

 CNR NO.MHPU040286542012	Presented on : 28/11/2012 Registered on : 28/11/2012 Decided on : 21/08/2025 Duration : 12Y.,08M.,24D.
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<u>IN THE COURT OF ADDITIONAL CHIEF MAGISTRATE, PUNE.</u> Before : Shri. N.R. GAJBHIYE (Date of Judgment : 21st August 2025) S.C.C.No.41796/2012. Exh.No.82
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Details of FIR
Crime No. : ----- Police Station : -----

Complainant / Informant / Prosecutrix	Shri. Vikas Ramchandra Jadhav Age :- Adult, Occ.: Nil, R/at : Bakori, Tal. Haveli, District Pune 412207.
Represented by	Adv. Shri. V. Shete for the complainant
Accused	Shri. Shriram Ganpat Yadav, Age :- Adult, Occ.: Servicemand, R/at : Flat No. 2, Bldg. No. 3, Swatantryasainik Sahakari Gruha- Rachana Sanstha Maryadit, Yerwada, Pune – 411006.
Represented by	Adv. Shri. V.S. Musale for the accused.

Date of Offence	01/11/2012
Date of FIR	-----
Date of Charge-sheet / Final Report	-----
Date of Framing of charges	11/03/2013
Date of commencement of evidence	10/07/2013
Date on which judgment is reserved	21/08/2025
Date of the Judgment	21/08/2025
Date of the sentencing order, if any	--

ACCUSED DETAILS

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detenti on underg one during trial.
A1	Shriram Ganpat Yadav	--	--	138 of Negotiable Instrument Act	The accused is convicted for the offence 138 of Negotiable Instrument Act	The accused sentenced to suffer simple imprisonment of 6 months and fine of Rs.4,00,000/- , in default of payment of fine he has to suffer simple imprisonment of one month	Nil

LIST OF PROSECUTION WITNESSES

Rank	Name	Exhibit No.	Nature of evidence
CW-1	Vikas Ramchandra Jadhav	17	Complainant

LIST OF DEFENCE WITNESSES

Rank	Name	Exhibit No.	Nature of evidence
DW-1	Atul Prasanna Nifalkar	64	Accused Defence witness

LIST OF COURT WITNESSES

Rank	Name	Nature of evidence
CW-1	N.A.	N.A.

LIST OF COMPLAINANT EXHIBITS

Sr. No.	Exhibit Number	Nature of evidence
1	Exh. 20	Cheque bearing No. 019023
2	Exh.21	Bank receipt
3	Exh.22	Bank Memo
4	Exh.23	Demand Notice dated 12/10/2012
5	Exh. 24	Postal acknowledgment
6	Exh. 25	Postal Receipt

DOCUMENTS ADMITTED BY DEFENSE

Sr.No.	Exhibit Number	Nature of evidence
1	Nil	Nil

LIST OF DEFENSE EXHIBITS

Sr.No.	Exhibit Number	Nature of evidence
1	Nil	Nil

LIST OF COURT EXHIBITS

Sr.No.	Exhibit Number	Nature of evidence
1	Nil	Nil

MATERIAL OBJECTS

Sr.No.	Material Object No.	Description
1	Nil	Nil

J U D G M E N T

(Delivered on 21st August 2025)

The accused tried for the offence punishable under section 138

of the Negotiable Instrument Act.

2. The complainant case in nutshell as under :-

The complainant and accused were acquainted with each other during the process of recruitment. The accused was in need of money. Therefore, considering to his difficulty the complainant had advanced time to time the amount of Rs. 2,00,000/- during period ending 25.06.2012. The accused has issued cheque bearing No. 019023 of Rs. 2,00,000/- dated 25.06.2012 of Sarasvati Co-operative Bank Ltd. Chiplun. The complainant presented the cheque for encashment. On 18.09.2012 the complainant Bank had issued the memo with remark Fund in sufficient. Therefore, on 12.10.2012 he had issued the notice through his advocate. On 17.10.2012 notice has been received by the accused but he failed to make the payment. Therefore, he has filed the present complaint.

