	Received on	30/08/2019
	Registered on	30/08/2019
	Decided on	13/07/2026
	Duration	06 Y,10M,14D.

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS,

14th COURT, GIRGAON, MUMBAI.

Presided over by :- (A. R. Yadav)

C.C. NO.1191/SS/2019 **EXH. No.:67**

(CNR No.MHMM140031172019)

Complainant	:-	**Vyankatesh Sawant**, Age : 62 years, Occ.: Not given, R/o.: 4A, Ganges, Walkeshwar Road, 17 Banganga, Cross Road no. 2, Walkeshwar, Mumbai.
Represented by	:-	Learned Adv. Smt. Pooja Pandey
~ VERSUS ~		
Accused	:-	**Faizal Kapadia**, Mumbai Global Land Investment Ltd., Age: Major, Occ.: Business, At: 141, 142 Nishad Society, Adajan Patiya, Surat, Gujrat.
Represented by	:-	Learned Adv. Shri Prashant Rathod

COMPLAINT UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881.

:: ~JUDGMENT ~::

(Delivered on this 13th day of July, 2026)

The accused faced the trial for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter in short 'Act').

The brief facts of the complainant's case unfurled during trail are as under:-

02. The complainant approached to the accused for purchase of plot situated at Village – Pansai at Dist. Raigad. The accused is Director of Mumbai Global Investment Ltd.

03. On 14/07/2012, the complainant entered into a Memorandum of Understanding for booking of a plot for consideration of Rs.5,13,000/-. Though the booking of flat was done in the year 2012, the accused did not deliver the possession of said plot to the complainant. As the accused had not delivered the possession, the complainant approached the accused and demanded back the money. As against said liability, the accused issued a cheque bearing no. 000102 for an amount of Rs.5,05,000/-, dated 27/06/2019, drawn on Kotak Mahindra Bank and assured that it will be cleared on the date mentioned.

04. On 27/06/2019, the complainant deposited the said cheque in his bank account at HDFC Bank, Branch at Malabar Hill for encashment. However, on 29/06/2019 the complainant received a memo from HDFC Bank bearing remark, 'Payment Stopped By Drawer'. The memo bears date

29/06/2019.

05. The complainant issued notice dated 16/07/2019 through his advocate, by registered post, on the accused, demanding payment of cheque amount within 15 days. The accused received the statutory notice on 23/07/2019 but, did not pay the cheque amount to the complainant. Therefore, the cause of action to the present complaint arose on 08/08/2019. The complainant instituted the present complaint.

06. My learned predecessor recorded verification of the complainant and issued process under Section 204 of the Code of Criminal Procedure,1973 for offence punishable under Section 138 of the Negotiable Instruments Act. He explained the substance of accusation to the accused to which he pleaded not guilty and claimed to be tried. The plea of the accused came to be recorded at Exh.4. He pleaded not guilty.

07. The complainant filed his examination-in-chief at Exh.5. My learned Predecessor directed to original documents to be exhibited, subject to objection of the accused, vide order dated 23/09/2019 passed at Exh.6. The documents were exhibited as per the list annexed below. The complainant closed his evidence vide pursis at Exh.42, dated 03/07/2024.

08. My learned Predecessor recorded statement of the accused under section 313 of Cr.P.C. wherein the accused denied the Memorandum of Understanding for an amount of Rs.5,13,000/-. He stated about issuing of the present cheque in some other transaction and not the transaction in question. He has denied receipt of notice.

09. The consideration of the materials give rise to following points which are answered with the reasons as under :

Sr. No.	Points		Findings
1.	Whether the prosecution proves that accused drew cheque no. 000102, dated 27.06.2019 for Rs.5,05,000/- drawn on Kotak Mahindra Bank in favour of the complainant for the discharge of any debt or legally enforceable liability, dishonored it for reason, "Payment Stopped By Drawer" and thereby committed an offence punishable u/s. 138 of the Negotiable Instruments Act, 1881?		**In negative.**
2.	What order?		**As per final order**

<u>R E A S O N S</u>

<u>AS TO POINT NOS.1 AND 2:</u>

<u>ANALYSIS OF THE MATERIALS :-</u>

10. Prior to proceeding with analysis of the fact, If the ordain of Section 118 (g) of the Negotiable Instruments Act is delved upon, it would be helpful in applying it to the facts of the case in seisin. Section 118 (g) carries presumption that the holder of negotiable instruments is a holder in due course. Said presumption is available until the contrary is proved. Said presumption is rebuttable and the accused can rebut it by bringing probable evidence either in the cross-examination of the complainant's witnesses or by examining himself as a witness.

