MHRG030012142022	Received on	:	13/10/2022		
	Registered on	:	13/10/2022		
	Decided on	:	29/10/2025		
	Duration	:	Y.	M.	D.
			03	00	16

	IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, RAIGAD, AT ALIBAG (Presided Over by M. B. Attar) **Date : 29/10/2025** **Summary Cri. Case No. 946/2022** **Exh. No. 53/B** (CNR No. MHRG030012142022)
	Sec. 138 of the Negotiable Instruments Act.
Complainant	**Kailas Baliram Dhodare** Age : 65 years, Occ. Agriculture R/o. : Pedhambe, Post Narangi, Tal. Alibag, Dist. Raigad At Present r/at : Jaijui Building, 2nd Floor, Room No. 103, Govind Bandar, Alibag
Represented by	Ld. Advocate Shri. Amol S. Patil
Accused	**Vipin Harishchandra Mhatre** Age : 37 years, Occ. Driving R/o. : At Post Veshwi, Near Shankar Temple, Tal. Alibag, Dist. Raigad.
Represented by	Ld. Advocate Shri. Rakesh Patil

PART 'B'

Date of Offence	:	17/09/2022
Date of F.I.R.	:	--

Date of Charge-sheet / complaint	:	13/10/2022
Date of recording of plea	:	19/12/2022
Date of Commencement of evidence	:	13/09/2023
Date on which Judgment is reserved	:	22/09/2025
Date of the Judgment	:	29/10/2025
Date of the Sentencing Order, if any	:	----

Accused Details

Rank of the accused	Name of accused	Date of Arrest	Date of Release on bail	Offence charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428 Cr.P.C.
1.	**Vipin Harishchandra Mhatre**	**----**	----	Offence p/u/sec. 138 of the Negotiable Instruments Act	Accused is **convicted**.	S.I. for 2 months & compensation of Rs. 3 Lakhs	----

LIST OF COMPLAINANT / DEFENCE / COURT WITNESSES

A. Complainant:

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
CW-1 (Exh.14)	Kailas Baliram Dhodare	Complainant
CW-2 (Exh.48)	Prashant Chandrakant Mhatre	Witness

B. Defence Witnesses, If any :

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
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C. Court Witnesses, If any :

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
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LIST OF COMPLAINANT / PROSECUTION / DEFENCE / COURT EXHIBITS

A. Complainant :

Sr. No.	Exhibit Number	Description
1.	Exh. 37	Cheque
2.	Exh. 38	Cheque Return Memo
3.	Exh. 39	Demand Notice
4.	Exh. 40	Postal receipt
5.	Exh. 41	Postal acknowledgment

B. Defence :

Sr.No.	Exhibit Number	Description
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C. Court Exhibits :

Sr.No.	Exhibit Number	Description
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D. Material Objects :

Sr.No.	Exhibit Number	Description
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JUDGMENT

(Delivered on 29/10/2025)

01. The accused is facing trial for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to, for the sake of brevity, as 'the N.I. Act')."

The complainant's case in nutshell is as under:

02. The complainant and the accused are known to each other through their common friend, one Mr. Prashant Mhatre, and they were also on cordial family terms.

03. The complainant has contended that in the year 2019, the accused was in need of money for purchasing a vehicle. Accordingly, the complainant advanced a hand loan of ₹2,90,000/- to the accused. The accused assured the complainant that the said amount would be repaid within one year. However, due to the COVID-19 pandemic, the complainant did not demand repayment for about two years.

04. After the pandemic situation normalized, the complainant demanded repayment of the said loan amount. In response, the accused issued a cheque bearing No. 066823 dated 04/08/2022, drawn on Union Bank of India, Alibag Branch, for an amount of ₹2,90,000/-, towards discharge of the said liability. The accused assured the complainant that the cheque would be duly honoured upon presentation. Relying upon such assurance, the complainant presented the cheque for encashment through his banker. However, the said cheque was returned unpaid with the endorsement "Account Blocked." Consequent to the dishonour of the cheque, the complainant issued a statutory demand notice to the accused on 30/08/2022, which was duly received by him. Despite receipt of the said notice, the accused failed to make payment of the cheque amount within the stipulated period of fifteen (15) days as required under Section 138 of the Negotiable Instruments Act, 1881.Therefore, the complainant has filed the present complaint under Section 138 of the Negotiable Instruments Act, 1881, for dishonour of cheque due to insufficiency of funds.