3. In view of pleading of the complainant and documents filed the following points arises for my determination and have recorded my finding with reasons thereon.

Sr. No	Points	Findings
1.	Is it proved by the complainant that the accused issued cheque bearing No. 019023 of Rs. 2,00,000/- dated 25/06/2012 of Sarasvat Bank for the discharge of legally enforceable debt or liability?	Yes.
2.	Is it further proved by the complainant that he has issued the demand notice for the payment of cheque amount in writing, within a period of 30 days from the received of in-	Yes.

	formation from the bank regarding the return of the cheque as unpaid?	
3.	Is it further proved by complainant that the accused failed to make the payment of the said amount of cheque within 15 days of the receipt of said notice?	Yes.
4.	What order?	As per final order.

REASONS FOR THE FINDINGS.

Point No. 1 :-

4. To make out an offence under Section 138 of the Negotiable Instrument Act, 1885 the complainant must prove that the accused has issued the cheque for the discharge of whole or any part of, or of any debt or liability.

5. The complainant Vikas Ramchand Jadhav (CW1) filed his evidence on affidavit (Exh.17) in lieu of his examination in chief. He has repeated the entire contents of his complaint in his evidence on affidavit.

6. During cross-examination he admitted that on 07.06.2012 the accused has demanded the amount. On 9/6/2012 he had advanced the amount of Rs. 1,87,000/- and on 11.06.2012 of Rs. 13,000/- by way of cash. But no document came to be executed. Prior to that he had not advanced any amount to the accused. On 25.06.2012 the cheque (Exh. 20) issued in the writing by the accused.

7. But the accused come with defense that he had issued the cheque towards the security purpose.

8. The admission given by the accused during the cross-examination of the complainant disclosed that the amount of Rs. 2,00,000/- advanced by the complainant to the accused. But no document came to be executed. The accused has not denied his signature and handwriting over the cheque (Exh.20).

9. The cross-examination of the complainant further disclosed that he earned Rs. 10,000/- per month from his salary. Apart from it he fetched the income of Rs. 2.5 to 3 lacs from his agricultural land. On 04.06.2012 he had obtained the loan from Pimpri Chinchwad Sahakari Bank of Rs. 2,00,000/-.

10. The accused come with the another defense that the hand loan advanced by the complainant to him alongwith the interest. But the complainant denied the said defense.

11. The accused come with another third fold defense that Sudhir Balasaheb Manchare and the complainant is relative. Mr. Sudhir Manchare paid of Rs. 9,000/- to the accused. When the accused had returned the amount to Mr. Sudhir Manchare. The cheque has been issued towards the security of that transaction.

12. The complainant relied on the passbook of Pimpri Chinchwad Co-operative Bank ltd. But failed to tender the said passbook during his examination in chief. Therefore, the said document could not prove by the complainant.

13. The accused could not denied his signature over the cheque(Exh.20). It was only a suggestion that the cheque(Exh.20) was issued towards the security.

14. It is pertinent to note that the cheque(Exh.20) issued towards the security is also having presumption under Section 139 of the Negotiable Instrument Act that it has issued towards the legally enforceable debt or liability. The accused has to rebut the presumption in favour of the complainant by way of probable defense.

15. The defense of the accused that the cheque(Exh.20) has been issued towards security purpose of the amount of taken from Sudhir Manchare of Rs. 9,000/-. But the complainant denied any relation of the Sudihr Manchare with him.

16. If Sudhir Mandhare handed over the cheque to the complainant than it was his duty to report the incident to Police that cheque issued Sudhir Manchare had been handed over Mr. Sudhir Manchare and that has been misused by the complainant.

17. The accused given mere suggestion that the amount of Rs. 2,00,000/- were not advanced to him. But the complainant during cross-examination has given specific detail that on 09.06.2012 Rs. 1,87,000/- and on 11.06.2012 Rs. 13,000/- paid by way of cash to the accused. The accused could not discarded the testimony of the complainant than the mere suggestions that the amount had not been advanced by the

complainant.

