Presented on : 15 -10-2022
Registered on : 15 -10-2022
Decided on : 02-01-2025
Period : 02-Y. 02-M. 17-D

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, ANJANGAON-SURJI, DIST. AMRAVATI.
(Presided over by Shri. S.M.Jadhav)

Sum.Cri.Case No.711/2022 **Ex.No.53**

Sharnira Nagri Sahakari Patsanstha, Anjangaon Surji,
Reg. No. 486/1994-95, Through its Manager,
Shri. Ajay Bhaurao Mahulkar,
Age about 40 years, Occ : Service,
R/o Anjangaon-Surji, Tq. Anjangaon Surji,
Dist. Amravati. .. Complainant

//Versus//

Nilesh Manohar Bobade,
Age about 47 years, Occ : Agriculture,
R/o. Near to Vitthal Temple,
Malipura, Surji, Tq. Anjangaon Surji,
Dist.Amravati. .. Accused

Offence Punishable Under Section 138 of Negotiable Instruments Act, 1881

Shri. P.B. Sangole, Advocate for the complainant.
Shri. S.M.Thote, Advocate for the accused.

JUDGMENT
(Delivered on 02/01/2025)

The accused is facing trial for offence punishable under Section 138 of Negotiable Instruments Act, 1881. (hereinafter referred as "N.I. Act").

2. In brief, it is contention of complainant that the Sharnira Nagari Sahakari Patsanstha, Anjangaon Surji, (the Patsanstha) is registered Patsanstha and working at Anjangaon Surji on given address. The complainant Patsanstha used to give loan to needy persons. The complainant Patsanstha sanctioned mortgage loan to the accused as per his demand on 11.08.2015 of Rs.5,00,000/-. He had executed all requisite documents in favour of the Patsanstha. However, he failed to pay the loan as per agreed terms. There was an amount of Rs. 10,63,200/- due against him with interest. The Patsanstha approached to the accused for loan amount. At that time, the accused had given a cheque bearing no. 002587 on 19.08.2022 of an amount of Rs.10,63,200/-(Ten Lack Sixty Three Thousand and Two Hundred Only) of Bank of Maharashtra, Branch-Anjangoan Surji (Drawer's Bank). The cheque was presented to the drawer's Patsanstha and it was returned for the reason "*insufficient funds*" by memo dated 19.08.2022. Then, the Patsanstha issued demand notice dated 01.09.2022 but the accused has not complied that notice despite service on 02.09.2022. Hence, this complaint.

3. I have explained substance of particulars of accusation to the accused vide Exh. 10 and the accused pleaded not guilty and claimed to be tried.

4. In statement u/s. 313 of Cr.P.C. at Exh.46, he has denied contention of complainant Patsanstha and took defence of false case.

5. Following points arise for my determination and I have recorded findings thereon for the reasons stated hereinafter.

	POINTS	FINDINGS.
1.	Does complainant Patsanstha prove that accused issued cheque drawn on Bank of Maharashtra, Branch- Anjangaon Surji bearing a cheque bearing no. 002587 on 19.08.2022 of an amount of Rs.10,63,200/- for discharge of whole or in part of legally enforceable debt or other liability in favour of complainant ?	**Yes.**
2.	Does complainant Patsanstha prove that it has issued notice dated 01.09.2022 and made a demand to pay cheque amount within 15 days ?	**Yes.**
3.	Whether accused has committed an offence punishable u/s 138 of Negotiable Instruments Act ?	**Yes.**
4.	What order ?	**Accused convicted as per final order.**

R E A S O N S

AS TO POINTS NO. 1 TO 3

6. In order to bring home the guilt of accused, the complainant Patsanstha examined Ajay Mahulkar (C.W.1) at Exh.14. The complainant Patsanstha has also filed documents on record i.e. cheque at Exh.15, Memo at Exh. 16, Notice at Exh.17, Postal receipt at Exh.18, Acknowledgment at Exh. 19, Resolution at Exh.20, Loan Statement at Exh. 21, Loan Application at Exh.22, Promissory Note at Exh.23, Loan Agreement at Exh.24, Second Loan Agreement at Exh.25, Second Loan Statement at Exh.26. Per contra, the accused has not adduced evidence.

