

MHKO100010692022 	Received on	:	19/10/2022
	Registered on	:	20/10/2022
	Decided on	:	23/04/2026
	Duration	:	YY MM DD
			03. 06. 04.

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
GADHINGLAJ, DIST. KOLHAPUR
(Presided over by S. D. Mehta)

S. C. C. NO. 353/2022**EXH. NO. 65/B.**

CNR NO. MHKO100010692022.

Smt. Shanta W/o Guruling Belgudri,
Age : 72 years, Occ.- Housewife,
R/o. Nevade Galli, Gadhinglaj,
Tal. Gadhinglaj, Dist. Kolhapur.

... Complainant.

Versus

Smt. Gouri Shivaling Belgudri,
Age : 45 years, Occ.- Service,
C/o. Vijay Appasaheb Arbole,
R/o. Rajguru Nagar, Behind Maharashtra
Chitra Mandir, Gadhinglaj,
Tal. Gadhinglaj, Dist. Kolhapur.

... Accused.

AND

R/o. Omkar Niwas, Nevade Galli,
Gadhinglaj, Tal. Gadhinglaj,
Dist. Kolhapur.

OFFENCE PUNISHABLE UNDER SECTION 138 OF THE
NEGOTIABLE INSTRUMENTS ACT, 1881.

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:- APPEARANCE :-

Advocate for the complainant :- Shri. A. B. Shintre &
Shri. R. A. Gunjale.

Advocate for the accused :- Shri. A. G. Deshpande.

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-: J U D G M E N T: -**(Delivered on this 23/04/2026)**

The accused is facing trial for the offence punishable U/s.138 of the Negotiable Instrument Act for dishonor of two cheques total amount of Rs.25,00,000/- (Rupees Twenty Five Lac only).

Brief facts of the complaint are as under: -

02. Complainant is mother-in-law of accused and mother of deceased Shivling Guruling Belgudri. The husband of complainant Guruling Belgudri expired on dated 08/04/2018 living behind him, the complaint, two sons namely Ravindra and Shivling and one daughter as his legal heirs. During the lifetime of Guruling, he executed family settlement in the year 2011 to divide his self acquired property among his legal heirs. Accordingly, his legal heirs peacefully enjoy their possession over their shares and started to leave separately 2011. After the death of husband of complainant, she continued to reside separately till today. The accused after the death of her husband, residing with her parents.

03. On dated 12/01/2020, the husband of accused expired living behind him the complainant, accused and son of accused as his legal heirs to succeed the property standing in the name of deceased husband of the accused. Therefore, in the intervention of elders of the village, friends and relatives an amicable oral settlement was drawn between the complainant and accused. According to the oral settlement, the accused

agreed to give two plots bearing no.47 and 74 of Revision Survey No.149/2/2 in the name of the complainant and Rs.25 lac in lieu of relinquishment of legal right, in the name of accused, from the property standing in the name of deceased husband of the accused. According to the said oral family settlement accused has executed sale deed bearing no.2912/2020 on dated 15/12/2020 in favour of complainant to transfer above said plots before the Sub-Registrar, Gadhinglaj. Further, the accused assured the complainant that, after sell of plots from the above said Revision Survey number the accused will pay the agreed amount of Rs.25 lac. The complainant believed the words of accused and waited for the sell of plots.

04. The month of August 2022 when complainant came to know that, accused recently had sold the plots and had sufficient funds to give the agreed amount to her, she approached the accused and requested to give the agreed amount to her. That time accused gave two cheques bearing no.025701 for amount of Rs.15,00,000/- dated 17/08/2022 and cheque bearing no.025700 for an amount of Rs.10,00,000/- dated 23/08/2022, both drawn on Federal Bank, Branch-Gadhinglaj in the name of complainant to discharge legally enforceable debt. On 05/09/2022, complainant deposited both the cheques in her bank of Baroda, Branch-Gadhinglaj for encashment. But, on 07/09/2022, those cheques returned unpaid with reason of 'funds insufficient'. Then complainant immediate issued a legal notice dated 14/09/2022 to accused to her advocate. The said notice was received to accused on dated

19/09/2022. On the contrary, she had not paid the said amount involved in the above said two cheques to her and replied the said notice vaguely and denied the lawful liability. Hence, complainant is constrained to file this complaint before this Court.

05. My learned predecessor has recorded plea of accused at **Exh.14** for the offence punishable u/s. 138 of The Negotiable Instruments Act. The contents of plea were read over and explained to the accused. He abjured the guilt and claimed to be tried.

