CNR No. MHBH030012702018	Received on	-	26.10.2018		
	Registered on	-	26.10.2018		
	Decided on	-	11.08.2026		
	Duration	-	Y	M	D
			07	09	16

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
(COURT NO.2) BHANDARA.
(Presided by S. L. Soyanke)

SCC :-301706/2018 **Exh. No- 51**

Complainant :-	**Nirmal Ujjwal Credit Co-op. Society Ltd. Nagpur, (Multi - State) 193,** Nandanwan Main Road, Nagpur, Branch Office at Rajiv Gandhi Chowk, Bhandara, thr. its Manager, Dhananjay Dayaram Katekhaye
Appearance :-	**Shri. Tawale**
V/s.	
Accused :-	**Chandrashekhar Hansraj Madan,** C/o. Hansraj Chetandas Madan, Ajay Kirana Store, Mahal Ward, Bhandara Tahsil & District-Bhandara.
Appearance :-	**Shri. Rahul**
Offence :- U/Sec. 138 of Negotiable Instrument Act.	

DETAILS OF AN OFFENCE

1.	Date of an Offence	11.10.2018
2.	Case filed on	26.10.2018
3.	Particular framed on	02.04.2019

4.	Commencement of trial	28.04.2025
6.	Fixed for judgment on	Nil
7.	Judgment delivered on	11.08.2026
8.	Final Order	Convicted.

DETAILS OF ACCUSED

Sr. No.	Name of accused	Date of arrest	Date of released on Bail	Offence	Whether accused convicted or Acquitted	Final Order	Period of set-off
1.	Chandrashekhar Hansraj Madan	Nil	3.6.2019	U/Sec. 138 of N. I. Act.	Convicted	As Per Final Order.	Nil

JUDGMENT
(Delivered on 11.08.2026)

The accused is facing trial for an offence punishable under section 138 of The Negotiable Instruments Act, 1881 (hereinafter referred as The Act).

FACTS OF THE COMPLAINANT'S CASE ARE AS FOLLOWS-

2. The complainant is carrying the business of banking at Rajiv Gandhi Chowk, Bhandara. The accused is the account holder of the complainant society. The complainant has sanctioned loan of Rs. 50,000/- to the accused after execution of agreement bearing No. 190/65

alongwith promissory note and other documents. The accused has to pay monthly installment of Rs. 1,758/- for a total periods from 29/03/2016 to 12/09/2018. The accused failed to pay loan installments. The accused has issued cheque of Rs. 19,861/- bearing No. 000042 dated 06/09/2018 drawn on the Bank of India, Branch Bhandara for payment of the loan amount. The complainant presented the cheque for encashment with banker. The cheque was dishonoured and returned with memo of endorsement "funds insufficient". The complainant issued statutory notice to the accused by R.P.A.D. on 21/09/2018 but it was not claimed and returned to the sender on 03/10/2018. Inspite service of notice the accused failed to repay the cheque amount. Hence, the complainant constrained to file the complaint for offence punishable under section 138 of the Act.

COGNIZANCE OF AN OFFENCE AND TRIAL

3. My learned predecessor has issued process against the accused for the offence punishable under section 138 of the Act. My learned predecessor had explained the particulars of offence punishable under section 138 of the Act at (Below Exh-10) to the accused. He pleaded not guilty and claimed to be tried.

EVIDENCE ON RECORD

4. The complainant has examined himself at (Exh.19). He relied on documentary evidence i.e. cheque (Exh. 30), bank receipt (Exh. 31), cheque return memo at (Exh-32), notice at (Exh-33), returned envelope at (Exh-34), a verified copy of the loan application at (Exh-36), agreement (Exh. 37), promissory note (Exh. 38), copy of resolution letter

(Exh. 39) and account statement of accused alongwith certificate of 65-B (Exh. 40 & 41). The complainant closed his evidence vide pursis at (Exh. 42).

5. After examination of the complainant and before accused was called for his defence, he was examined under section 313 (1) (b) of Cr. P. Code to enable him to personally explain the circumstances appearing in evidence against him. The statement of accused under section 313 (1) (b) of Cr.P.C. is recorded at (Exh.50). The accused neither examined himself nor any other witness. Defence of the accused is that false case is filed against him.