11. The Hon'ble Supreme Court has examined the scope and ambit of presumptions to be raised as envisaged by the provisions of Sections 118 and 139 of the Act in case of ***M/s. Kumar Exports Vs. M/s. Sharma Carpets, AIR 2009 SC 1518,***. The Hon'ble Supreme Court has observed as under:-

> " 9. *In order to determine the question whether offence punishable under Section 138 of the Act is made out against the appellant, it will be necessary to* ***<u>examine the scope and ambit of presumptions</u>*** *to be raised as envisaged by the provisions of Section 118 and 139 of the Act. In a suit to enforce a*

simple contract, the plaintiff has to aver in his pleading that it was made for good consideration and must substantiate it by evidence. ***But to this rule, the negotiable instruments are an exception.*** *In a significant departure from the general rule applicable to contracts, Section 118 of the Act provides certain presumptions to be raised. This Section lays down some special rules of evidence relating to presumptions. The reason for these presumptions is that, negotiable instrument passes from hand to hand on endorsement and it would make trading very difficult and negotiability of the instrument impossible, unless certain presumptions are made. The presumption, therefore, is a matter of principle to facilitate negotiability as well as trade. Section 118 of the Act provides presumptions to be raised unless the contrary is proved (i) as to consideration, (ii) as to date of instrument, (iii) as to time of acceptance, (iv) as to time of transfer, (v) as to order of endorsements, (vi) as to appropriate stamps and (vii) as to holder being a holder in due course.* ***Section 139 of the Act provides that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any date or other liability.*** *Presumptions are devices by use of which the courts are enabled and*

> *entitled to pronounce on an issue notwithstanding that there is no evidence or insufficient evidence. Under the Indian Evidence Act all presumptions must come under one or the other class of the three classes mentioned in the Act, namely, (1) "may presume" (rebuttable), (2) "shall presume" (rebuttable) and (3) "conclusive presumptions" (irrebuttable). The term 'presumption' is used to designate an inference, affirmative or disaffirmative of the existence a fact, conveniently called the "presumed fact" drawn by a judicial tribunal, by a process of probable reasoning from some matter of fact either judicially noticed or admitted or established by legal evidence to the satisfaction of the tribunal. Presumption literally means "taking as true without examination or proof..."* (Emphasis supplied).

CONTENTIONS BY THE COUNSEL

12. Learned advocate Smt. Pandey contended that the MOU (Exh.7) is of year 2012 and from the year 2012 till 2019 there has been no conveyance between the parties regarding issue involved in the proceeding. She contended that the cheque (Exh.8) is signed by the accused and the signature is not disputed. She took me through para no. 17 of the cross-examination at Exh.5 and pointed out admission about production of demand notice and acknowledgment card along with the complainant's affidavit. It is her

contention that as the accused has admitted signature over cheque and demand notice the presumption arises as per Section 118 & 139 of N.I. Act. She also placed reliance on statement of the accused recorded under section 313 of Cr.P.C., more particularly question no. 2. It is also contended that the accused has failed to establish existence of any other transaction under which the cheque in question (Exh.8) might have been issued.

13. On the contrary, learned defence counsel contended that the MOU (Exh.7) is not signed by Meenakshi who is wife of the present accused though it bears her name. He also contended that in MOU (Exh.7) name of the present accused is not mentioned nor he is signatory to that.

14. The learned counsel for the accused pointed out that the notice at Exh.10 has been issued to the accused and not to the person who is signatory of MOU at Exh.7. He contended that one Mr. Aijaz is the authorized signatory of the company Mumbai Global Land Investment Ltd. It is also his contention that the complainant has failed to produce the postal receipt of statutory notice on the record.

15. The learned counsel for the accused contended that the cheque (Exh.8) has been signed by authorized signatory for 'Le Chalet' but, said Le Chalet is not made party to the complaint nor any demand notice was issued upon it. To support his contention, he placed reliance on statement of accused under section 313 of Cr.P.C. wherein

while answering to question no.5, the accused has stated about issuance of the cheque in question against some other transaction. He contended that the presumption has been rebutted in cross-examination of CW1 Vyankatesh.

16. It is contention of learned defence counsel that Mumbai Global Land Investment Ltd. is not made accused in the complaint. So, the complaint do not survives.

