Exhibit			
CNR No.	GANG080014942022		
Presented on	11/10/2022		
Registered on	11/10/2022		
Decided on	07/08/2025		
Duration	Years	Months	Days
	02	09	27

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS, AT PONDA, NORTH GOA.

(Before: Miss. Queency D'Silva, Judicial Magistrate First Class, 'B' Court, Ponda)

Criminal Case No.763/OA/NIA/2022/B

VPK Urban Co-op Credit Society Ltd.,
duly represented by its Authorized Officer,
Mr. Sharad H. Palyekar,
married, aged 46 years, service,
with his Office at VPK Bhavan,
Mardol, Ponda-Goa. 403401. ..... Complainant

v/s.

Mr. Samir alias Sameer Raghu Naik,
Age 43 years,
R/o. H. No.91, Near Mahadev Temple,
Agapur, Ponda-Goa. 403401. ..... Accused

Appearances:-

Representative of the Complainant present alongwith Ld. Adv. C. R. Naik.

Ld. Adv. S. P. Gaonkar for the Accused, however, none present at the time of Judgment.

J U D G M E N T

(Delivered on this the 07th day of the month of August, of the year 2025)

The Complainant has filed the present Complaint against the Accused, for offence punishable under Section 138 of the Negotiable Instrument Act, 1881 (N.I. Act, for short).

2. The case of the Complainant is that it is a Registered Co-operative Society Limited engaged in financial

business of accepting deposits and advancing loans to its members. That, the Accused being one of its members had obtained a loan of Rs.1,00,000/- for the purpose of wife treatment under Loan Account No.PSL/69420, through its service Branch at Mardol and agreed to pay the same in monthly installments of Rs.3,700/- at the rate of 15%, under the terms and conditions stipulated in the Agreement executed between them. It is further the case of the Complainant that the Accused thereafter issued a Cheque bearing No.054858 dated 25/07/2022, drawn on the IDBI Bank, Panaji Branch, in favour of the Complainant for Rs.1,06,000/- towards the above liability as a part payment. *(hereinafter referred as said Cheque)*. However, it returned unpaid with reasons "Funds Insufficient" vide Memo dated 26/07/2022 issued by IDBI Bank, Ponda Branch. A Demand Notice dated 23/08/2022 was issued by the Complainant to the Accused, calling upon the Accused to pay the cheque amount within a period of 15 days upon its receipt, which the Notice was received on the correct address of the Accused.

Thereafter the Accused failed and neglected to effect the payment and neither replied to the said Demand Notice and thus has filed the present Complaint.

3. As prima-facie from the perusal of the Complaint, and documents it appeared that the ingredients of the offence under Section 138 N. I. Act, 1881 was made out, process was issued against the Accused. Upon service of Summons, the Accused appeared and contested the matter. The Particulars of the Offence (Exhibit C-25) was explained to the Accused, to which he pleaded not guilty, and claimed trial.

4. The Accused had filed an application to cross-examine the Complainant and the same was rejected. No defence evidence was led in the matter despite granting opportunity.

5. The Representative of Complainant tendered his Affidavit-in-Evidence/ Verification (Exhibit C-2),

corroborating the contents of the Complaint. Complainant further produced True copy of Resolution alongwith Letter of Authority both dated 30/07/2022, True copy of Resolution alongwith Letter of Authority both dated 02/02/2016, Notarised copy of Loan Agreement and Promissory Note both dated 10/07/2017, print copy of Loan Account Statement alongwith Certificate under Section 65-B of Indian Evidence Act, 1872, Cheque bearing No.054858 dated 25/07/2022, Cheque Return Memo dated 26/07/2022, Demand Notice dated 23/08/2022 alongwith postal slip and returned envelope with A/D card. Summary procedure was followed and all documents produced by the complainant are considered herein.

6. The Statement under Section 313 of the Code of Criminal Procedure, 1973, (Cr.P.C., 1973 in short), of the Accused was recorded (Exhibit C-34), whereby the Accused denied the case of the Complainant and did not take any defence.