POINTS FOR DETERMINATION

6. Heard learned advocate for both sides. Considering the evidence on record and argument of both sides, following points arise for my determination and I recorded my findings thereon with reasons stated below :-

SR.NO.	POINTS FOR DETERMINATIONS	DECISIONS
1.	Does the complainant proves that, accused had issued a cheque of Rs.19,861/- bearing No.000042 dated 06.09.2018 drawn on The Bank of India Branch Bhandara in favour of the complainant to discharge its legal enforceable debt or liability ?	**In the Affirmative.**
2.	Does the complainant proves that the said cheque in question was dishonored for the reason "Funds Insufficient" in the account of accused ?	**In the Affirmative.**

3.	Does the complainant proves that he had sent demand notice to the accused demanding cheque amount within period of 30 days from the date of dishonour of cheque ?	**In the Affirmative.**
4.	Does the complainant proves that the accused had received the demand notice and failed to pay cheque amount within period of 15 days from the receipt of notice ?	**In the Affirmative.**
5.	Does the complainant proves that the accused has committed an offence punishable under section 138 of the Act ?	**In the Affirmative.**
6.	What order ?	**Accused is convicted.**

REASONS

7. The learned advocate for the complainant submitted that the notice was duly served on the address of the accused. There is no reply by the accused to the notice of the complainant. The accused failed to adduce any evidence in support of his defence. The accused admitted the transaction. The presumptions under section 118 and 139 of the Act are applicable. The complainant has proved ingredients of section 138 of the Act. Hence, he prayed to convict the accused.

8. Learned advocate for the accused argued that the alleged cheque was given by the accused as a security for the loan transaction. The complainant without intimation to the accused used the alleged

cheque which is given for security. The amount mentioned on the alleged cheque is not due against the accused. The complainant failed to prove its case beyond reasonable doubt. Hence, he prayed to acquit the accused.

AS TO POINT NO.1 :-

9. The complainant deposed in consonance with the allegations in the complaint.

10. At this stage, it would be apt to refer section 138 of N.I. Act which reads as follows :-

Section 138 :- Dishonor of cheque for insufficiency, etc. of funds in the account- where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years or with fine which extend twice the amount of the cheque, or with both.

Provided that nothing contained in this section shall apply unless-

a. the cheque has been presented to the bank within a period of six months.

b. the payee or the holder in due course of the cheque, as the case may be, make a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid and

c. the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque, within 15 days of the receipt of the said notice.

Explanation :- For the purposes of this section "debt or other liability" means a legally enforceable debt or other liability.

11. In the judgment of **Dashrathbhai Patel Vs. Hitesh Patel** (2023) 1 SCC 578, the Hon'ble Supreme Court laid down the following principles of offence under section 138 of the Act. The relevant observations are reproduced here as under :-

Section 138 of the Act provides that a drawer of the cheque is deemed to have committed the offence if the following ingredients are fulfilled :-

1. A cheque drawn for the payment of any amount of money to another person,
2. The cheque is drawn for the discharge of the whole or part of any debt or other liability. Debt or other liability means legally enforceable debt or other liability and
3. The cheque is returned by the bank unpaid because of insufficient funds.

12. However, unless the stipulations in the proviso are fulfilled, the offence is not deemed to be committed. The conditions in the proviso are as follows :-

I. The cheque must be presented in the bank within 6 months from the date on which it was drawn or within the period of its validity,

II. The holder of the cheque must make a demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within 30 days from the receipt of the notice from the bank that the cheque was returned dishonored.

III. The holder of the cheque fails to make the payment of the said amount of money within 15 days from the receipt of the notice.

13. It is well settled principle of law that in a case under section 138 of N.I. Act when the cheque has been issued by a person and he is arrayed as an accused, he has limited defence available to him. Also once a negotiable instrument is executed, certain presumptions are raised although they are rebuttable presumptions. In this regard, the observations of the Hon'ble Supreme Court in the case of **Kumar Exports Vs. Sharma Carpets**, (2009) 2 SCC 513 are relevant. The same are reproduced here under :-

14. In order to determine the question whether offence punishable under section 138 of the Act which made out against the appellant, it will be necessary to examine the scope and ambit of presumptions to be raised as envisaged by the provisions of sections 118 and 139 of the Act. In suit to enforce a simple contract, the plaintiff has to aver in his pleading that it was made for a good consideration and must substantiate it by evidence. But, to this rule, the negotiable instruments are an exception.