06. In order to prove her case, the complainant has examined herself as C.W. No.1 at **Exh.18**. Complainant closed her evidence vide pursis at **Exh.39**. The statement of the accused u/s. 313 of the Code of Criminal Procedure is recorded at **Exh.41**. The defence of the accused is of total denial and stated that, she is not liable to pay cheques amount to complainant. Her husband was suffered with brain tumor, therefore, she had gone with him for treatment at different places. That time, she was teaching at school and for school purpose she had kept signed cheque in her house. She was living with in laws at that time in house and every one knew about the signed cheque. Meantime, her cheque misplaced. In result, this false complaint has been filed by misusing those missing cheques against her.

07. From the complaint following points arises for my determination and I record my findings against each of them for reasons enumerated below.

Sr. No.	Points for determination	Findings
01.	Whether the complainant proves that, the accused has issued cheque bearing No.025701 of Rs.15,00,000/- dated 17/08/2022 and No.025700 of Rs.10,00,000/- dated 23/08/2022 drawn on Federal Bank, Branch-Gadhinglaj towards the discharge of legally enforceable debt or other liability?	In negative.
02.	Whether the complainant proves that, the above referred cheques were returned by the bank unpaid with the reason “ Funds Insufficient ” ?	In affirmative.
03.	Whether the complainant proves that, the complainant had made demand for the payment of said amount of money by giving a notice in writing to the accused within 30 days of the receipt of the information by him from the bank regarding return of the cheques as unpaid?	In affirmative.
04.	Whether the complainant bank proves that, the accused failed to make the payment of the said amount of money to the complainant within 15 days from the receipt of notice?	In affirmative.
05.	What order ?	Accused is acquitted.

REASONS

08. Argument of Ld. Advocate Shri. R. A. Gunjale for complainant.

On behalf of complainant, his advocate argued that after the death of husband of accused, the complainant, accused and her son became legal heirs of deceased. It was orally agreed between the complainant and accused that, complainant shall

relinquish her legal right in the property of deceased husband of accused. If accused execute sale deed of plot no.47 and 74 in Revision Survey No.149/2/2 in her name without consideration along with additional payment of Rs.25,00,000/- to her. Accused agreed about that oral agreement. Accordingly, on dated 15/12/2020, she had executed sale deed of above said plots in her favour. But, not paid agreed amount of Rs.25,00,000/- to her, when she approached to accused and demanded Rs.25,00,000/- as per agreed oral agreement between them. She had issued above said signed cheques in her favour to discharge her liability towards repayment of legally enforceable debt. Here, in present case complainant has established her case beyond reasonable doubt. Presumption u/s. 118 and 139 of the N.I.Act are played in her favour. On the contrary, neither accused has examined herself nor adduced any oral evidence to support her defence. She does not rebut the presumption of above said section of N.I.Act. She does not denied the issuance of cheques and her signature upon it. The defence is not probable. Hence, complainant has proved her case beyond reasonable doubt. Therefore, prayed for conviction and demand twice amount of cheque as a compensation from accused. In support of his argument, he has filed citation with list Exh.55.

- 1) *Anil Sachar & Anr. Vs. M/s. Shree Nath Spinners P Ltd & Ors., AIR 2011 SC 2751,*
- 2) *Yavtmal District Mahesh Urban Credit Co-Op Society Ltd. Vs. Narayanrao Ukandrao Paikrao, Criminal Appeal No.576/2008,*

3) *Rajeev Bhalla Vs. State & Anr., CRL.M.C. 2870/2012.*

09. **Argument of Ld. Advocate Shri. A. G. Deshpande for accused.**

It is argument of Ld. Advocate of accused that, there was no so called oral agreement executed between the complainant and accused after the death of husband of accused. It is admitted facts that, after the death of Shivling, son of complainant living behind complainant, accused and his son as legal heirs. Their name will be recorded on the properties stand in the name of deceased. But, it was decided that complainant shall relinquish her right in the property of deceased Shivling. If, plot no.47 and 74 of Revision Survey No.149/2/2 shall be sold to her without consideration. Accordingly, accused executed sale deed on dated 15/12/2020 in favour of the complainant about the above said plots without consideration. This fact has been admitted by the accused in the replied notice vide Exh.49 sent to complainant. Apart of that, there was no agreement about the payment of additional Rs.25,00,000/- be given to complainant. Therefore, no question will arise to issuance cheques in the favour of complainant to discharge her legal liability. It is the defence of accused that, her husband was suffering from brain tumor and she was bringing him at various hospitals for treatment. At the same time, she was working as a teacher and for school purpose she kept signed cheque at her house. Complainant was residing with them and that period her cheque which are used in this complaint have been misplaced. It is a