7. I have heard oral arguments advanced by the Ld. Advocates for Complainant and the Accused. I have perused the records of the case file. The following points arise for determination. I have recorded by findings alongwith my reasons thereon, as under:-

SR. NO.	POINT FOR DETERMINATION	FINDINGS
1.	Whether the Accused has committed offence punishable under Section 138 of the N.I. Act, 1881?	Yes
2.	Whether the Accused is liable to pay the cheque amount to the Complainant?	Yes
3.	What Relief? What Order?	Accused is convicted.

R E A S O N S

POINTS NO. 1 AND 2:

8. Points No.1 and 2 are taken up together for discussion as they are interlinked and the finding of Point No.2 is dependent on the finding of Point No.1.

9. To make out an offence under Section 138 of the

Negotiable Instrument Act, 1881, the Complainant ought to prove the following:

i) The Cheque was issued by the Accused from his Account to the Complainant, and that such cheque when presented for payment returned back unpaid for certain reason/s.

ii) The Complainant issued a Demand Notice within 30 days from the date of intimation of such return of the Cheque; and further the Accused failed to make good the payment of the Cheque within a period of 15 days from the date of receipt of the Demand Notice.

iii) The present Complaint is filed within a period of 1 month from the date of occurrence of the Cause of Action i.e. upon expiry of 15 days specified to the Accused for payment of the Cheque amount.

10. Further, Section 139 of the said Act provides a

presumption in favour of the holder of the Cheque, that the holder of the Cheque received the Cheque towards discharge of any debt or liability. This presumption is however rebuttable by the Accused, by raising a probable defence, which creates a doubt about the existence of a legally enforceable debt or liability. The standard of proof for doing so, is preponderance of probability.

11. In the case of ***Hitendra Dalal v/s. Bratindranath Banerjee,*** reported in ***2001 (6) SCC 16****, it has been held that both Sections 138 and 139 require that Court shall presume the liability of the drawer of the Cheque for the amounts, which the Cheques are drawn, and it is obligatory on the Court to raise this presumption in every case, where the factual basis for raising the presumption have been established. The Hon'ble Apex Court has further held that these Sections introduce an exception to the General Rule, as the burden of proof in criminal cases and shifts the onus on the Accused. Such a presumption of Law, as* *distinguished from a presumption of facts, which describes provisions by which the Courts may presume a certain state of affairs.*

12. In the case of ***Rangappa V/s. Shri. Mohan,*** reported in ***2010 (4) Bom C.R. 652****, the Apex Court has reiterated that the presumption under Section 139 of the N.I. Act, includes existence of enforceable liability and this could be rebutted by a probable defence that it did not exist.*

13. Further Section 118 of the N. I. Act, 1881 provides certain presumptions that every Cheque was issued for a consideration, on the date mention thereon; and that such Cheque was accepted within the time of its validity and maturity.

14. Ld. Advocate for the Complainant argued that the Accused was a member of the Complainant Society and had obtained a loan from the Complainant for wife's treatment

and undertook to repay the loan by installments. However, the Accused defaulted in making the payments and issued the disputed cheque, which upon its presentation was dishonoured, for the reason 'Funds Insufficient". Further, it was argued that despite serving a Demand Notice to make good the Cheque amount within 15 days, the Accused did not bother and neglected to repay the said amount. The Accused has not paid any amount till date and no specific defence is raised by the Accused.

15. Further, the Accused has not disputed that the Cheque in question bears his signature. Thus, the presumption under Section 139 of the N. I. Act, 1881 that the Cheque was issued towards a legally enforceable debt arises in favour of the Complainant. It is sufficient if the ingredients of the offence punishable under Section 138 of N. I. Act, 1881, have been established.

16. In the case of ***K. Bhaskaran v/s. Sankaran***

Vaidhyan Balan, reported in ***AIR 1999 SC 3762****, the Apex Court has held that, when the signature on the Cheque is admitted to be that of the Accused, the presumption envisaged under Section 118 of the N. I. Act, can legally be inferred that the Cheque was made or drawn for consideration on the date which the Cheque bears, and Section 139 of the N. I. Act enjoined on the Court to presume that the holder of the Cheque received it for the discharge of any debt or liability, and the burden is on the Accused to rebut the presumption.*

17. The Accused had not led any evidence to rebut the presumptions available to the Complainant and to prove that he is paying the amount in installments. By merely stating that false case is filed is not sufficient. The Accused ought to prove his defence and rebut the Presumptions laid down by Law, by leading cogent and convincing evidence.

