CNR No:	GASG060011382024
Presented on:	13.09.2024
Registered on:	17.09.2024
Decided on:	09.03.2026
Duration:	Years 01 Months 05 Days 26

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS 'C' COURT AT VASCO, GOA
(Before Pooja S. Desai, J.M.F.C. "C" Court, Vasco, Goa)

Cri. Case No: OA/218/NIA/2024/C

Mr. Gurunath S. Madar, age 52 years S/o Somappa Madar, R/o. House No.4/166/B(4) Green Valley, Mangor Hill, Vasco da Gama, Goa.	.... COMPLAINANT
Represented by	Ld. Adv. Mr. B. Singh
Versus	
Mr. Santosh G. Naik, Age 53 years, S/o. Govind Naik	

R/o. H. No.75, Patrong Baina, Vasco da Gama, Goa.	..... ACCUSED
Represented by	Ld Adv. Mr. V. Gaunkar

Date of Offence	13.08.2024/ 04.09.2024
Date of FIR	---
Date of Chargesheet	---
Date of framing of charges	27.02.2025
Date of commencement of evidence	09.06.2025
Date on which Judgment is reserved	04.03.2026
Date of Judgment	09.03.2026
Date of the sentencing Order, if any	---

Accused details

Rank	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 of CrPC
A-1	Santosh G. Naik	---	---	Sec 138 of NI Act.	Acquitted	---	---

Prosecution Witnesses

Rank	Name	Nature of evidence
CW1	Mr. Gurudas S. Madar	Complainant
CW2	Basappa Madar	Witness

Defence Witnesses

Rank	Name	Nature of evidence
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Court Witnesses

Rank	Name	Nature of evidence
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Prosecution Exhibits

Sr . No.	Exhibit Number	Description
1	C-7 colly	Cheque bearing No.041207 dated 16.07.2024 and Cheque return memo dated 18.07.2024
2	C-8 colly	Cheque bearing No.041208 dated 09.08.2024 and Cheque return memo dated 13.08.2024
3	C-9 colly	Demand notice dated 25.07.2024 and 19.08.2024 along with postal slip and AD card.
4	C-10 colly	postal slip and AD card.
5	C-11	Undertaking.

Defence Exhibits

Sr. No.	Exhibit Number	Description
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Court Exhibits

Sr. No.	Exhibit Number	Description
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Material Objects

Sr. No.	Material Object Number	Description
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APPEARANCE

Learned Advocate Mr. B. Singh for the Complainant.

Learned Advocate Mr. V. Gaunkar for the Accused.

JUDGMENT

(Delivered on this 9th day of March, 2026)

1. This is a complaint under section 138of the Negotiable Instruments Act (NI Act, for short).

2. It is the case of the complainant that in the year 2022, he had paid the accused a sum of Rs.4,00,000/- based on a promise that the accused would provide him with a government job as a linemen helper in the Electricity Department. The complainant claims he arranged this money through his brother, Basappa Madar. The complainant alleges the accused failed to secure the promised job and subsequently requested to repay the

amount in two instalments of Rs.2,00,000/- each. On July 1, 2024, the accused executed a notarized undertaking acknowledging the receipt of the amount and promising to return it by July 15, 2024.

3. To repay the amount, the accused issued two post-dated cheques bearing no. 041207 and 041208 dated July 16, 2024, and August 9, 2024, for Rs.2,00,000/- each. Both cheques were returned by the bank with the memo 'Funds Insufficient' on July 18, 2024, and August 13, 2024, respectively. The complainant, through his advocate, issued statutory legal notices on July 25, 2024, and August 19, 2024, demanding payment. Despite receiving the notices, the accused neither replied nor paid the demanded amounts within the 15-day statutory period. The complainant has therefore prayed that the accused be punished in accordance with law for having committed an offence under section 138of the NI Act.

4. On appearance, the copy of the complaint and other relevant documents were furnished to the accused.

Accordingly, Substance of Accusation was explained to the accused at Exhibit C-17. The accused pleaded not guilty and claimed to be tried.

5. The complainant examined him and his brother at the time of evidence relied on the same verification documents in evidence and thereafter closed its evidence. Thereafter, the statement of the accused, at Exhibit C-29 was recorded to explain all incriminating evidence, wherein, it is stated that it is a false case as he never agreed to provide any job and never received money for such purpose. Thereafter, the accused did not lead any evidence.

