



**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No. _____ of 2026
(@Special Leave Petition (Crl.) No.499 of 2026)

Sanu Varghese

.... Appellant

Versus

Shoukkathali

.... Respondent

ORDER

Leave granted.

2. The appellant is the complainant, and the respondent is the accused in a proceeding initiated under Section 138 of the Negotiable Instruments Act, 1881 (NI Act). The appellant is aggrieved with the impugned order of the High Court in revision which remanded the matter for fresh trial from the stage of defence evidence. The ground on which the remand was made was the decision of this Court in *M/s Mandvi Cooperative Bank Limited v. Nimesh B. Thakore*¹.

3. We heard Mr. Babu Joseph K., learned Counsel for the appellant and Mr. Raghenth Basant, learned Senior Counsel appearing for the respondent.

¹ (2010) 3 SCC 83

4. The issue, in a narrow compass, is as to whether the remand order was proper on the ground raised at the stage of revision, when there is no plea of prejudice taken by the accused. The cited decision, on a detailed consideration of Section 145 of the NI Act held that sub-section (1) provides that the evidence of the complainant may be given by him on affidavit which was also to be read in evidence in any enquiry, trial or other proceeding under the Cr.PC, subject to all just exceptions. The provision enables only the complainant's chief examination to be in affidavit. As far as sub-section (2) is concerned, it was held to be a discretion of the Court to call a person giving evidence to do so on affidavit and to examine him as to the facts contained therein. However, if any application is made, either by the prosecution or by the accused that the person giving his evidence on affidavit should be called in person, to be again examined as to the facts contained therein, it must be done.

5. True, this Court found a distinction between the nature of the complainant's evidence and the evidence of the accused in a case of dishonoured cheque, in paragraph 48. The nature of the evidence of the defence may not

necessarily be documentary and the defence would adduce other kinds of evidence to rebut the presumption, that the issuance of the cheque was not in discharge of any debt or liability, was the finding, which led to the conclusion that the accused cannot be permitted to be examined on affidavit.

6. The dictum has to be applied in a criminal case, specifically with reference to the prejudice caused to the accused in a completed trial. In the present case, the reading of the order of the learned Magistrate would indicate that the accused, examined as DW-1 contended that a signed blank cheque leaf was given as security for loan of Rs.10 lakhs, transferred by the complainant to the account of the accused. The cheque presented was for an amount of Rs.30 lakhs. It was also the contention of the accused that on the alleged date of handing over of Rs.20 lakhs and on the date on which the cheque was issued; the evidence of PW-1, the complainant having been corroborated by PW-2, the complainant was not in station and was at Bengaluru. However, no substantive evidence regarding the unavailability of the complainant was proffered before Court. The learned Magistrate clearly observed that the

accused could very well have obtained the Call Data Records (CDRs) of the mobile of the complainant to establish his absence.

7. The accused never alleged a prejudice before the Trial Court or before the First Appellate Court. The signature was admitted and the presumption applies squarely which has not been rebutted.

8. Before the High Court, the accused has merely by reason of the ingenuity of the lawyer, taken a contention which was erroneously accepted by the learned Single Judge, according to us. The plea of prejudice looms large and is stark in the above case by its absence.

9. The learned Senior Counsel appearing for the respondent would submit that in fact, the trial was resumed at the stage of defence evidence and completed. But that is of no consequence when we set aside the order of the learned Single Judge impugned in this appeal, which we do set aside. As pointed out by the learned Senior Counsel, still the other contentions are available. In these circumstances, we restore CrI. R.P. No.715 of 2023 to the files of the High Court, which shall be considered on its own merits.

However, the evidence led at the trial initially shall only be considered, if at all, the Trial Court has examined the accused in person, subsequently the same shall be eschewed.

10. The appeal stands allowed.

11. Pending application(s), if any, shall stand rejected.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

**NEW DELHI;
SEPTEMBER 22, 2026.**