Judge, South Goa, at Margao (***Sessions Court***), in Criminal Appeal No. 39/2020, whereby the Appeal preferred by the Applicant was dismissed and the conviction and sentence imposed by the Judicial Magistrate First Class at Vasco (***the JMFC***), vide Judgment and Order dated 18.02.2020 in Criminal Case No. OA/11/NIA/2019/A, were confirmed.

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

(A) 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 case of the Respondent was that the Applicant had obtained a loan of Rs.20,00,000/- (Rupees Twenty Lakhs only) from the Respondent's Headland Sada Branch, repayable in instalments together with interest and other charges. According to the Respondent, the Applicant committed defaults in repayment. Accordingly, the Respondent issued a recall notice dated 10.05.2018 and a corrigendum dated 11.10.2018, demanding payment of the alleged outstanding amount of Rs.23,23,361/- (Rupees Twenty-Three Lakhs Twenty-Three Thousand Three Hundred and Sixty-One only).

(C) It was further alleged by the Respondent that the Applicant issued Cheque No. 048062 dated 09.11.2018, drawn on the Citizen Co-operative Bank Limited, Vasco Branch, for Rs.20,00,000/- (Rupees

Twenty Lakhs only) towards part repayment of the outstanding loan. The said cheque was dishonoured on account of 'insufficient funds'.

(D) The Respondent thereafter issued a statutory demand notice dated 05.12.2018, which, as per the Respondent, was served upon the Applicant on 07.12.2018. Despite receiving the notice, the Applicant neither replied to it nor complied with it. Alleging that the Applicant failed to make payment within the prescribed statutory period, the Respondent instituted the complaint under Section 138 read with Section 142 of the N.I. Act.

(E) During the trial, the Respondent examined only one witness (authorised representative of the Respondent, PW-1), who tendered his evidence by way of affidavit and was subjected to cross-examination by the Advocate for the Applicant. Upon completion of the evidence, the statement of

the Applicant under Section 313 of the Code of Criminal Procedure, 1973 (***Cr.P.C.***), was recorded, wherein the Applicant denied the case of the Respondent.

(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 for twelve months and to pay Rs.20,20,000/- (Rupees Twenty Lakhs Twenty Thousand only) to the Respondent, with a default sentence of eleven months' simple imprisonment.

(G) The Applicant preferred Criminal Appeal No. 39/2020 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 Application for condonation of delay [CRMA No. 480/2022 (Filing)] was disposed of by condoning the delay on 29.07.2026. Additionally, the Applicant had filed an Application for suspension of sentence [CRMA No. 481/2022 (Filing)] which is pending till date and no interim protection has been granted to the Applicant.

5. The Revision Application, along with the miscellaneous applications, was listed for hearing on 03.08.2022, 17.08.2022, 12.09.2022, 12.09.2022, 19.09.2022, 26.09.2022, 09.01.2023, 11.01.2023, 16.01.2023, 23.01.2023, 30.01.2023, 06.02.2023, 13.02.2023, 20.02.2023, 24.03.2023, 20.01.2025, 24.01.2025, 18.02.2025, 07.03.2025, 07.03.2026, 30.03.2026, 23.04.2026, 24.06.2026, 04.07.2026, 27.07.2026, 29.07.2026, 01.09.2026, 10.09.2026, 24.09.2026 and 09.10.2026; however, no deposit was made, as directed by the JMFC.

6. The Advocate for the Applicant was discharged vide order dated 07.03.2025, following which the Applicant did not appear before this Court despite the Application being listed on board. By order dated 07.03.2025, this Court noted that the Applicant had not paid any part

of the compensation and directed the JMFC to issue a warrant to ensure the Applicant serves his sentence. The order dated 07.03.2025, recorded thus:

> *"2. From the record, it is clear that the Applicant has not paid the compensation directed by the impugned order and as submitted by the learned Advocate for the Respondent, no part of the compensation has been paid till date. The Applicant is, therefore, in default of the order of the Magistrate. Considering that the Applicant has been directed to pay compensation under Section 357(3) Cr.P.C. of Rs.20,20,000/- to the Complainant, and in default to undergo simple imprisonment of 11 months, the J.M.F.C. at Vasco da Gama, passed a sentence on 18.02.2020. Criminal Case No. OA/11/NIA/2019/A, shall proceed to issue a warrant to in the Applicant to ensure that he serves his sentence."*

7. Thereafter, the matter was adjourned from time to time at the instance of the Applicant.

8. Subsequently, the JMFC filed a compliance report dated 20.03.2026 informing that a warrant of arrest was issued against the Applicant on 13.03.2025, which remained unexecuted and as per the Report of the

Police, the Applicant has not been residing at the provided address for the last five years and his whereabouts are not known.