6. In cross examination, the complainant (CW1) deposed that he gave Rs.4,00,000/- to the accused specifically to secure Government job. He clarified that he intended to secure the job of a linemen helper in the Electricity Department, for which he believed the required qualification was 8th or 9th class. Although the statutory legal notices and the complaint referred to the amount as a loan, CW1 stated in Court, "I had never given any loan to

the accused". CW1 claimed he was not aware that making payments to obtain government jobs is a criminal offence. He also noted that his advocate did not inform him that giving such money was illegal because he never asked for such advice. He testified that the money was arranged through his brother, Basappa Madar, and paid to the accused in two instalments of Rs.2,00,000/- each in the year 2022. When questioned about the meaning of loan amount in his legal notices at Exhibit C-9 colly, CW1 stated he could not explain it as he is not a bank. He further claimed he did not understand the contents of the notices and could not recollect who typed them. Regarding the notarized undertaking at Exhibit C-11, CW1 admitted he was not present when it was executed and claimed it was drafted by the accused. The defence suggested that because the cheque was received for an illegal consideration, the complainant is not entitled to relief and there is no cause of action; CW1 denied these suggestions.

7. CW2, Mr. Basappa Madar, is the 60-year-old uncle of the complainant. He testified that he lent Rs.4,00,000/- to the complainant approximately two to three years prior to the deposition. He stated that the complainant borrowed this amount specifically to give it to the accused, Mr. Santosh Naik. CW2 claimed to have accompanied the complainant and witnessed the money being handed over to the accused. He confirmed that the accused promised to secure a job for the complainant upon receipt of the money. He testified that the accused failed to secure the job and did not repay the amount, which in turn prevented the complainant from repaying the loan to CW2.

8. During cross- examination, CW2 claimed he earned the Rs.4,00,000/- through his long-term service as a labourer at the PWD in Cortalim. He testified that he retired approximately five years prior to the deposition with a final monthly salary of about Rs.51,000/- and received retirement benefits totalling roughly Rs.30,00,000/-. He admitted that he did not possess any

documents to prove his employment with the PWD or the specific withdrawal/ transfer of the Rs.4,00,000/- given to the complainant. The defence suggested that he was a planted witness who had not actually seen the transaction and was only deposing at the request of the complainant being his nephew; CW2 denied these suggestions.

9. Heard arguments by Ld. Adv. Mr. B. Singh for the complainant and Ld. Adv. Mr. V. Gaunkar for the accused. Perused the complaint, documents and other relevant record. Considered the evidence adduced, arguments advanced and the records perused.

10. The judicial precedents in *Suhas v. Sachin, 2016(1) Mh.L.J. 492*, wherein it was held that a cheque issued to repay money taken for an illegal purpose is not for a legally enforceable debt. The court held that such transactions are against public policy under Section 23 of the Contract Act, and the machinery of the law cannot be used to assist in recovering such amounts; and *Sanjabij Tari v. Kishore S. Borcar and another, 2025 SCC OnLine SC 2069*, wherein it

was observed that While Section 139 of the NI Act creates a presumption in favor of the holder, this presumption is rebuttable. The court emphasized that if the accused can demonstrate the complainant lacked the financial capacity to advance the alleged loan, the presumption can be successfully rebutted; are taken into account.

11. On perusal of complaint, consideration of the evidence adduced and the arguments advanced, the following points arise for my determination; findings of which are based on reasons mentioned there under;

Sr. No.	**Points for determination**	**Findings**
(1)	Whether the accused rebuts the presumption under section 139 of the NI Act?	Yes.
(2)	Whether the offence punishable under section 138 of the NI Act is made out	No.

against the accused?

(3) What order? The accused is acquitted.

REASONS

12. The NI Act raises two presumptions in favour of the holder of the cheque i.e. the complainant in the present case; firstly, in regard to the passing of consideration as contained in Section 118(a) and, secondly, a presumption that the holder of cheque received the cheque of the nature referred to in Section 138, for discharge in whole or in part, of any debt or other liability. For the offence under Section 138 of the NI Act, the presumptions under Sections 118 and 139 have to be compulsory raised as soon as execution of cheque by accused is admitted or proved by the complainant and thereafter burden is shifted to accused to prove otherwise. These presumptions end only when the contrary is proved by the accused. A presumption is not in itself evidence but only makes a prima facie case for a party

for whose benefit it exists. The presumptions under section 118 and 139 are rebuttable in nature.