STATUS OF MUMBAI GLOBAL LAND INVESTMENT LTD. WITH REGARD TO THE ACCUSED FAIZAL

17. The complaint (Exh.1), in very first paragraph states that accused Faizal is Director of Mumbai Global Land Investment Ltd. Now switching to Memorandum of Understanding (hereinafter it shall be referred to as 'MOU') (Exh.7). In very opening paragraph, Mumbai Global Land Investment Ltd. is shown as company duly incorporated under the provisions of the Companies Act I of 1956 having its registered office at Andheri (W), Mumbai. At the concluding page of the MOU i.e. at page no. 5, it appears that one Mr. Aijaz has been mentioned as 'Authorized Signatory of the Company' and has signed in token of the company and thereby had accepted the terms of the MOU, it also speaks that said Mr. Aijaz has signed in presence of one Vimal. However, the status of Vimal is not clear.

18. The MOU, in the opening paragraph, appears to be made and entered into on 28/05/2012. However, it appears to be signed on 14/07/2012 by the present

complainant. It is not signed by Meenakshi V. Sawant though she has been called as purchaser in the very first page of the MOU.

19. Now switching to, weighing and testing of cross-examination of CW1 Vyankatesh. In para no. 23, it is clear that he was confronted with the said MOU (Exh.7) and he admitted that it do not bear name of accused. He also admitted that MOU is not signed by the present accused.

20. In cross-examination CW1 has further admitted that Mumbai Global Land Investment Ltd. and Le Chalet are two different entities. These shows that CW1 was well aware about different and distinguishable identity of Le Chalet from that of Mumbai Global Land Investment Ltd. He has further given admission that name of Le Chalet is not mentioned in MOU. Thus, the churning of cross-examination of CW1 Dr. Vyankatesh reveals that though cheque (Exh.8) is signed for Le Chalet but, said Le Chalet is not party to the MOU nor the said MOU has been executed and signed on behalf of Le Chalet. The role of signatory of cheque at Exh.8 for Le Chalet could not be traced out in the MOU (Exh.7). Thus, the complainant has failed to establish the relation between the drawer of the present cheque and the MOU which leads to rebuttal to the presumptions.

21. Further, winnowing and analysis of cross-examination of CW1 Dr. Vyanakatesh in para no. 28 reveals admission that accused Faizal has not signed the cheque in

personal capacity. He has further admitted that the drawer of the cheque (Exh.8) is Le Chalet and not the present accused personally. Thus, once again, in the nature of cross-examination, accused has succeeded in giving serious jolt to the case of prosecution by bringing on record the absence of relation between the drawer of the cheque and the party of the first part of the MOU (Exh.7).

AVERMENT IN THE COMPLAINT AS PER SECTION 141 OF THE ACT

22. In MOU (Exh.7), the Mumbai Global Land Investment Ltd. is represented as a company registered under the provisions of Companies Act, but, the complaint do not mentions details of the Directors of said company. It only speaks that accused was Director at the time of transaction of the said company.

23. Hon'ble Supreme Court in case of **S.M.S. Pharmaceutical Ltd. Vs. Neeta Bhalla (2005) 8 SSC 89** has observed as under:

> *'19...(a) It is necessary to specifically aver in a complaint under section 141 that at the time the offence was committed, the person accused was in-charge of, and responsible for the conduct of business of the company.* ***This averment is an essential requirement of section 141 and has to be made in complaint. Without this averment being made in a complaint, the requirement of section 141 can not be***

said to be satisfied.' *(emphasis supplied).*

24. Thus, the Hon'ble Supreme court clearly laid down that without averment regarding person in charge of and responsible for conduct of the business of the company the complaint does not survive.

25. Now again shifting over to contents of the complaint. It nowhere avers that at the time of the transaction on 28/05/2012 or at the time of its alleged execution by the complainant on 14/07/2012, accused Faizal Kapadia was in-charge of and responsible for conduct of business of Mumbai Global Land Investment Ltd. Therefore, it cannot be said that the complainant has satisfied the basic ingredients of section 141 of the Act.