defence taken in this case is already made by the accused in her reply notice sent to complainant prior to file this complaint. Here, the presumption of Section 118 and 139 of the N.I.Act has been rebutted and the defence taken by accused is probable one. Therefore, onus has been shifted upon complainant to prove how these alleged cheques are legally enforceable against the accused. Hence, prayed for acquittal. In support of the argument, he relied upon the case of *Dattatraya Vs. Sharnappa*, *AIR Online 2024 SC 550*.

As to Point No.1 -

10. The complainant in her evidence has reproduced and retreated the contents of the complaint. She has also relied on following documents.

Sr. No.	Particulars	Exh. No.
01.	Cheque bearing No.025701.	29
02.	Cheque bearing No.025700.	30
03.	Return Memo of cheque No.025701.	31
04.	Notice Dated 14/09/2022.	32
05.	Postal Receipt.	33
06.	Postal Receipt.	34
07.	Acknowledgment Receipt.	35
08.	Acknowledgment Receipt.	36
09.	Return Memo of cheque No.025700.	63

11. The accused in her evidence has reproduced and retreated the contents of the complaint. She has also relied on following documents.

Sr. No.	Particulars	Exh.No.
01.	Answer letter dated 01/10/2022	49
02.	Postal Receipt.	50
03.	Acknowledgment Receipt.	51
04.	Certified copy of Exhibit No.1 of Special Civil Suit No.64/2022.	52
05.	Statement of Account for the period 01/01/2014 to 31/12/2023.	53

The accused closed her evidence vide pursis at **Exh.54.**

12. In the present case, it is a story of the complainant that, her husband had executed family settlement in the year 2011 during his lifetime and divided the self acquired property amongst his legal heirs. He died in the year 2018 and unfortunately in the year 2020, her son and husband of accused namely Shivling was also died. The property of Shivling will be divide among complaint, accused and her son as a legal heirs. But, as per the story of complainant, it was orally agreed between her and accused that she will relinquish her right in the property of her deceased son, if accused will be executed sale deed of plot no.47 and 74 of Revision Survey No.149/2/2 without consideration and also paid additional Rs.25,00,000/- to her. This oral agreement was accepted by accused and she had executed sale deed of above plots in her name without consideration on dated 15/12/2020. But, she did not pay agreed amount of Rs.25,00,000/- to her and issued above said cheques vide Exh.29 and 30 in her favour to discharge her legal liability.

When she deposited those cheques in her account, it got bounced. She sent notice to accused and demanded cheques amount, but she neither pay agreed amount of Rs.25,00,000/- to her. On the contrary, sent reply notice vide Exh.49 to her.

13. To substantiate her claim, she has examined herself at Exh.18 on record. Through her evidence she had proved all documentary evidence on record. The Ld. Advocate of complainant vehemently argued that, cheques vide Exh.29 and 30 are issued by the accused and it was not disputed the signature of accused. Therefore, the presumption u/s. 118 and 139 of the N.I.Act are playing in favour of the complainant. Accused has not rebutte this presumption. Neither she has examined herself nor led any oral evidence.

14. Considering the evidence came on record in form of oral and documentary. First of all it shall be established by the complainant that, there was oral agreement between her and accused about the relinquishment of right in the property of deceased Shivling. Then only the presumption of Section 118 and 139 of the N.I.Act shall be come in the picture. As per the contentions of complaint and evidence of complainant there was so called oral agreement made between her and accused about the relinquishment of her right in the property of deceased son. Here, the reply notice vide Exh.49 sent by accused if perused then it has been admitted at the extent of execution of sale deed in respect of plot no.47 and 74 in Revision Survey No.149/2/2 in favour of complainant without consideration. But, the additional amount of Rs.25,00,000/- to pay complainant it was

not agreed between them. This fact is totally denial by accused. Therefore, Ld. Advocate of accused argued that, no question will arise to issuance cheques of total amount of Rs.25,00,000/- as alleged by complainant.