18. Therefore, the complainant had proved that the amount of Rs. 2,00,000/- advanced by way of cash to the accused.

19. The complainant had presented the cheque(Exh.20) for encashment. But it has been returned with remark “insufficient funds” accordingly. The complainant had proved the bank memo (Exh. 22). He also relied on the testimony of Atul Prasanna Nifadkar (CW-2) being the Officer of “Sarasvat Bank”. His testimony disclosed that the cheque (Exh. 20) came for clearance in his bank. But it has been dishonoured with remark “account closed” by the accused.

20. He also relied on the statement(Exh. 67) of the Sarasvati Bank, Chiplun Bank along with certificate. The statement disclosed that the accused account was operated till 19.10.2011.

21. But he had issued the cheque (Exh. 20) came to be issued on 25.06.2012. Therefore, accused was aware about the fact that the account has been closed. But in spite of that he had issued the cheque(Exh.20).

22. The testimony of the complainant, Bank memo (Exh. 22) and testimony of Atul Nifadkar (CW-2) proved that the cheque (Exh. 20) dishonored. When the complainant presented for encashment.

23. Therefore, the complainant had proved that the accused had issued cheque (Exh. 20) toward legally enforceable debt or liability.

Hence, I answer point No. 1 in affirmative.

Point Nos. 2 and 3 :-

24. The complainant has contended that on 12.10.2012 he had dispatched the written notice (Exh.23) for demanding the cheque (Exh.20) amount by way of registered post. It has been received by the accused by way of acknowledgment (Exh.24).

25. The postal acknowledgment at (Exh.24) mentioned the correct address and name of the accused. The accused received the notice (Exh. 23) by acknowledging it (Exh.24). There is no denial during the cross-examination of the complainant that no such notice has been issued and the said notice has not acknowledged by the accused.

26. The accused failed to make the payment of cheque (Exh. 20) amount. Admittedly, cheque (Exh. 20) amount has not been paid by the accused within 15 days from the date of service of notice (Exh.23). Therefore, the complainant has proved that the accused failed to make the payment of cheque within the 15 days from the date of service of notice. Hence, I answer point Nos. 2 and 3 in affirmative.

Point No.4 :-

27. In view of my finding point Nos. 1 to 3 and its cumulative effect the accused is convicted for the offence under section 138 of the Negotiable Instrument Act.

28. The ld. Advocate for the accused and the accused remain absent when matter called out.

29. The ld. Advocate for the complainant submitted that the

complainant had proved the case since 2012 the accused has utilized the amount. About 13 years has been lapsed. Therefore, the complainant be compensated by imposing the fine of double of cheque amount.

30. The evidence brought on record proved that in year 2012 the complainant had advanced Rs. 2,00,000/-. About 13 years has been lapsed but accused failed to repay the amount. In such situation. The complainant is entitled by way of compensation of Rs. 4,00,000/- i.e. double of the cheque amount. Hence, I proceed to pass the following

:: O R D E R ::

- 1] The accused is convicted for the offence punishable under Section 138 of the Negotiable Instrument Act, 1885 vide Section 255 (2) of the Code of Criminal Procedure.
- 2] The accused sentenced to suffer simple imprisonment of 6 months and fine of Rs.4,00,000/-, in default of payment of fine, he has to suffer simple imprisonment of one month.
- 3] The entire fine amount of Rs.4,00,000/- given to the complainant by way of compensation.
- 4] Copy of judgment given to the accused.
- 5] Issue arrest warrant against accused.

(Dictated and pronounced in open court)

Pune
Date -: 21/08/2025.

Sd/-
(N. R. Gajbhiye)
Addl. Chief Judicial Magistrate Pune.

CERTIFICATE

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

Name of the Stenographer :- P. P. Khair Grade III

Name of the Court :- N. R. Gajbhiye

Addl. Chief Judicial Magistrate,
Pune.

Order / Judgment Date :- 21/08/2025

Order / Judgment signed by

the Presiding Officer on :- 21/08/2025

Order uploaded on :- 22/08/2025