05. Upon receipt of the complaint and verification of the complainant on oath, process was issued against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. In due course, the accused entered appearance before the court. The particulars of the offence were duly explained to him in vernacular, to which he pleaded not guilty and claimed to be tried.

06. The statement of the accused under section 313 of the

Code of Criminal Procedure, 1973 was recorded at Exhibit 50, wherein he took the plea of total denial and alleged false implication. He specifically contended that the cheque in question was not issued towards any legally enforceable debt or liability.

07. Heard the learned advocate for the complainant and the learned advocate for the accused. Having considered the rival submissions advanced by both parties, the following points arise for my determination. I have recorded my findings thereon for the reasons discussed hereinbelow.

Sr. No.	Points	Findings
1.	Whether complainant proves that the accused issued cheque bearing No. 066823, dated 04/08/2022 of ₹2,90,000/- drawn on Union Bank of India, Branch Alibag, for payment of money for discharge, in whole or in part of any debt or other liability?	Yes
2.	Whether the complainant proves that the cheque was presented within the prescribed period and it was dishonored for the reason 'Account Blocked'?	Yes
3.	Whether the complainant proves that the demand notice was issued to the accused within stipulated period and the notice was duly served on the accused and he failed to make the payment within 15 days from the receipt of the notice?	Yes
4.	What order?	The accused is **CONVICTED**

:: **R E A S O N S** ::

As to Point No. 01 to 03 :

08. The findings on these points are inter-related to each other; therefore, I have taken up these points to decide together.

09. Dishonoured of cheque in itself is not an offence under Section 138 of Negotiable Instrument Act, 1881. To come within the preview of this Section certain other requirements have to be fulfill which are as follows -

i) A cheque had been issued by the accused.

ii) The said cheque had been issued towards the payment of an amount of money for the discharge in whole or any part of any debt or any other legal liability of the accused.

iii) The cheque had been returned unpaid by the bank.

iv) The reason for non payment of the cheque was either insufficient funds or that the amount of the cheque exceeded the amount arranged for.

v) The cheque was presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier.

vi) The payee or the holder in due course of the cheque makes a demand for the payment of the amount of money under the cheque by giving notice in writing to the drawer of the cheque within 30 days of receiving regarding its dishonour.

vii) The drawer of the cheque fails to make the payment of the cheque amount within 15 days of the receiving the said notice.

10. The Negotiable Instrument Act raises two presumptions in favour of holder of the cheque. Firstly, in regard to passing of consideration as contained in section 118 and secondly, the presumption that the holder of cheque receives the same in discharge of whole or part or any debt or liability under section 139 of Negotiable Instrument Act.

11. Section 118 of Negotiable Instrument Act provides presumption as to Negotiable Instrument that, every negotiable instrument was made or drawn for consideration and that every such instrument has been accepted, endorsed, negotiated or transferred for consideration.

12. Section 139 of Negotiable Instrument Act further provides presumption in favour of the holder. It shall be presumed unless contrary dispute that the holder of cheque received the cheque of the nature referred in section 138 for discharge in whole or in part or any debt or other liability.

13. For the offence under section 138 of Negotiable

Instrument Act presumption under section 118 and 139 have to be compulsorily raised as soon as the execution of the cheque is admitted or proved by the complainant and thereafter, the burden is shifted to the accused to prove otherwise. The presumption shall end only when the contrary is proved by the accused that the cheque was not issued for consideration or in discharge of liability. The presumption is not itself an evidence, but only make prima facie case for the party for whose benefit is exists. The presumption both under section 118 and 139 are reputable in nature. The accused can rebut the presumption by leading direct evidence or by way of cross-examination. The burden upon the accused is preponderance of probabilities and onus on the accused is not heavy as that of the complainant.

14. Coming to the facts and circumstances of the present case and considering the settled principles of law under the Negotiable Instruments Act, 1881, I proceed to evaluate the evidence adduced by the complainant.

15. The complainant deposed that one Prashant Mhatre is his close friend. Prashant Mhatre is also a close friend of the accused, and through him, the complainant became acquainted with the accused. Thereafter, they developed friendly and family relations. He further deposed that in the year 2019, the accused was in need of money for purchasing a vehicle. Therefore, the accused requested a hand loan of ₹2,90,000/- from the complainant. Accordingly, the complainant advanced a sum of ₹2,90,000/- in cash to the accused.

