KAVP510013472017

PANKAJA KONNUR Digitally signed by PANKAJA KONNUR Date: 2026.06.02 17:04:23 +0530

Presented on : 01-09-2017

Registered on : 01-09-2017

Decided on : 02-06-2026

Duration : 8 years, 9 months, 1 days

IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC, SINDAGI, AT: SINDAGI

Present

SMT. PANKAJA KONNUR
B.A.,LL.B.

PRL. CIVIL JUDGE AND JMFC, SINDGI.

DATE: 2nd DAY OF JUNE 2026

CRIMINAL CASE No.367/2017

Complainant :

Manoj S/o. Govardhan Bhatija
Age:45 years, Occ: Business,
R/o. C/o. Arun Awati, H.N.25,
Behind Police Station, Sindagi,
Tq: Sindagi, Dist:Vijayapur.

(By Sri.G.S.K., Adv)

// Versus //

Accused:

Mahantesh S/o. Suresh Pyati,
Age: 40 years, Occ: Business,
R/o. Kondaguli village,
Tq:Sindagi, Dist: Vijayapura.

(By Sri.S.S.S., Adv)

1.	Date of commission of offence	:	On 27.02.2017
2.	Date of report of offence	:	On 27.02.2017
3.	Date of arrest of the accused	:	----
4.	Date of recording evidence	:	On 01.06.2017
5.	Date of closing evidence	:	On 13.02.2026
6.	Offences complained of	:	S.138 of N.I.Act.
7.	Opinion of the Judge	:	As per final order.

PANKAJA KONNUR Digitally signed by PANKAJA KONNUR Date: 2026.06.02 17:04:32 +0530

Prl.Civil Judge & JMFC,
Sindagi.

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J U D G M E N T

This complaint is filed by the complainant against the accused for offence punishable under Section 138 of NA Act read with 420 of IPC.

2. **The Avernments made in the Complaint:** The complainant is that himself and the accused are known to each other about 5 years. As the complainant was hiring the trucks for his coal business from the accused, he was the owner of truck bearing No.MH12/FZ-7633, which he was intending to sell, by that time, the accused approached the complainant requested him to sell the aforesaid truck to him, amount was fixed at ₹5,75,000/-. as token, the accused has paid the amount of ₹20,000/-, he promised to pay the

remaining balance amount after obtaining the loan from the **Shriram Finance Ltd.** Further, it is contended that as accused stated that he can apply for the loan after transfer of the necessary documents as per terms and conditions of the Financier i.e. **the Shriram Finance Limited** by considering the relationship between himself and accused, the complainant signed all necessary documents to facilitate the accused to obtain the loan on the said vehicle. As **Shriram Finance Ltd**. has transferred the amount of ₹4,00,000/- towards the consideration amount and he gave the post dated cheque bearing No.103877 dated 22.02.2017. When the cheque was presented before the State Bank of India, Devar-Hipparagi branch for consideration of amount of ₹1,55,000/- on 20.02.2017 but it was dishonored as **Funds Insufficient** with memo dated 27.02.2017. Thereafter same is intimated to the accused he went on postponing, then legal **notice was issued** to the accused through counsel, same was also not replied by the accused, after compliance of statutory period he filed the present complainant against the accused.

3. On filing of complaint, cognizance was taken for offence punishable under Section 138 of Negotiable Instruments Act, the complainant himself entered into the witness box

examined as PW.1 and examined another witness as PW.2 and got marked Ex.P1 to 6. As there are prima facie materials, the accused was summoned, his plea was recorded he pleaded not guilty claims for trial.

4. After closure of the complainant's evidence, the counsel for accused cross examined the PW.1 and 2 since there is incriminating evidence against the accused persons he was examined U/Sec.313(2) of Cr.P.C he denied the all the incriminating against him did not choose to enter into the defense evidence

5. The counsel for the complainant as well as the accused put-forth their arguments.

6. Following points that arise for my consideration:

1. Whether the complainant has proved beyond all reasonable doubt that accused has committed an offence punishable under Section 138 of Negotiable Instruments Act?
2. What order?

7. My findings to the above points are:

POINT No.1: In the Negative

POINT No.2: As per the final order;
for the following

REASONS

8. **POINT No.1**: In order to prove alleged guilt of the accused, the complainant himself entered in to the witness box examined as PW.1, another witness by name Govardhan Bhatija is examined as PW.2 and got marked 6 documents i.e., Ex.P1 is the Cheque issued by the accused, Ex.P2 is the endorsement issued by the State Bank of India as Funds insufficient Ex.P3 is the notice dated.19.03.2017, Ex.P4 is postal receipt, Ex.P5 is the acknowledgment and Ex.P6 is the complaint.