15. In significant departure from 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 which 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 until the contrary is proved

i. As to consideration
ii. As to date of instrument,
iii. As to time off acceptance,
iv. As to time of transfer,
v. As to order of endorsement,
vi. As to appropriate stamp, and
vii. As to holder being a holder in due course.

16. 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 debt or other liability.

17. Section 118 of the Act inter-alia directs that it shall be presumed, until the contrary is proved, that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that unless the contrary is proved, it shall be presumed that the holder of the cheque received the cheque, for the discharge of, whole or part of any

debt or liability.

18. The accused in a trial under section 138 of the Act has two options. He can either show that the consideration and debt did not exists or that under the particular circumstances of the case, the non existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions, an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should dispute the non existence of consideration and debt by leading direct evidence because of existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently, would not served the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant.

19. The accused has also an option to prove the non existence either by letting in evidence or in some clear and exceptional cases, from the case set out in the statutory notice and evidence adduced by the complainant in the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the pre-ponderance of probabilities the evidential burden shifts back to the complainant and thereafter, the presumptions under section 118

and 139 of the Act will not again come to the complainants rescue.

20. Now, let us discuss the contention of the accused. It is not in dispute that the disputed cheque pertains to the bank account which was in the name of accused. In cross examination of the complainant's witness, the accused denying his signature on cheque at Exh. 30, therefore, it is necessrary to see whether the complainant has prove that disputed cheque bears signature of the accused or not. During cross-examination, the Ld. Advocate for the accused given submission that the complainant has taken blank signed cheque from the accused. Therefore, the accused himself admitted his signature on the disputed cheque. Therefore, mere denial of signature in cross-examination is not sufficient. The complainant has proved that disputed cheque bears signature of accused. Therefore, I am of the opinion that the presumptions under sections 118 & 139 are applicable in the present case. Burden in of the accused to rebut the presumptions. Lets see whether the accused rebutted the presumptions by probable defence or not.

21. It is pertinent to note that the accused admitted that he has taken loan of Rs. 50,000/- from the complainant but he taken defence that he has paid the loan amount. The complainant has filed on record the copy of loan application (Exh. 36), agreement (Exh.37) and promissory note (Exh. 38) which shows that the accused has received the loan of Rs. 50,000/- from the complainant. The accused not denied the execution of documents at Exh. 36 to 38. Now, the burden is on the accused to prove that he has paid the amount. But to prove this fact the accused has neither examined himself nor filed any document to support

his defence.

22. The next contention advanced by the accused is that the cheque in question was a security cheque and had been misuse by the complainant. It is settled law that merely a cheque has been alleged to be a security cheque by the drawer, does not mean that in all the circumstances, the cheque was a security cheque. It would depend on the fact and circumstances of each case if indeed, the cheque issued was a security cheque or it was given in discharge of legal debt or liability existing on the date of issuance of the cheque. The Hon'ble Supreme Court in the judgment of **Sripati Singh Vs. State of Jharkhand** live law 2021 606 held that dishonor of cheque as a security can also attract offence under section 138 of N.I. Act. Moreover, the accused neither lodged any complaint to police station for alleged misuse of the cheque nor issued letter to this bank for stop payment instructions, therefore, the defence of the accused that complainant misuse his blank cheque is not probable.

23. In view of the above discussion, it appears that the defence of accused is not probable. The accused failed to prove his defence to the extent of preponderance of probabilities. In such circumstances, the complainant proved that the accused has received the loan of Rs. 50,000/- & issued alleged cheque to discharge his legal liability. Hence, I recorded finding in affirmative to point No.1.

AS TO POINT NO. 2 -

24. The complainant has produced on record original cheque

return memo at (Exh-32). It bears the number of the cheque in question and the amount mentioned therein. The reason given for dishonour of cheque is "Funds Insufficient". The memo is primary evidence. Therefore, the complainant has proved that the cheque (Exh-32) was dishonour for the reason "Funds Insufficient" in the account of accused. There is no material in cross-examination of the complainant to disbelieve the cheque return memo. Hence, I recorded finding in Affirmative to point No.2.