16. He further deposed that due to the COVID-19 pandemic for about two years, he did not demand repayment of the said amount. Thereafter, upon demanding the amount from the accused, the accused issued a cheque bearing No. 066823, dated 04/08/2022, drawn on Union Bank of India, Alibag Branch, for a sum of ₹2,90,000/- towards discharge of his liability. The said cheque was presented for encashment but was returned unpaid with the endorsement "Account Blocked" on 05/08/2022. Consequently, the complainant issued a legal notice dated 30/08/2022 to the accused, which was duly served on 02/09/2022. However, the accused failed to make payment within the statutory period of 15 days from the date of receipt of the notice.

17. To substantiate his case, the complainant has relied on the following documents: Cheque – Exhibit 37, Bank Memo of Dishonour – Exhibit 38, Demand Notice – Exhibit 39, Postal Receipt – Exhibit 40, Postal Acknowledgment – Exhibit 41.

18. I have carefully perused the cross-examination of the complainant. It is noteworthy that the accused has not denied either the issuance of the statutory notice or the receipt thereof. Hence, from the evidence on record, it stands established that the legal notice was issued in accordance with law and duly served upon the accused.

19. Further, on a meticulous examination of the cross-examination, it is revealed that the accused has not disputed his signature on the cheque or the amount mentioned therein. The sole defence taken by the accused is that he had never issued the cheque to the complainant and that the said cheque was in the custody of witness Prashant Mhatre.

20. Therefore, in view of the fact that the cheque (Exh. 37) was issued by the accused and neither his signature nor the contents of the cheque have been denied, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act, 1881, are attracted.

21. Section 118(a) of the N.I. Act provides for a presumption that a negotiable instrument was made or drawn for consideration, and under section 139, it is presumed that the holder of the cheque received it for the discharge, in whole or in part, of any legally enforceable debt or other liability. These presumptions are rebuttable in nature and may be displaced either by leading positive evidence or by eliciting admissions in the cross-examination of the complainant or his witnesses.

22. It is not necessary for the accused to step into the witness box or lead direct evidence in every case. The standard of proof required for rebutting the presumption is that of preponderance of probabilities, not proof beyond reasonable doubt.

23. In the present case, although the accused has cross-examined the complainant, he has not led any evidence in his defence. Therefore, it becomes necessary to examine whether, through cross-examination or otherwise, the accused has succeeded in raising a probable defence so as to rebut the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act.

24. I have carefully perused the cross-examination of the complainant. It appears that the accused has neither disputed the issuance of the statutory notice nor denied its receipt. Hence, the issuance and service of the notice upon the accused stand duly proved. The accused has also not raised any defence by replying to the notice. The failure of the accused to reply to the statutory notice under Section 138 of the Negotiable Instruments Act gives rise to an inference that he did not possess any valid defence. The Hon'ble Supreme Court, in **Tedhi Singh v. Narayan Dass Mahant, (2022) 6 SCC 735**, has held that the initial burden to set up a defence, such as questioning the financial capacity of the complainant in the reply to the demand notice, lies upon the accused.

25. Further, the Hon'ble Supreme Court in **MMTC Limited & Anr. v. Medchl Chemicals and Pharma Pvt. Ltd. & Anr., (2002) 1 SCC 234**, held that when the statutory notice is not replied to, it may be presumed that the cheque was issued towards the discharge of a legally enforceable debt or liability.

26. Therefore, from the cross-examination, it appears that the accused has not raised any credible defence by replying to the notice. Although he later contended that the cheque was in the custody of one Prashant Mhatre and was written by him, the accused did not dispute his own signature on the cheque. Hence, the presumption under Sections 118 and 139 of the Negotiable Instruments Act stands attracted. A mere suggestion that the cheque was in the custody of another person is insufficient to rebut this presumption. The accused also suggested that the complainant was engaged in money-lending activities and that certain cases were pending against him; however, there is no material on record to substantiate such allegations.

27. The learned advocate for the accused has also argued that the complainant had filed the affidavit of evidence of Prashant Mhatre. However, during verification, the said witness resiled from his affidavit. Therefore, according to the defence, the case of the complainant is not proved.

