CNR : MHAH0300 4628 2025	Received on	:	03.04.2025		
	Registered on	:	15.04.2025		
	Decided on	:	30.01.2026		
	Duration	:	Y. 00	M. 09	D. 27

FORM NO.XXXII
Part 'A'
[Para 44(i) of Chapter VI of Criminal Manual]

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE, (COURT NO.12) AT : AHMEDNAGAR.

(Presided over by : M. A. Husain)

Summary Criminal Case No.3874/2025 **Exh.38**

Complainant	:	**Arati Sandip Pathare,** Age - 42 yrs., Occ. - Agri and tailoring, R/o : Datta Chowk, Bhushan Nagar, Kedgaon, Ahmednagar.
Represented by	:	Learned Advocate Shri S. S. Shinde
Accused	:	**Mahesh Ratilal Mutha,** Age - 55 yrs., Occ. - Business, R/o : Mahadeo Mandir, Arati Colony, Bhushan Nagar, Kedgaon, Ahmednagar.
Represented by	:	Learned Advocate Shri Y. R. Thombare

Part 'B'
[Para 44(ii) of Chapter VI of Criminal Manual]

Date of Offence	25.03.2025
Date of complaint	03.04.2025
Date of framing of particulars/plea	31.07.2025
Date of Commencement of Evidence	12.08.2025
Date on which judgment is reserved	28.01.2026

Date of the Judgment	30.01.2026
Date of the Sentencing order, if any	30.01.2026

Accused Details

Rank of the accused	Name of accused	Date of arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during Trial for purpose of Section 428
1.	Mahesh Ratilal Mutha	NIL	31.07.2025	Section 138 of N.I. Act.	Convicted.	As per final order.	--

J U D G M E N T

(Delivered on this 30th January, 2026)

Accused is facing trial for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter it will be referred as 'the Act').

The brief facts of complainant's case are as under :

2. Complainant and accused are acquainted with each other and complainant used to help the accused. Accused was in need of money. He took an amount of Rs.56,200/- by PhonePe and Rs.50,000/- in cash as per his needs from the complainant. Accused took in all Rs.1,06,200/- from the complainant in presence of the witnesses to solve his financial difficulty. Accused assured to repay the said amount within 7 to 8 months. Accused did not repay the amount as promised and he only paid an amount of Rs.7,200/- by PhonePe and did not repay the remaining amount. Complainant was in need of money therefore, she demanded money to the accused.

Accused did not repay the remaining amount of Rs.99,000/-in cash and issued his cheque of Ahmednagar Merchant's Co.Op.Bank Ltd., Ahmednagar, Branch- Market Yard, Station Road, Ahmednagar bearing No.000162 of Rs.99,000/- dated 03.03.2025. Accused assured that the said cheque will be honoured. By relying on the words of the accused, on 03.03.2025 complainant presented the said cheque in her bank The Ahmednagar District Central Co-operative Bank Ltd., Ahmednagar, Branch – Kedgaon, Ahmednagar which came back dishonour on 04.03.2025 with reason 'funds insufficient'. The bank intimated the same to the complainant by it’s letter dated 05.03.2025. On 07.03.2025 complainant issued notice to the accused for demand of money of the cheque. The said notice was received by the accused on 10.03.2025. Instead of paying the cheque amount, on 15.03.2025 accused issued false reply to the said notice. In spite of the receipt of the notice, accused did not pay the amount of the cheque within 15 days therefore, accused has committed an offence punishable under section 138 of the Act.

3. Summons were issued to the accused. Accordingly, accused appeared before the court. Particulars of the offence below Exh.15 were read over and explained to the accused in vernacular. Accused denied the same and claimed to be tried. On going through statement of the accused below Exh.23 under Section 351 of Bharatiya Nagarik Suraksha Sanhita, 2023 the defence of accused appears to be of denial and false implication.