9. Thus, the Applicant has not served the sentence ordered by the JMFC and has not paid any compensation to the Respondent. There has been no deposit of any amount by the Applicant throughout the proceedings to date.

10. The Revision Application is pending since 27.07.2022. The office objections were not removed for almost 4 years. The Applicant deliberately kept the application seeking condonation of delay pending. Thereafter, as the Application for condonation of delay was allowed, the Criminal Revision Application was registered on 01.08.2026. The record indicates multiple adjournments on the part of the Applicant.

11. Left with no option, this Court appointed Advocate Shane Coutinho through Legal Aid Services to represent the Applicant on 29.07.2026. The relevant portion of the order dated 29.07.2026 is quoted below:

"Even today, none appears for the Applicant. The record indicates that the Applicant has persistently remained absent in the proceedings since 2022 and has abused the process of law."

2. On 07.03.2026, this Court had directed the learned JMFC to issue a warrant to the Applicant to ensure that he serves his sentence. Even thereafter, the matter was listed on Board on 30.03.2026, 23.04.2026, 04.07.2026 and 27.07.2026. However, the Applicant remained absent in the proceedings.

3. In view thereof, as and by way of last chance, stand over to 03.08.2026. 4. The Member Secretary, Goa State Legal Services Authority is directed to appoint Advocate Shane Coutinho to represent the Applicant."

12. Heard Mr. Shane Coutinho for the Applicant and Mr. Jatin Ramaiya for the Respondent.

13. Mr. Coutinho submitted that the present Revision Application raises substantial questions concerning the appreciation of evidence, the enforceability of the alleged liability underlying the cheque, and the fairness of the proceedings before the JMFC and the Sessions Court. He submitted that the JMFC and the Sessions Court ought to have

examined the evidence on record in its entirety, including the terms of the loan agreement, the circumstances in which the cheque was issued, the recall notice and its corrigendum. It is, therefore, submitted that the impugned judgments deserve reconsideration in the light of the material circumstances and the specific defence raised by the Applicant.

14. It is further submitted that, under the loan agreement dated 15.07.2014, the loan was repayable on or before 15.08.2034. Therefore, it is contended that the Respondent's decision to recall the loan and demand the entire outstanding amount was contrary to the agreed terms. In view of the same, Mr. Coutinho submitted that the legality and effect of the recall notice dated 10.05.2018 and the corrigendum dated 11.10.2018 were material to determining the liability alleged by the Respondent. The JMFC and the Sessions Court ought to have considered the relevant clauses of the loan agreement, the events constituting the alleged default, and whether the Respondent was contractually entitled to accelerate repayment and demand the entire outstanding amount.

15. He submitted that it is essential to consider whether the cheque was issued towards a legally enforceable debt or liability and whether the statutory ingredients of Section 138 of the N.I. Act stood established. In this context, it is necessary to scrutinise the terms of the loan agreement and the evidence led by the Respondent. It is contended that blank cheques had been obtained from the Applicant at the time of sanction of the loan and that the Respondent subsequently utilised the same without his consent in the manner alleged. It is, therefore, submitted that the JMFC and the Sessions Court ought to have considered the circumstances in which the cheque was obtained, completed and presented, as well as the purpose for which it was issued.

16. Mr. Coutinho submitted that the defence concerning the circumstances in which the cheque was issued, together with the other evidence on record, was required to be evaluated in accordance with law. In the present case, it is submitted that the underlying loan transaction and the evidence actually adduced by the Respondent, ought to have been examined by the JMFC and the Sessions Court

rather than merely considering the dishonour of the cheque in isolation.

17. It is submitted that the JMFC and the Sessions Court failed to take into consideration the fact that the Applicant had already paid a sum of Rs.5,36,000/- (Rupees Five Lakhs Thirty-Six Thousand only) towards the repayment of the loan as on 16.01.2019, as has been admitted by the PW-1 in his cross-examination. The Respondent ought to have deducted the said amount towards the loan amount before issuing the demand notice. Therefore, the JMFC and the Sessions Court ought to have examined whether there was in fact a legally enforceable debt to the tune of Rs.20,00,000/- as on the date of presentation of the cheque in order to satisfy the ingredients of Section 138 of the N.I. Act.