28. Upon perusal of the cross-examination of the complainant, it appears that the first question put to him was that he is acquainted with the accused through Prashant Mhatre. Hence, it is evident that the witness Prashant Mhatre was known to both the complainant and the accused. Though the said witness did not support the complainant, when the accused had come forward with the specific plea that the cheque was in the custody of Prashant Mhatre, it was open for him to examine the said witness in his defence. Once the statutory presumptions under the Negotiable Instruments Act are raised, the burden shifts upon the accused to rebut the same. However, in the present case, the accused has failed to discharge this burden. Accordingly, the accused has failed to rebut the presumption under Section 139 of the Negotiable Instruments Act, 1881. In the absence of any plausible defence or satisfactory explanation from the accused, the presumption as to the existence of a legally enforceable debt or liability in favour of the complainant remains unrebutted.

29. From the perusal of the evidence available on record, and in the absence of any denial or rebuttal by the accused, it stands proved that the complainant had advanced a legally enforceable debt or liability to the accused. In discharge of the said liability, the accused issued the cheque in question. However, the said cheque was returned unpaid by the bank, thereby attracting the provisions of Section 138 of the Negotiable Instruments Act, 1881. Hence, I answer Points No. 1 to 3 in the affirmative.

As to point No. 04 :

30. As I have already held the accused guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, I now proceed to hear the accused on the point of sentence.

31. The accused submitted that a false case has been filed against him. He is of young age and his family depend upon him. He has two small daughters. Therefore, he prayed that leniency be shown.

32. Heard the accused in person and the learned Advocate appearing on his behalf. The learned defence counsel submitted that the accused may be awarded the minimum punishment.

33. I have also heard the learned counsel for the complainant, who vehemently argued that the accused deserves to be awarded maximum punishment in view of the nature of the offence.

34. The offence under Section 138 of the Negotiable Instruments Act is an economic offence. The legislative intent behind the said provision is to enhance the credibility and reliability of transactions conducted through negotiable instruments and to ensure the smooth functioning of commercial transactions.

35. In the present case, it has been established that the accused issued the cheque in question towards discharge of a legally enforceable debt or liability. The accused has failed to raise any probable defence to rebut the statutory presumption under Section 139 of the N.I. Act. Even during his examination under Section 313 of the Code of Criminal Procedure, the accused merely denied the case. His defence remains unsubstantiated by any cogent evidence on record. It is important to note that once the court reaches a finding of guilt, mere assertions by the accused without supporting proof cannot be the basis for seeking leniency in sentencing. Moreover, the evidence on record clearly demonstrates that the complainant had advanced the amount to the accused from his lawful earnings, and the accused, in spite of having received the said amount, failed to repay the legally enforceable debt.

36. Given the seriousness of cheque dishonour offences, which undermine public confidence in the financial and banking system, such offences must be dealt with firmly. I am, therefore, not inclined to grant the benefit of probation to the accused, nor do I find any justification for taking a lenient view in the matter. In terms of compensation, the complainant is entitled to be compensated for the loss suffered. Even in the event of non-payment of compensation by the accused, the same can be enforced by ordering imprisonment in default, as has been held by the Hon'ble Supreme Court in **Hari Singh Vs. Sukhbir Singh [(1988) 4 SCC 551]**. In these circumstances, I am of the opinion that the following order would meet the ends of justice. Hence, I proceed to pass the following order:

:: ORDER ::

1. Accused **Vipin Harishchandra Mhatre** is hereby convicted under section 255(2) of the Code of Criminal Procedure for committing offence punishable under section 138 of the Negotiable Instruments Act and is hereby sentenced to suffer simple imprisonment of **2 months** (Two months).

2. The accused is directed to deposit in Court, compensation of ₹3,00,000/- (Rupees Three Lakhs only) under the provisions of section 357(3) of the Code of Criminal Procedure and in default to suffer simple imprisonment for 15 days (Fifteen days).

3. The amount of compensation if recovered, be paid to the complainant after appeal period is over.

4. The amount paid by the accused as per section 143-A of the Cr.PC be deducted from the amount of compensation.

5. Accused to surrender his bail bonds.

6. Copy of this Judgment be given to the accused free of costs.

(Declared and pronounced in open Court.)

ATTAR MOUSAMA BADSHAH
Digitally signed by ATTAR MOUSAMA BADSHAH
Date: 2025.10.30 10:28:31 +0530

Alibag. (**M. B. Attar**)
Date : **29/10/2025**. Chief Judicial Magistrate,
Raigad-Alibag.