4. After perusing the evidence of parties and after hearing arguments of both the sides following points arise for my

consideration and my findings thereon are as under :-

Sr. No.	POINTS	FINDINGS
1)	Whether accused issued cheque bearing No.000162 dated 03.03.2025 for Rs.99,000/- drawn on Ahmednagar Merchant's Co.Op.Bank Ltd., Ahmednagar, Branch- Market Yard, Station Road, Ahmednagar for discharging, in whole or in part of any legally enforceable debt or liability, in favour of the complainant ?	Affirmative.
2)	Does the complainant prove that, the aforesaid cheque was dishonoured by the Bank ?	Affirmative.
3)	Does the complainant prove that, she had made demand for the payment of the aforesaid cheque amount by giving notice in writing to the accused within statutory period ?	Affirmative.
4)	Whether the aforesaid notice was served on the accused ?	Affirmative.
5)	Whether the accused paid the cheque amount to the complainant within 15 days of the receipt of notice of demand ?	Negative.
6)	Does the complainant prove that, the accused has committed an offence punishable under section 138 of the Negotiable Instruments Act ?	Affirmative.
7)	What order ?	Accused is convicted as per final order.

REASONS

5. The complainant has adduced oral as well as documentary evidence as shown in Part 'C' of the Appendix of this judgment. Complainant closed her evidence by filing pursis Exh.22. Accused examined himself as D.W-1 below Exh-25 and thereafter,

inspite of several opportunities accused did not lead further evidence. Hence, the evidence of accused was closed by passing order below Exh.1.

6. It is argued by the Learned Advocate for the complainant that, accused took an amount of Rs.1,06,200/- from the complainant out of which Rs.56,200/- was taken by him through PhonePe and remaining amount of Rs.50,000/- was taken in cash as and when he was in need of money. He submitted that, out of the said amount, accused only paid Rs.7,200/- and did not pay the remaining amount. He submitted that, when the complainant demanded the amount at that time accused issued cheque Exh.16 for repayment of the remaining amount. He submitted that, in his cross-examination accused has admitted that the said cheque belongs to him and it bears his signature. He submitted that, once the accused admits the cheque and his signature, the burden shifted on him. He submitted that, the complainant has proved that accused issued the cheque for legally enforceable debt and liability and even inspite receipt of the notice, he did not pay the cheque amount within statutory time. He submitted that, by not paying the said amount, accused has committed the offence punishable under section 138 of the Act. He submitted that, accused be punished as per law. In support of his argument he relied upon following case laws :

i) ***Sanjabij Tari Vs. Kishor S. Borcar and anr. Reported in 2005 ALL MR (Cri.) 4429 (S.C.)*** wherein it is held by the Hon'ble Supreme Court that once the execution of the cheque is admitted presumption under section 118 of the N.I. Act that cheque in question was drawn for consideration and presumption under section

139 of N.I. Act that holder of the cheque received the said cheque in discharge of legally enforceable debt or liability arises against the accused.

ii) ***K. Bhaskaran Vs. Sankaran Vaidhyan Balan and anr. reported in 1999 Cr.L.J. 4606*** wherein it is held by the Hon'ble Supreme Court that accused denied having issued the cheque although he owned his signature therein. Presumption that cheque was made or drawn for consideration on date which cheque bears arises. Holder of cheque presumed to have received it for discharge of liability and burden is upon accused to rebut the presumption.

iii) ***V. Rajakumari Vs. P. Subbarama Naidu and anr. reported in AIR 2005 S.C. 109*** wherein it is held by the Hon'ble Supreme Court that notice dispatched by the sender by post with correct address on it, it can be deemed to be served on sendee unless he proves that it was not really served.

7. Per contra the learned advocate for the accused submitted that, accused had taken only an amount of Rs.56,200/- from the complainant out of which he has repaid the amount of Rs.7,200/- by PhonePe and he has paid the remaining amount to the complainant in cash. He submitted that, the complainant has never given any amount of Rs.50,000/- in cash. He submitted that, accused has not issued any cheque of Rs.99,000/- to the complainant. He submitted that, the cheque of the accused has been misused by the complainant. He submitted that, the complainant has not proved the payment of Rs.50,000/- in cash by her to the accused. He submitted that, as the complainant has failed to prove the payment of Rs.50,000/- to the accused, the accused was not under liability to