7. Shri. Ajay Mahulkar CW-1 is recovery officer/authorized person of the Patsanstha. He has reiterated contents of complaint in his affidavit of evidence in lieu of examination in chief. He has testified all the loan documents executed by the accused in favour of the complainant

Patsanstha. He further testified the issuance of cheque by the accused for the repayment of the loan. He further testified dishonour of cheque memo, notice, postal receipt, returned notice envelope, loan agreement, promissory note and loan account extract. Despite ample opportunity, the accused has not cross examined this witness and therefore, evidence of this evidence remained unchallenged. On perusal of record, it is seen that after further chief examination on 03.10.2023 the matter is repeatedly adjourned on 31.10.2023, 07.12.2023, 14.12.2023, 17.01.2024, 16.02.2024, 26.03.2024, 24.04.2024, 04.06.2024, 23.07.2024, 22.08.2024, 24.09.2024, 06.11.2024, 05.12.2024 but the accused has not try to set aside no cross order nor settled matter. It is further clearly seen that the accused is deliberately lingering the matter. Said conduct of the accused is not at all tolerable. Besides, today the accused has filed adjournment application at Exh.52 for argument. However, the accused has paid amount of Rs.1,50,000/- towards the disputed cheque vide Exh.40. Thus, no purpose will be served by adjourning the matter for argument. Hence, application is rejected. In view of unchallenged evidence of the complainant has successfully proved all the ingredients of the Section 138 of N. I. Act. Hence, I answered point no. 1 in affirmative. The notice was issued to the accused which was duly served vide Exh.19 Acknowledgment. The accused has not disputed the service of notice. Hence, I answered point no. 2 in affirmative. From the above discussion, I hold that the complainant Patsanstha has proved that accused has committed offence punishable u/s. 138 of N.I. Act.

8. Heard the complainant on the point of sentence, it is submitted that maximum punishment be awarded to the accused with twice of cheque amount. On the contrary, accused has submitted that he is poor person and his entire family is dependent on him. I have considered

submissions made by both the parties. The complainant is banking institution. It is the prime object of the N. I. Act that people should believe and honour the negotiable instruments. The nature of offence is economical. Thus, for the reasons, the accused is not entitled for the benefit of the provisions of the Probation of Offenders Act. However, the complainant as well as accused have fairly admitted that the accused has paid amount of **Rs. 1,50,000/-** vide pursis at Exh.40, 42, 43, 49 and 51 to the complainant during the trial. Thus the accused is entitled for set-off to that effect. In the facts and circumstances, I hold that following sentence would meet the ends of justice and in the result pass the following order.

O R D E R

1. The accused namely **Nilesh Manohar Bobade,** is convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 vide Section 255(2) of the Code of Criminal Procedure, 1973 and he sentenced to suffer simple imprisonment for **three months.**

2. The accused is directed to pay compensation of **Rs.9,13,200/-** to the complainant under section 357(3) of the Code of Criminal Procedure, 1973, within two months from the date of this order, in default to suffer simple imprisonment of one month.

3. The accused to surrender his bail bonds.

4. Copy of this Judgment be given to the accused free of cost.

(Judgment dictated and pronounced in open court.)

SANTAJI MARUTI JADHAV Digitally signed by SANTAJI MARUTI JADHAV Date: 2025.01.02 15:26:52 +0530

(S. M. Jadhav)
Judicial Magistrate First Class,
(Court No. 1), Anjangaon Surji.

Place: Anjangaon Surji
Date: 02/01/2025

I affirm that the contents of this P.D.F. file Judgment are same, word to word, as per the original Judgment.

Name of the Stenographer	:-	Swapnil D. Ghode
Name of Court	:-	C.J. Jr. Dn. and J.M.F.C., Court No.1. Anjangaon Surji,
Date of Dictation	:-	02.01.2025
Judgment signed by the P.O. on	:-	02.01.2025
Judgment uploaded on	:-	02.01.2025