9. As the counsel for accused cross examined the witness on 18.01.2019 as counsel asked about his native place, alleged transaction who were present by that time, he deposed that, he is the native of Mangalavadapeth, Pune, alleged transaction was taken place in Sindagi at Professor Colony, by that, time his brother by name Jitendra S/o Govardhan Bhatija, Badasha and Dr. Arun Awati, Yaseen, Appasab, Mahantesh where present.

10. Again PW.1 was cross examined by the counsel for the accused on 29.07.2019 as counsel asked the question regarding the acquaintance of the complainant with accused

and business of the accused he deposed that he knows the accused since 8-10 years he is having transport business he use to give his vehicle on rental basis to complainant and since 7-8 years he is doing the said business the complainant is residing in rented house of Arun Awati accused is come to his house oftenly.

11. As there was transport transaction in between the complainant and accused he had sold the truck to the accused for amount of Rs.5,75,000/- which was in the name of his brother by name Jitendra the said transaction was taken place on 20.02.2016 by that time the accused had given Rs.2000/- advance for remaining amount he agreed to repay within one month by obtaining the loan from the Shri Ram Fiance likewise on 05.05.2016 Rs.4 lakh credited to his account directly from the Shri. Ram Finance.

12. Further the counsel put suggestion that, prior to sale transaction of truck to the accused was met with an accident at Solapur, therefore the accused spent amount of Rs.8000/- to 10,000/- for repair of the said truck the witness deposed that, it is not relevant to him, as there was dispute among the owner of the vehicle bearing No.KA-32/K3728 in the said

dispute the complainant had torned all the documents of vehicle, to get said documents the accused has spent Rs.25,000/- witness denied the same. Further suggestion that, there was talk between the complainant and accused to give the remaining amount by deducting the Rs.1,25,000/- he denied the same.

13. As counsel suggested that, himself and accused used to reside in the house of Arun Awati on rental basis by that time, accused used to keep all his documents such as chque book, pass book, Adhar card, other important documents, he denied the same. As counsel suggested that, on several occasion the complainant and accused used to take money from their ATM each other.

14. Further the counsel suggested regarding signature and contents of the Ex.P1, as accused's counsel denied the signature and handwriting which alleged to be handwriting of the accused, the complainant denied the said suggestions, further counsel asked question regarding issuance of legal notice as witness deposed that, he issued the legal notice through his counsel whether said notice was received by the accused or not he deposed that it is known his counsel, as

counsel suggested that, signature on Ex.P1 and Ex.P5 are different and signature on Ex.P1 and Vakalath are same. As counsel suggested that, signature on Ex.P5 and Signature and Vakalath are belong to the accused he denied the same. As counsel suggested that, by taking the cheque of the accused forgery has been committed and presented said cheque to the bank for encasement same is denied by the witness, on perusal of the rest of the cross examination nothing has been elicited from mouth of witness in support of defense case.

15. As stated above the complainant in order to prove his case, he examined another witness who is the brother of the complainant as PW.2 in his chief examination he reproduced the contents of the complainant.

16. As the counsel for accused asked the question regarding the transaction between himself and accused he admittedly same, then counsel suggested that, there is no relevancy of transaction taken place in between himself and accused with complainant he deposed that transaction of himself and complainant are one and same, as counsel asked question that, who was the owner of that truck he deposed that it was

in his name and amount was credited to his account, thereafter amount of Rs.4 lakh has been credited to account of ICIC bank of his brother for remaining amount he gave cheque.

17. As counsel suggested that, accused was working as driver of his truck prior to transaction he deposed that he was not driver of their truck but his father used to drive their vehicle on rent. As counsel suggested regarding the accident of truck he deposed that, while that time already it was transferred as accused spent Rs.1 lakh for repair of truck he deposed that, does no about same, by that, time already he had sold the vehicle. As counsel suggested that, himself and his brother had told documents of the vehicle he denied the same. He denied the suggested that, truck was sold by deducting the amount of Rs.1,25,000/-.

18. Further the counsel suggested regarding the prior to transaction himself and accused used to reside together in the house of Awati on rental basis, he admitted that for some time they were residing, thereafter his brother use to stay in the lodge, by that time accused use to come and go.

19. As accused used to keep his documents in the rented house by taking the advantage of same, the complainant took two cheques of accused and misused the same, he denied the same, further the counsel asked question regarding whether cheque had been issued to the complainant or himself he deposed that, by that time both were present. as counsel suggested that, as there is deference of signature on Ex.P1 and 5 he denied the same. And he admitted the signatures on Ex.P5 and signatures on Vakalath from rest of cross examination nothing has been elicited from mouth of witness.