18. It is further submitted that, during the appellate proceedings, the matter was taken up for hearing on 30.10.2021, when oral arguments were heard on behalf of the Respondent in the absence of the Advocate for the Applicant. The Applicant's Advocate did not thereafter file written arguments or advance oral arguments on behalf of the Applicant. The absence of submissions on behalf of the

Applicant deprived the Sessions Court of the benefit of a properly presented argument concerning the loan agreement, the alleged recall of the loan, the defence relating to the blank cheque and the sufficiency of the evidence. Therefore, Mr. Coutinho submitted that the entire proceedings have resulted in injustice to the Applicant and this Court ought to exercise its revisional jurisdiction.

19. Mr. Ramaiya submitted that through the records and concurrent findings of both the Courts, it was established that the Applicant, being a member of the Respondent society, had obtained a loan of Rs.20,00,000/- which was repayable in 240 instalments of Rs.20,640/- (Rupees Twenty Thousand Six Hundred and Forty only) each. The loan was repayable with interest, costs and other charges as applicable. He submitted that in view of the consistent default, the loan was recalled vide notice dated 10.05.2018 and corrigendum dated 11.10.2018, calling upon the Applicant to pay the entire outstanding loan of Rs.23,23,361/- as on 30.04.2018 plus further interest from 01.05.2018 till date of final payment, in terms of clause 3 of the loan agreement dated 15.07.2014.

20. He submitted that both the Courts have recorded factual findings and have held that the Respondent has established that the Applicant had in fact issued the cheque dated 09.11.2018 for part payment of loan outstanding to the tune of Rs.23,23,361/- as on 30.04.2018. It is submitted that both the Courts have concurrently held that the Applicant was not able to rebut the statutory presumption under Section 139 of the N.I. Act.

21. I have heard the rival submissions and perused the record.

22. There are concurrent findings of facts against the Applicant. The Applicant, being a member of the Respondent society, had admittedly obtained a loan of Rs.20,00,000/- (Rupees Twenty Lakhs only) at the Headland Sada Branch. The loan was repayable in 240 instalments of Rs.20,640/- (Rupees Twenty Thousand Six Hundred and Forty only) each; the loan was repayable with interest, costs and other charges as applicable. Admittedly, the Applicant has defaulted in repayment as per the agreed terms. In view of consistent default by the Applicant, the loan was recalled vide notice dated 10.05.2018 and corrigendum dated 11.10.2018, calling upon the Applicant to pay the entire outstanding

loan of Rs.23,23,361/- (Rupees Twenty-Three Lakhs Twenty-Three Thousand Three Hundred and Sixty-One only) as on 30.04.2018 plus further interest from 01.05.2018 till date of final payment, in terms of clause 3 of the agreement for loan dated 15.07.2024.

23. The Applicant has executed the loan agreement. There is no dispute about that. The loan was recalled by the Respondent because of the defaults made by the Applicant and the same was in terms of the loan agreement. Therefore, I reject the submission made on behalf of the Applicant that the recall of the loan was premature and the Respondent could not have done so. All other submissions on behalf of the Applicant are linked to the primary submission that the Respondent could not have recalled the loan. If that submission fails, then all linked submissions should also fail. Accordingly, I reject all other submissions made on behalf of the Applicant.

24. Additionally, both Courts have held that the Applicant failed to rebut the statutory presumption under Section 139 of the N.I Act. I agree with the concurrent findings because nothing on record establishes the contrary.

25. The record also reveals that the Applicant was given an opportunity to file written arguments and orally argue the matter before the Sessions Court and despite having such opportunity, the Applicant failed to adduce any arguments, and the same appears to be the modus adopted by the Applicant in the present proceedings. In any case, the Sessions Court, notwithstanding the fact that the Applicant did not tender any oral or written arguments, has considered all aspects of the matter and has rendered reasoned findings, which ought not to be interfered with in the limited revisional jurisdiction. Therefore, I reject the submission made on behalf of the Applicant that the Applicant had no opportunity or that the entire proceedings have resulted in injustice to the Applicant.

26. Considering the overall circumstances involved, the findings rendered by the JMFC and the Sessions Court, the grounds raised by the Applicant in the Application and the conduct of the Applicant, I find no infirmity in the order 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.

27. Therefore, the Revision Application deserves to be dismissed and **accordingly it is dismissed**. Pending Applications, if any, also stand disposed of.

28. The Applicant has already avoided the earlier warrants issued by the learned JMFC and abused the process of law. Therefore, the Police Inspector, Vasco Police Station, is ordered and directed to arrest the Applicant and produce him before the Judicial Magistrate First Class at Vasco.

29. 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.]

IBC Laws | www.ibclaw.in