18. As per the Agreement for Loan dated 10/07/2017,

it is seen that the Accused had obtained a Loan from the Complainant. This fact is not denied by the Accused. Further upon perusal of the Cheque dated 25/07/2022 and the Cheque Return Memo dated 26/07/2022, it is seen that the Accused issued the disputed Cheque and the same returned unpaid. Further, there is clear evidence that, the Accused was issued a Demand Notice in terms of Section 138 of the N. I. Act, 1881. Further, no explanation is given by the Accused, as to how and why he entered into the Agreement by signing the same. The documents speak for itself. The Statement of Account, further reveal that the loan amount was disbursed on 10/07/2017 and that the Accused has not repaid the said loan. Therefore, it can be rightly concluded that the said Cheque was issued by the Accused towards the repayment of the said Loan. These documents too are not rebutted by the Accused in any manner.

19. Moreover, it nowhere the case of the Accused that the Accused has repaid the said loan or the disputed Cheque

amount. No document / evidence has been produced by the Accused to show that she has repaid the Cheque amount either.

20. In the absence of any cogent evidence, the Accused cannot succeed in proving his defence in rebutting the statutory presumptions of Law. Considering the aforesaid facts and findings, I can conclude that the Complainant has sufficiently established its case that the Accused has issued the Cheque bearing No.054858 dated 25/07/2022 in favour of the Complainant for Rs.1,06,000/- towards the repayment of the Loan, which was returned back with endorsement "Funds Insufficient" and that the Accused has failed to rebut the presumption that is in favour of the Complainant that the cheque was issued towards the legally enforceable debt. I thus answer Points No.1 and 2 in the Affirmative.

POINT NO.3:

21. The Complainant has sufficiently proved its case.

The Cheque is of an amount of Rs.1,06,000/-. The Accused has not paid any amount till date during the pendency of the present case. All ingredients of the offence under Section 138 N.I. Act, 1881, are proved by the Complainant. Thus, the Accused is liable for conviction by imposing appropriate sentence, as he is found to be guilty of the aforesaid offence.

22. The matter was fixed for Judgment on 27/03/2025. Although the Accused is aware of the present case, the Accused did not attend the case when the matter was fixed for Judgment. It appears that the Accused is not interested to argue on point of Sentence, and hence the Accused has lost his opportunity to argue on point of Sentence. I have considered the Judgment of ***Sharad Jethalal Savla V/s. State of Gujarat LAWS (GJH)-2016-11-32***, passed by the Hon'ble High Court of Gujarat dated 14/11/2016. Hence, in view of the above, and taking into consideration Section 353(7) of Cr.P.C., 1973, and that the present proceeding is being tried under Chapter XXI of

Cr.P.C., 1973, I find it just to proceed with the matter and pronounce the Sentence against the Accused, in order to not delay justice being done the Complainant.

23. In the backdrop of the above discussion and reasons, I pass the following:-

ORDER

i) The Accused is convicted vide Section 148(2) of Cr.P.C., 1973 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

ii) The Accused is sentenced to undergo simple imprisonment for a period of 05 days.

iii) The Accused is directed to pay an amount of Rs.1,10,000/- to the Complainant towards compensation, and in default the Accused shall undergo further simple imprisonment for a period of 01 month.

iv) The Accused shall furnish Bail Bond of Rs.5,000/- in terms of Section 437-A of the Code of Criminal Procedure, 1973.

v) **Issue Non Bailable Warrant against the Accused under Section 418(2) of Cr.P.C., 1973.**

vi) An Authenticated copy shall be given to the Accused free of cost.

Pronounced in the Open Court.

Proceedings Closed.

Place : Ponda, North Goa.
Dated : 07/08/2025.

(Queency D'Silva)
Judicial Magistrate First Class,
'B' Court, Ponda, North-Goa.

*dn.