pay an amount of Rs.99,000/ to the complainant. He submitted that, therefore, accused has not issued any cheque of Rs.99,000/- in discharge of his legally enforceable debt and liability. He submitted that, accused has rebutted the presumptions available in favour of complainant. He submitted that, the complainant has failed to prove the legally enforceable debt and liability on the accused in response to which the accused issued disputed cheque. He submitted that, the complainant has failed to prove the case against the accused beyond reasonable doubt. He submitted that, therefore, accused be acquitted. In support of his argument he relied upon the judgment of Hon'ble Supreme Court in case of ***Basalingappa Vs. Mudibasappa reported in (2019) 2 SCC (Cri.) 571*** wherein it is held by the Hon'ble Supreme Court that, evidence on record is probable defence on behalf of the accused which shifted the burden on complainant to prove his financial capacity and other facts. There is no suggestion by the complainant that a post dated cheque was given to him. It was incumbent on complainant to have explained his financial capacity. Court cannot insist on a person to lead negative evidence. Accused has raised probable defence. Findings of the trial court that complainant failed to prove his financial capacity are based on evidence laid by the defence. Judgment of acquittal restored.

AS TO POINT NO.1 :

8. Having regard to the arguments advanced by the Learned Advocates for the parties, it is necessary to analyze the evidence on record. C.W-1 has deposed as per his case. In her cross-examination she admitted that she is not having any documentary evidence in respect of payment of Rs.50,000/-. She further admitted that,

accused has paid her Rs.7,200/- by online mode. She further admitted that, she has filed one case against Vijay Bhandari in respect of dishonour of cheque of Rs.4,00,000/-. She further admitted that, for the said transaction of Rs.4,00,000/- there was notarized document and on that document, accused was witness. C.W-2 supported the evidence by saying that, the cash amount of Rs.50,000/- was paid by the complainant in her presence. However, in the cross-examination she stated that, the fact of paying the amount was told by complainant to her.

9. Accused examined himself in his defence and he deposed that, Vijay Gokuldas Bhandari is his friend and he had given the disputed cheque to him for becoming guarantor for taking loan from co-operative society. According to him, the said cheque was having his signature and it was given prior to one and half or two years. According to him, the complainant gives money on interest at the rate of 10% per week and she was not giving money to Vijay Bhandari therefore, Vijjay Bhandari told him that he is taking money from the complainant on his name. He deposed that complainant deposited an amount of Rs.56,200/- in his account and he had transferred the said amount by online mode to the account of Vijay Bhandari. According to him he paid an amount of Rs.7,200/- to the complainant. He further deposed that, he is not having any liability to pay the amount to the complainant. He further deposed that, he is not having any transaction with complainant and has not taken any amount in cash from complainant and has not given any cheque to the complainant. In his cross-examination he admitted that Vijay Bhandari is his close friend. He further admitted that, the disputed

cheque belongs to his account and bears his signature. He denied other suggestions in respect of receiving the amount of Rs.50,000/- in cash.

10. If the evidence of parties are seen then it appears that there is no dispute of receiving an amount of Rs.56,200/- by the accused and repaying an amount of Rs.7,200/- by the accused to the complainant. So far as the amount of Rs.50,000/- in cash is concerned, accused has denied the receipt of the same. The complainant has deposed about the said payment and the evidence of the complainant supported by CW-2. There is no documentary evidence on record in respect of cash payment of Rs.50,000/- to the accused. The learned advocate for the accused submitted that in order to prove an amount of Rs.50,000/- the complainant ought to have prove her financial capacity. The burden of proving financial capacity can not be directly shifted on the complainant unless there be being rebuttal of the presumptions available in favour of the complainant

11. If the defence of the accused is seen then it appears that he has admitted the cheque and signature on it. However, he has denied the contents thereon. Accused has deposed about taking the amount of Rs.56,200/- from the complainant for his friend and sending it to him. However, he has not brought any evidence on record. In his statement below Exh.23 he stated that out of an amount of Rs.56,200/- he has paid an amount of Rs.7,200/- to the complainant and remaining amount is yet to be paid. The accused has replied the notice of the complainant and the said copy of the

reply is filed by the complainant on Exh.20. Accused has admitted the fact of replying the notice of the complainant in his evidence. On going through the said reply, it appears that the accused has not stated anything about taking the money for Vijay Bhandari and sending it to him. In his statement, the accused has stated that he had given the disputed cheque to Vijay Gokuldas Bhandari as security. If the defence of the accused is seen then it appears that the said Vijay Bhandari was one of the important witness for proving the defence however, the accused has not examined him. In such circumstances adverse inference can be drawn against him.