13. Section 118 and Section 139 of the Act read as under:

***Section 118**. Presumption as to Negotiable Instruments*:-

Until the contrary is proved, the following presumptions shall be made:-

(a) *of consideration-that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;*

(b) *as to date —that every negotiable instrument bearing a date was made or drawn on such date;*

(c) *as to time of acceptance —that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;*

(d) *as to time of transfer —that every transfer of a negotiable instrument was made before its maturity;*

(e) *as to order of endorsements —that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;*

(f) *as to stamps —that a lost promissory note, bill of exchange or cheque was duly stamped;*

(g) *that holder is a holder in due course —that the holder of a negotiable instrument is a holder in due course:*

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

Section 139. *Presumption in favour of holder:-*

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 debt or other liability.*

14. Thus, as soon as the facts required to form the basis of such presumption of law exist, no discretion is left with the Court but to draw the statutory presumption, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. The rebuttal does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence that the Court must either believe the defence to exist or consider its existence to be reasonably probable, the standard of reasonability being that of the prudent man.

15. It is a settled position that the accused can displace this presumption on a scale of preponderance of probabilities and the lack of consideration or a legally enforceable debt/ liability need not be proved beyond all reasonable doubts. This the Accused can do either by

leading own evidence in his defence or by cross examining the Complainant and/ or its witnesses.

POINT NO.1

16. Section 139 of the NI Act, automatically assumes a cheque was issued to discharge a legally enforceable debt or liability once the complainant proves the cheque was issued and dishonoured. The burden then shifts to the accused to rebut this presumption by proving, on preponderance of probabilities, that no such debt existed or was validly created, or that the debt was for an unlawful purpose.

17. The complainant through its evidence has produced his affidavit at C-2, Cheque bearing No.041207 dated 16.07.2024 and Cheque return memo dated 18.07.2024 at Exhibit C-7 colly, Cheque bearing No.041208 dated 09.08.2024 and Cheque return memo dated 13.08.2024 at Exhibit C-8 colly, Demand notice dated 25.07.2024 and 19.08.2024 along with postal slip and AD card at Exhibit C-9 colly, postal slip and AD card at Exhibit C-10 colly and

Undertaking at Exhibit C-11. These documents prima facie establish the complainant has discharged its burden of attracting the presumption that the said cheque was received for discharge of an enforceable liability as per Section 139 of the NI Act.

18. The accused did not respond to the legal notice. However, its AD card shows that it was delivered. While recording his plea, the accused did not specify the defence he intended to take. In the application for cross examination, the accused stated that he had never received the legal notice sent by the complainant and that the acknowledgment/ undertaking executed is a forged document that has no connection with the accused. The statement recorded under section 313 of CrPC is that of denial and that there was no legally enforceable debt or liability.

19. By highlighting inconsistencies in the complainant's version of events there are contradictions noted in the nature of the debt. In his legal notice and affidavit, the

complainant characterized the amount as a loan. However, in cross-examination, he stated, “I had never given any loan to the accused”. Such a direct contradiction regarding the nature of the liability creates significant doubt, which is sufficient to meet the preponderance of probabilities standard required for the accused to rebut the presumption.

20. The most significant factor in rebutting the presumption is the complainant’s own admission during cross-examination where CW1 explicitly admitted that he gave Rs.4,00,000/- to the accused specifically to secure Government job as a linemen helper. Under Section 23 of the Indian Contract Act, any agreement with an unlawful object or one opposed to public policy is void. In the case of *Suhas v. Sachin (supra)*, the Hon’ble High Court held that money paid for securing jobs, whether in public or private service, is an unlawful transaction. Therefore, any cheque issued to return such money is not for a legally enforceable debt. By establishing that the funds were for an illegal

purpose, the accused effectively rebuts the presumption of a valid debt.

21. The next attempt to rebut the presumption was by questioning the complainant's financial capacity to lend such a large sum. Once the accused raises a credible doubt regarding the complainant's income or source of funds, the burden shifts back to the complainant to prove their financial capacity. In this regard, CW1 admitted that he has no documents to prove that his brother (CW2) gave him the Rs.4,00,000/-. In the case of *Sanjabij Tari v. Kishore S. Borcar (supra)*, the Hon'ble Supreme Court clarified that if an accused can show the complainant lacked the financial wherewithal or means to advance the alleged loan, the presumption under Section 139 is rebutted. In the present case, while CW2 testified he had retirement benefits, the lack of documentary proof of the actual transfer to the complainant permits the accused to raise a probable defence regarding the source of funds.