26. The Hon'ble Supreme Court in the case of **Bharat Mittal V. State of Rajsthan, MANU/SC/1703/2025** has further laid down as under :

> *'15. This Court, in Aneeta Hada V. Godfather Travels and Tours Pvt. Ltd., laid down the law that criminal prosecution against "every person who, at the time the offence was committed, was in-charge of and responsible to the company for the conduct of its business,' as contemplated under section 141 of the Act, cannot be maintained* ***unless the company itself is arraigned as an accused in a complaint filed under section 138 read with section 141 of the Act. (emphasis given)'.***

27. Thus, in view of the ordain of the Hon'ble Supreme Court in case of *Bharat (supra)* it was sine qua none for the complainant to make the company as an accused in the complaint after fulfillment of conditions laid down under Section 138(b) of the Act. The perusal of the demand notice (Exh.10) reveals that it has not been issued directly on the company. The cross-examination of CW1 Dr. Vyankatesh, in para no. 32, reveals admission that he has not issued the demand notice (Exh.10) on the address mentioned in the MOU. He has issued demand notice to accused Faizal Kapadia who has not been averred to be responsible for the conduct of the business of the complainant company. He has further admitted the demand notice is neither addressed nor sent to Le Chalet who is drawer of the cheque.

28. Thus, the overall analysis of the complaint, evidence of affidavit and demand notice (Exh.10) radiates that the complaint do not avers that Faizal Kapadia was in-charge of and responsible for the conduct of business of the company. The notice is also not issued upon the company nor it has been arrayed as an accused in the capacity of different legal entity. Therefore, in the light of above discussion and settled legal position, the accused has succeeded in bringing sufficient cogent evidence in the cross-examination of CW1 to rebut the presumption available under section 118 & 139 of the Act.

29. CW1 Dr. Vyankatesh, in para no. 18 of the cross-examination, has admitted that he had not produced any document showing that accused Faizal was Director of Mumbai Global Land Investment Ltd. He also admitted that he has not produced document showing that accused was in-charge of said Mumbai Global Land Investment Ltd. Thus, there is neither averment in complaint nor production of any document to establish that the accused was in fact in-charge of the company.

30. In the conclusion, the complainant has failed to sufficiently aver in the complaint in tune with the law laid down in case of *Bharat (supra)* which has proved fatal and has laid to establishing of cogent evidence to rebut the presumptions. The MOU (Exh.8) is not signed by the accused Faizal either in the personal capacity or in the capacity of Director to the Mumbai Global Land Investment Ltd. So, the presumption about existence of the liability either on 28/05/2012 or on 14/07/2012 is also rebutted. There is no demand notice to the company nor it is made party. In these scenario, contentions by learned counsel for the complainant holds no ground and the answer to point no. 1 in negative. The accused deserves to be acquitted and is accordingly acquitted with the order as under:

ORDER

1. Accused **Faizal Kapadia**, Mumbai Global Land Investment Ltd. is hereby acquitted of the offence punishable under Section 138 of the

Negotiable Instruments Act, 1881 as per section 255(1) of The Code of Criminal Procedure, 1973.

2. Bail bonds of the accused is hereby extended for next six months as per the provisions of Section 437-A of the Code of Criminal Procedure, for the purpose of appeal.

3. The judgment and order is passed in presence of both the parties.

4. Order dictated and pronounced in open court under section 353(1) of the Code of Criminal Procedure,1973 and typed directly on computer screen.

5. The judgment and order is digitally signed.

AJAYPRAKASH RAMNATH YADAV

Digitally signed by AJAYPRAKASH RAMNATH YADAV
Date: 2026.07.13 17:30:02 +0530

(A. R. Yadav)
Judicial Magistrate (First Class),
14th Court, Girgaon, Mumbai.

Date :13.07.2026

LIST OF COMPLAINANT/ ACCUSED WITNESSES:-

A. COMPLAINANT'S WITNESSES.

Rank	Name	Nature of Evidence
1	Vyankatesh Sawant	Complainant

LIST OF COMPLAINANT'S EXHIBITS.

Sr. No.	Exhibit Number	Description
1	Exhibit No.7/CW No. 1	Application form for plot booking including Memorandum of Understanding, dated 28/05/2012
2	Exhibit No.8/CW No. 1	Cheque no. 000102, dated 27/06/2019
3	Exhibit No.9 /CW No. 1	Cheque return memo, dated 29/06/2019
4	Exhibit No.10 /CW No. 1	Demand notice, dated 16/07/2019
5	Exhibit No.39/CW No. 1	Acknowledgment card

AJAYPRAKASH RAMNATH YADAV

Digitally signed by AJAYPRAKASH RAMNATH YADAV
Date: 2026.07.13 17:30:10 +0530

(A. R. Yadav)
Date :13.07.2026 Judicial Magistrate (First Class),
14th Court, Girgaon, Mumbai.