20. The counsel for the complainant and accused put-forth their argument, as counsel for the complainant in their argument re produced the contents of the complainant, stating that, as complainant has complied the all the statutory ingredients of section 138 of N.I Act, hence, prays to convict the accused.

21. On the other hand the counsel for the accused canvassed the argument, stating that the complainant has not prove the legal enforceable debt since there is no transaction in between the complainant and accused and he denied the signature on Ex.P1 as there is differences in the

signature in Ex.P1 and P5 and Vakalath, in order to ascertained the signatures he has not obtained for expert opinion. Hence, the complainant has filed to prove his case, therefore prays to acquit the accused for alleged offences.

22. Before going to look into evidence it is necessary to look into admitted as case in hand on perusal of evidence of the complainant and cross examination of PW.1 and PW.2 it is clear about about acquaintance of the complainant and accused, transaction, but contention of the accused is that sale transaction was taken in between the brother of the complainant and accused, already he has paid amount but documents kept in rented house of the complainant and accused were taken by the complainant misused same.

23. I have gone through oral as well as documentary evidence adduced by the complainant upon having heard so, it is settled principle of law that, to prove the guilt of the accused for the offence punishable under Section 138 of Negotiable Instruments Act, the complainant has to prove the following ingredients i.e. sub points:

1. The cheque drawn by the accused on account maintained by him.

2. The said cheque is issued for discharge of debt whole or in part or any other liability.

3. The cheque is presented within time limitation.

4. The said cheque is returned or dishonored.

5. The payee or holder in due course makes demands for the payment by giving a notice within the 30 days to the accused.

6. The accused fails to make the payment within the 15 days from the receipt of notice.

7. The complaint is filed within the time limitation.

24. Now, the Court has to see whether the complainant has to proved these ingredients.

Ingredient No.1: In order to prove the ingredient No.1, the complainant presented the cheque before State Bank of India Sindagi Branch on 20/02/2017 Sindagi, same was dishonored on 27/02/201730/10/2023 as **"Funds Insufficient"**. Therefore, it may be opined that, the cheque is issued on account maintained by accused. Hence, this Ingredient No.1 is answered in the affirmative.

Ingredients No.3 to 7: Ex.P.1 is the cheque dated 20/02/2017, Ex.P.2 is Bank Memo dated 27/02/2017 Ex.P-3 is the notice issued to the accused on 19/03/2017, Ex.P-4 is the Postal receipt, Ex-P-5 is the Acknowledgment.As per said documents the complainant is filed within time after compliance of statutory provisions. This being the argument it is pertinent to note here that, the accused has not disputed the address. Therefore, as per the presumption once it is posted by registered post to address, it is deemed service. Therefore, the contention of learned counsel is not acceptable in the eyes of law and there is a deemed service.

25. The aforementioned all the events shows that, the cheque is presented in time and it is dishonored and notice is issued in time and accused has not repaid the amount. Further the complaint is filed in time. Hence, these sub-points are answered in the affirmative.

Ingredient No.2: It is settled principle of laws that, the complainant has to prove that the said cheque has been received for consideration to discharge the debt or liabilities. It is initial burden on the complainant and in this regard the complainant is protected by the presumption under section 139 of N.I Act. The accused has to rebut the presumption. It is also settled principle of law that, accused need not to enter defence evidence and upon evidence of complainant only he may rebut the presumption. Therefore, now the Court has to see whether the accused is able to rebut the said presumption, though he has not entered defence evidence legal presumption shall be raised that the cheque was issued for discharging an antecedent debt or liability. The presumption can be rebutted only by the person who drew the cheque. Sec. 118 of the Act, it is provided that unless the contrary is proved, every negotiable instrument is presumed to be drawn for consideration. Therefore, negotiable instrument enjoys legal presumption as contemplated under Sec. 118 and 139 of N.I.Act. The presumption to be raised is mandatory in nature. It is for the accused to rebut the said presumption with preponderance of probability.

26. As discussed above the accused even though did not enter into witness box he has taken above mentioned defence, now burden shifts to the complainant he has to rebut said defence.