AS TO POINT NO. 3 AND 4 -

25. The complainant has produced on record office copy of the notice at (Exh-33), returned envelope at (Exh-35) issued to the accused demanding the amount of cheque. The notice was issued on the address mentioned on complaint. The accused appeared in response to the summons issued on the address mentioned on complaint. Moreover, during cross examination, the learned advocate for the accused given suggestion to the complainant witness that he has issued false notice to the accused on 21.09.2018. Therefore, he admitted that he received the said notice. Therefore, the complainant proved that he has issued statutory notice to the accused and the accused has received the demand notice and failed to pay cheque amount within period of 15 days from the receipt of notice. Hence, I recorded finding in Affirmative to point Nos.3 and 4.

AS TO POINT NO. 5 -

26. In view of the finding to point No.1 to 4, the complainant proved all ingredients of section 138 of the Act. The complainant proved guilt of the accused beyond reasonable doubt. The accused is guilty for

offence punishable under section 138 of the N.I. Act. Hence, I recorded finding in affirmative to point No.5 and I proceed to hear the accused on the point of sentence.

Digitally signed by SOYANKE SONALI LAXMAN
Date: 2026.08.11 18:02:03 +0530

(S. L. Soyanke)
Place :- Bhandara. Judicial Magistrate First Class,
Date :- 11.08.2026 Court No.2, Bhandara.

27. Heard Ld. Advocate for the accused and accused in person on the quantum of sentence. The Ld. Advocate for the accused submitted that he has ready to pay the cheque amount to the complainant, hence, prayed to impose minimum sentence. Accused also prayed for leniency. The Ld. Advocate for the complainant prayed to impose maximum sentence alongwith compensation.

28. On perusal of record, it appears that the matter is pending since more than 7 years. The complainant has incurred expenses of litigation charges and other charges. Considering the above facts and circumstances, I am of the opinion that the following sentence will meet the ends of justice.

ORDER

1. The Accused **Chandrashekhar Hansaraj Madan** is convicted of the offence punishable under section 138 of the N. I. Act, vide Section 255 (2) of the Cr. P .Code and sentenced to pay fine of Rs.35,000/- and suffer simple imprisonment for 2 months in default of payment of fine amount.

2. The amount of fine of if recovered be paid to the complainant as

compensation under section 357 of Cr.P.C. after appeal period is over.

3. Accused to surrender his bail bonds.

4. Accused not behind the bar during trial thus there is no question of set-off as per section 428 of Cr.P.C.

5. As per section 363(1) of Cr.P.C., copy of this judgment be given to accused forthwith and free of cost.

(Judgment is delivered and pronounced in an open court.)

Digitally signed by SOYANKE SONALI LAXMAN
Date: 2026.08.11 18:02:09 +0530

(S. L. Soyanke)
Judicial Magistrate First Class,
Court No.2, Bhandara.

Place :- Bhandara.
Date :- 11.08.2026

SCHEDULE

1. Witnesses examined by the complainant -

Sr. No.	**Name of Witness**	**Nature**
C.W.No.1	Dhananjay Dayaram Katekhaye (Exh-19)	Complainant

2. Documents proved by the complainant

Sr. No.	**Nature of Documents**	**Exhibit Numbers**
1.	Cheque	Exh. 30
2.	Bank receipt	Exh-31
3.	Cheque return memo	Exh-32
4.	Notice	Exh-33

5.	Postal receipt	Exh - 34
6.	Returned envelope	Exh- 35
7.	A verified copy of the loan application	Exh-36
8.	Agreement	Exh. 37
9.	Promissory note	Exh. 38
10.	Copy of resolution letter	Exh. 39
11.	Account statement of accused alongwith certificate of 65-B	Exh. 40 & 41

3. Witnesses examined by the Accused -

Sr. No.	**Name of Witnesses**	**Nature**
	Nil	

4. Documents proved by the Accused -

Sr. No.	**Nature of Documents**	**Exhibit Numbers**
	Nil	

5. Material Object / Article -

Sr. No.	**Material Object**	**Nature**
	Nil	

Digitally signed by SOYANKE SONALI LAXMAN
Date: 2026.08.11 18:02:16 +0530

(S. L. Soyanke)
Judicial Magistrate First Class,
Court No.2, Bhandara.

Date :- 11.08.2026

CERTIFICATE

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

Name of Court	:-	Judicial Magistrate First Class Court No.01, Bhandara.
Name of the Stenographer	:-	Ku. B.R.Marghade (L.G.)
Date of dictation	:-	11.08.2026
Judgment signed by the presiding officer on	:-	11.08.2026
Judgment uploaded on	:-	11.08.2026