15. After perusal of entire cross-examination of complainant it reveals that, she does not know about the date of alleged oral agreement, what was the purpose of that alleged agreement, why and when alleged cheques were issued in her favour. In whole in entire cross-examination it brought on record that she was unaware about her own complaint. She repeatedly deposed in her cross-examination that, she had supplied all information to her advocate. She had admitted in her cross-examination that, her advocate knows everything regarding this complaint. Therefore, these admissions create doubt about the story of complainant. Complainant has not examined the witness before whom the alleged oral agreement was made between them. She was unable to give specific date on which the alleged cheques were issued in her favour. On the contrary, the defence taken by accused is already mentioned in her reply notice vide Exh.49. This notice was sent prior to filing of this complaint. It is admitted in the cross-examination of the complainant that, accused was working as a teacher when her husband was suffering with brain tumor and it was the defence of accused that, she was living with her mother-in-law i.e. complainant when her husband was suffering with ailment. It was also explained in her reply notice that, there was a dispute between the brother-in-law of accused with her after the death of her

husband regarding the property. She had filed civil suit against him and after the death of her husband, complainant had gone to leave with her another son namely Ravindra who is the brother-in-law of accused. There was a dispute between accused and him about the property and he made conspiracy with the complainant and misplaced the alleged cheques used in this complaint from the house of accused. This defence is already taken in the reply notice. Therefore, the objection arose by the complainant that, after the missing of alleged cheque, why accused had not filed any complaint to police or intimate to bank. Then the answer is filing of reply notice is sufficient, because the relation and complainant and accused is mother-in-law and daughter-in-law. It is not the commercial relation. Keep it mine the relation between the parties it may be possible to not make any police complaint against the complainant. Therefore, the defence taken by the accused is probable one. It create doubt about the existence of legal debt exist at the time of issuance of cheque. The onus of presumption is shifted to the complainant and it is not proved by the complainant further, oral or documentary evidence against the accused. Therefore, from above discussion of evidence I am of the opinion that, there is a probability that signed cheque of accused might be misplaced from her house and it has been used in this case. There is a question arise about the existence of legally enforceable debt between the parties. Hence, the presumption u/s. 118 and 139 of the N.I.Act shall not the help to complainant.

16. I have gone through the case laws filed by complainant with list Exh.55 on record. In *Anil Sacchar (Supra)* case and *Yavatmal District Urban Credit Co Operative (Supra)* case are altogether different from this case in hand, because in those cases there was commercial transaction between the parties. But, in present case there was no commercial transaction between complainant and accused. Hence, the facts and circumstances of those cases are totally different with this case, hence not applicable and supportive with the argument of complainant. Apart of that, it has relied on *Rajeev Bhalla (Supra)* case it was about the quashing of complaint filed u/. 138 of the N.I.Act against the accused. That case is altogether different with this case. Hence, it would not be help to the complainant case. On the contrary, the case law filed by the accused advocate *Dattatray (Supra)*. In this case it was observed in this case that, unless and until the complainant established his case the presumption u/s. 118 and 139 of the N.I.Act shall not help to complainant. Here, in present case same thing has been happened. Complainant has failed to establish his case. He did not proved the existence of oral agreement about the condition of additional payment of Rs.25,00,000/- to complainant. Therefore, the question of issuance of cheque for repayment of Rs.25,00,000/- for fulfillment of oral agreement condition is not arise. Hence, the *Dattatray (Supra)* case is applicable and supportive with the argument of accused case. Hence, on the above discussion regarding the point no.1, I am of the opinion that complainant has failed to prove that, alleged cheques were issued for discharged the liability towards

repayment of debt. Hence, I answered point no.1 in 'negative'.

As to Point Nos. 2 to 5 -

17. The presentation of cheques for encashment and service of notice its dishonor is not disputed. Therefore, the basic ingredients to attracts the offence under Section 138 is fulfill by the complainant. Therefore, in view of above reasons point Nos.2 to 4 are answered in 'affirmative' and to answer point No.5, I reckon to pass the following order.

ORDER

01. The accused **Gouri Shivaling Belgudri** is acquitted U/s. 255(1) of The Code of Criminal Procedure for the offence punishable U/s.138 of The Negotiable Instruments Act.
02. The accused is set at liberty.
03. The bail bonds of the accused is surrendered.
04. The accused is directed to furnish P.B. and S.B. of Rs.15,000/- (Rupees Fifteen Thousand Only) for the compliance of Section 437-A of the Code of Civil Procedure.

(Dictated and pronounced in open Court.)

Date: 23/04/2026.
Gadhinglaj.

(**S. D. Mehta**)
Judicial Magistrate First Class,
Court No.1, Gadhinglaj.