22. In such circumstances, the defence of the accused seems probable. Thus, in my considered opinion the accused has successfully rebutted the presumption in favour of the complainant, by raising the issue of defective notice, inflated demand, raising the hurdle of legally enforceable debt, in respect of such cheque.

23. Therefore, the accused has rebutted the mandated presumption under the law and prove his innocence on preponderance of probability. Hence, point no. 1 is answered in the affirmative.

<u>POINT No. 2</u>

24. Section 138 of the NI Act provides for dishonour of cheque for insufficiency, etc., of funds in the account. The following are its ingredients;

i. A person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;

ii. That cheque has been presented to the Bank within a period of three months from the date on which it is drawn or within the period of validity whichever is earlier.

iii. That cheque is returned by the Bank unpaid either because the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the Bank.

iv. The payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within 30days of the receipt of information by him from their Bank regarding the return of the cheque as unpaid;

v. The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

25. From the aforesaid, it is seen that the ingredients required to be proved stand prima facie established in view of the presumptions under the NI Act. Since the same was rebutted, all the ingredients of provision of Section 138 of the NI Act, cannot be deemed as satisfied.

26. The cheque must be issued for the discharge, in whole or in part, of a legally enforceable debt or other liability. While the complainant initially claimed the Rs.4,00,000/- was a loan, he admitted in cross-examination that the money was given specifically to secure Government job. Under Section 23 of the Indian Contract Act, an agreement with an unlawful object or one opposed to public policy is void. In *Suhas v. Sachin (supra)*, it was held that a cheque issued to return money paid for an illegal purpose does not constitute a legally enforceable debt. Since the consideration is unlawful, the debt is not

legally enforceable. Consequently, this primary ingredient is not satisfied.

27. The cheque must be presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier. The cheques dated July 16, 2024, and August 9, 2024, were presented on July 17, 2024, and August 12, 2024, respectively. This ingredient is satisfied. Next, the cheque must be returned by the bank unpaid, either because of insufficiency of funds or because it exceeds the amount arranged to be paid. Both cheques were returned with the memo 'Funds Insufficient' on July 18, 2024, and August 13, 2024. This ingredient is also satisfied. Then, the payee must make a demand for the payment of the said amount by giving a notice in writing to the drawer within thirty days of receiving information about the dishonour. The complainant issued legal notices on July 25, 2024, and August 19, 2024, which is within the 30-day statutory period. This ingredient is thus, satisfied. Further, the

drawer of the cheque must fail to make the payment of the said amount to the payee within fifteen days of the receipt of the notice. The complainant stated that the accused received the notices but failed to pay the amount or reply within the 15-day period. This ingredient is therefore, satisfied.

28. Although the procedural requirements of presentation, dishonour, and notice were met, the fundamental requirement of a legally enforceable debt is missing due to the unlawful nature of the transaction. Therefore, the offence under Section 138 of the NI Act is not made out against the accused.

29. Hence, offence under section 138 cannot be made attributable against the accused. Hence, I answer point no. 2 in the negative.

POINT No.3

30. In view of my findings on points no. 1 and 2, the offence is not made out. Thus, it cannot be said that all the

ingredients of provision of Section 138 of the NI Act, are satisfied. Hence, offence under section 138 cannot be made attributable against the accused.

31. For the foregoing reasons, considering the evidence adduced and the arguments advanced, it is seen that the offence punishable under section 138 of NI Act is not proved against the accused. Thus, the accused deserves to be acquitted.

32. In such circumstances, considering the submissions made, I pass the following;

FINAL ORDER

i. Accused is acquitted for the offence punishable u/s 138 of the NI Act, vide Section 255 (1) of CrPC.

ii. Bail bonds of the accused and surety shall remain in force and would stand discharged on expiry of appeal period, in absence of any appeal.

iii. Accused shall comply section 437A of CrPC, and furnish a personal bond of Rs. 10,000/.

Proceedings closed.

Pronounced in the Open Court.

Vasco, Goa
Dated:09.03.2026

(Pooja S. Desai)
J.M.F.C., 'C' Court,
Vasco– Goa.

dmf/-