12. So far as the cheque Exh.16 is concerned, the accused has admitted that, it is the cheque of his account and it bears his signature. On going through Exh.16 it appears that it is the cheque of joint account. However, on going through the memo it appears that it was dishonoured by the bank for the want of sufficient funds and not for signature of other holder. The complainant in her cross-examination has stated that accused had informed her that his signature works on the cheque. In such circumstances it can be said that, merely because the cheque is of joint account, it cannot be said that it is invalid cheque. Accused has admitted signature on the cheque. He has admitted about part payment received by him from the complainant. Though he has taken defence that he has not given cheque to the complainant but, he could not bring the evidence in support of his evidence. In such circumstances his defence that he did not give the cheque to the complainant for any repayment of amount appears unacceptable.

13. In the aforesaid facts and circumstances of the case complainant is holder in due course of the cheque. As per the ratio of the judgment in Sanjabij Tari and K.Bhaskaran referred above once the execution of cheque is admitted, presumption under section 118 and 139 of the Act that cheque was drawn for consideration and the holder of the cheque received said cheque in discharge of legally enforceable debt or liability arises against the accused. The accused relied upon the judgment of Basalingappa in his defence however, as the accused has not rebutted the presumptions available in favour of complainant therefore, in such circumstances the ratio of the aforesaid case law is not applicable to the facts of instant case. Considering all the aforesaid facts and circumstance of the case, I am of the considered view that, complainant has proved that accused issued the cheque Exh.16 to her in discharge of legally enforceable debt and liability. Hence, I answer point No.1 in affirmative.

<u>AS TO POINT NO.2</u> :

14. Complainant has deposed that, he deposited the cheque for encashment and it came back as dishonoured with remarks 'funds insufficient'. The evidence of the complainant is supported by the letter of the bank Exh.17 in respect of dishonour of cheque along with memo. On going through Exh.17 and memo along with it, it reveals that, cheque became dishonour on 04.03.2025 with remarks 'funds insufficient'. Accused could not bring anything in cross examination from which it can be said that it was not dishonoured. In such circumstance, I hold that, complainant has proved that, she presented the cheque and it became dishonour with remarks 'funds insufficient'. Hence, I answer point No.2 in affirmative.

<u>AS TO POINT NO.3 TO 5</u> :

15. As points No.3 to 5 are interlinked with each other therefore, I am taking them for discussion together. Complainant has deposed that, on 07.03.2025 she sent legal notice to the accused on his correct address and demanded the payment of cheque within 15 days from the receipt of the notice. According to her, the said notice was served on the accused on 10.03.2025. She further deposed that, even after receipt of the notice within 15 days accused did not repay the amount of the cheque. She further deposed that, accused falsely replied her notice. If the cross-examination of the complainant is seen then it appears that, even the address mentioned on the notice is not disputed by the accused.

16. In his statement under Section 351 of B.N.S.S. accused has denied about the receipt of the notice. Evidence of complainant is supported by documentary evidence i.e. notice, postal receipt and track report. Therefore, from all the aforesaid facts it becomes clear that, notice was sent to the accused on his correct address by registered post. In his evidence, accused has admitted that he has replied the notice of complainant. The complainant has filed the reply of her notice given by accused at Exh.20. From the said facts it becomes clear that complainant sent the notice to the accused on his correct address and it was received by him and replied by him. As the complainant has proved that the notice was served on the accused then there would not be any question of presuming it's service. Therefore, the case law relied upon by the complainant in case of V. Rajakumari referred supra will not be of any use for any presumption.

17. Complainant has deposed that, accused did not pay the amount even after receipt of the notice. Accused has not brought anything on record from which it can be said that he had paid the amount of cheques. In answer to point No.1, I held that, accused was having legally enforceable debt and liability to pay the amount of cheques. Considering the aforesaid discussions, it becomes clear that, even after having the liability to pay the amount and even after receiving notice, accused did not pay the amount of cheque within the statutory time to the complainant. Hence, I answer point No.3 and 4 in affirmative and point No.5 in negative.