27. As the contention of accused is that there was sale transaction of Truck in between himself and brother of the complainant, for consideration amount of Rs.5,75,000/- as

token he paid amount of Rs.20,000/- and Rs.4,00,000/- has been given by obtaining loan from Shri. Ram Finance, since vehicle was met with an accident the accused had spent Rs.1,25,000/- for repair work by deduction said amount he has paid amount to the complainant but defence of counsel for accused is that as there was no transaction in between the complainant and accused , there is no legally enforceable debt, when said question was asked the PW.2 who is the brother of the complainant, even though he was owner of the vehicle transaction was belonged to himself as well as to the complainant, when amount of Rs.4,000,00/-, Rs.20,000/- was paid to the complainant himself, on perusal of entire cross examination of PW.1 no where accused denied issuance of amount to the complainant if transaction was not in between himself and the complainant he could have denied allegation he did not do so he kept quite, even in cross examination of the PW.2 also the accused has not denied same, but mere oral is not sufficient to consideration of the accused and PW.2 as transaction of accused and the complainant as on perusal of the chief examination of the PW.2 he stated that he has authorized the complainant on behalf of himself same is also not denied by the accused burden is on the complainant he has to submit any documents of authorization of PW.2 executed in favour of the complainant, second defence is that Cheques were misused by the complainant as accused himself and complainant use to stay together in rented house, by that time he has taken cheques if it is case the accused could have given complainant wherein he had knowledge of legal notice also same is also not denied another defence is that signatures on Cheque is not belonged to the accused it was forged if it is case the Bank Could have been given endorsement as Signature Differ, but it is not there, but mere admission and denial will not prove case here.

28. As the complaint in complaint at Para No-1 stated that he is the owner of the vehicle bearing No.MH-12/FZ-7623, but when he was subjected to cross-examination by the counsel for accused, he stated that, the Truck was in the name of his brother, but transaction was taken in between himself and accused. On entire cross-examination of PW.1 and 2 they stated only one thing that even though the vehicle was owned by PW.2, the transaction was taken in between the complainant and accused, but in this regard there is no document before the Court. Further in para No.2 it is stated that in order to get the loan from Shriram Finance by the

accused, the complainant has executed some documents and finance has transferred some of Rs.4 Lakhs towards the part consideration amount to the complainant. In this regard also there is no documents before the Court. No-doubt the accused has not submitted any document, but as per the settled provision of law, the accused without entering the witness box he can set up his defence, then burden will automatically shift to the complainant. When such defence has been raised by the accused, the complainant at least should have been submitted some document to show that even though the vehicle was owned by his brother, as the complainant was authorized for transaction, moreover there is contradiction in the contents of the complaint and evidence with respect to the ownership. As stated above in the complaint he stated that he is the owner, but in cross-examination he admitted that his brother is the owner. Therefore on perusal of above discussion this court comes to the conclusion that as there is a debt, but when there it is legally enforceable or not is the question , that has to be looked into as the counsel for accused in his cross examination and argument tried to prove that alleged debt is not legally enforceable debt, only on this ground the accuse cannot be let free , the complainant has to prove why the accused was liable to him even though transaction was with the complainant's brother same is not proved by the complainant, therefore this court is of the opinion that as there is no transaction in between the complainant and accused. Therefore, there is no recoverable legally enforceable debt in favour of the complainant by the accused. Hence I answer point No.1 in the Negative.

29. **POINT No.2**: With above discussion, this court proceed to pass the following;

ORDER

Acting under Section 255(1) of Cr.P.C, the accused is hereby acquitted for the offence punishable under Section 138 of Negotiable Instruments Act.

Bail bond and surety bond of the accused shall stand cancelled.

(Dictated to the Stenographer directly on computer, typed by him, judgment corrected and then pronounced by me in the open court on this the 2nd day of June 2026)

PANKAJA KONNUR
Digitally signed by PANKAJA KONNUR
Date: 2026.06.02 17:04:56 +0530

(Smt. Pankaja Konnur)
Prl. Civil Judge & JMFC,
Sindagi.

:ANNEXURE:

List of witnesses examined on behalf of complainant:

PW.1 : Manoj S/o. Govardhan Bhatija

PW.2 : Jeetendra S/o. Govardhan Bhatija

List of Documents marked on behalf of complainant:

Ex.P1 : Cheque issued by the accused

Ex.P2 : Endorsement issued by the State Bank of India

Ex.P3 : Notice dated.19.03.2017,

Ex.P4 : Postal receipt,

Ex.P5 : Acknowledgment

Ex.P6 : Complaint.

List of witnesses examined on behalf of accused:

-NIL-

List of Documents marked on behalf of accused:

-NIL-

The counsel for Complainant relied on the following case laws.

-NIL-

The counsel for accused relied on the following case laws.

-NIL-

PANKAJA KONNUR Digitally signed by PANKAJA KONNUR Date: 2026.06.02 17:05:04 +0530

(Smt. Pankaja Konnur)
Prl. Civil Judge & JMFC,
Sindagi.