AS TO POINT NO.6 AND 7 :

18. As discussed earlier, I have answered point No.1 to 5 and thereby held that, accused issued cheque Exh.16 in discharge of his legally enforceable debt or liability and after dishonour of said cheque even after receipt of notice Exh.18 accused did not pay the amount of cheque. Therefore, in such circumstances by not paying the amount of cheque within statutory period accused has committed an offence punishable under Section 138 of the Act. Hence, I answer point No.6 in affirmative.

19. Here, I take pause to hear the accused and complainant on the point of sentence.

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Ahmednagar
Date : 30.01.2026

(M. A. Husain)
Addl. Chief Judicial Magistrate,
(Court No.12), Ahmednagar

20. Heard Learned Advocate for the complainant, advocate for the accused and accused on the point of sentence. The Learned Advocate for the complainant submitted that, offence is economic offence and accused be punished by imposing fine double than the amount of cheque and maximum punishment be imposed according to law.

21. Heard accused and his advocate. Learned Advocate for the accused submitted that, this is the first offence of the accused. He further submitted that, accused is educated person and is having liability to maintain his family. He submitted that, looking to his social and economical condition lenient view be taken and minimum sentence be imposed.

22. I have given my anxious consideration to the plea of leniency and claim of stern sentence. The situation in the life of the accused plays a dominant role in the determination of sentence. In the instant case accused is educated person. For any other reasons merely because accused is having liability of maintaining his family the gravity of the offence cannot be ignored. Considering all the facts of the case, I am not inclined to extend the benefit of Probation of Offenders Act to the accused. Having regard to the totality of the circumstances of the case, I hold that, as the offence is relating to economy it not only affects the economy of an individual but also affects the economy of the State. Considering all the aforesaid discussions, I am of the considered view that, in answer to point No.7, the following sentence would meet the ends of justice.

ORDER

1.	Accused Mahesh Ratilal Mutha is convicted for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 vide Section 278(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 and sentenced to undergo rigorous imprisonment for one month.
2.	The accused shall pay compensation of Rs.1,15,000/- (Rupees One Lac Fifteen Thousand only) to the complainant within one month from the date of judgment, vide Section 395(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 in default of payment of compensation, accused to undergo rigorous imprisonment for two months.
3.	Bail bonds of the accused stands surrendered.
4.	A copy of this judgment be given free of cost to the accused vide Section 404(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023.
5.	Judgment pronounced in open court.

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Ahmednagar
Date : 30.01.2026

(M. A. Husain)
Addl. Chief Judicial Magistrate,
(Court No.12), Ahmednagar

APPENDIX I

Part 'C'

[Para 44(iii) of Chapter VI of Criminal Manual]

LIST OF COMPLAINANT/DEFENCE/COURT WITNESSES

A. COMPLAINANT

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESSES POLICE WITNESS, MEDICAL WITNESS, PANCH WITNESS)
C.W-1	Arati Sandip Pathare, Exh.5	Complainant
C.W-2	Sumanbai Digambar Maid, Exh.21	Witness

B. DEFENCE WITNESSES, IF ANY

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESSES POLICE WITNESS, MEDICAL WITNESS, PANCH WITNESS)
D.W-1	Mahesh Ratilal Mutha, Exh.25	Accused

C. COURT WITNESSES, IF ANY

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESSES POLICE WITNESS, MEDICAL WITNESS, PANCH WITNESS)
-	-	-

LIST OF COMPLAINANT/DEFENCE/COURT EXHIBITS

A. Complainant :

Sr.No.	Exhibit	Description
1.	C.W-1 Exh.16	Cheque
2.	C.W-1 Exh.17	Letter in respect of cheque return memo
3.	C.W-1 Article ‘A’	Copy of memo
4.	C.W-1 Exh.18	Notice
5.	C.W-1 Exh.19	Postal receipt
6.	C.W-1 Article ‘B’	Track report
7.	C.W-1 Exh.20	Notice reply given by accused.
8.	C.W-1 Article ‘C’	Account statement

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B. Defence :

Sr.No.	Exhibit	Description
-	-	-

C. Court Exhibits :

Sr.No.	Exhibit	Description
-	-	-

D. Material Objects :

Sr.No.	Material Object Number	Description
-	-	-

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Ahmednagar
Date : 30.01.2026

(M. A. Husain)
Addl. Chief Judicial Magistrate,
(Court No.12), Ahmednagar