Received on : 13.11.2019
Registered on : 13.11.2019
Decided on : 03.07.2026
Duration : Y. M. D.
06 07 20

Part 'A'

CNR NO. MHAM090017042019	**IN THE COURT OF JUDICIAL MAGISTRATE (F.C.), COURT NO.3, CHANDUR BAZAR.** (Presided over by H.S. Sonar) **S.C.C No. 700/2019** **Exh. No.49/B**
COMPLAINANT	**Patrakar & Nagrik Gramin Bigar Sheti Sahakari Patsanstha Ltd, Shirajgaon** Through Authorized Officer, Sunil Ganeshrao Raut Age : 45y, Occ : Service, Resident : Shirajgaon Kasba, Tq. Chandur Bazar, Dist : Amravati
REPRESENTED BY	Ld. Adv. Shri. S.S. Yawale.
ACCUSED	**Maksud Kha Shabbir Kha,** Age. 54 yrs, Occ. Farmer, R/o. Deurwada, Chandurbazar, Tal. Chandurbazar, Dist. Amravati.
REPRESENTED BY	Ld. Adv. Shri. A.B. Wasankar.

Part 'B'

Date of Offence	16.10.2019
Date of Filing of Complaint	13.11.2019
Date of recording of evidence(Verification)	07.12.2019
Date of Recording Plea	30.12.2024
Date on which Judgment is reserved	05.06.2026
Date of the Judgment	03.07.2026
Date of the sentencing order, if any	03.07.2026

DETAILS OF 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 Sec.428 of Cr.P.C.
Maksud Kha Shabbir Kha	N.A.	20.12.2024	Section 138 of Negotiable Instruments Act, 1881	Convicted	Simple Imprisonment for 4 months and fine of Rs. 2,65,000/-	N.A.

J U D G M E N T

(Delivered on 3rd day of July, 2026)

The present complaint has been filed by the complainant under Section 138 of the Negotiable Instruments Act, 1881 (N.I. Act).

2. The complainant is a Co-operative Credit Society duly registered under the Maharashtra Co-operative Societies Act, 1960 and is engaged in the business of accepting deposits from its members and advancing loans. The present complaint has been instituted through its Branch Manager, Shri Sunil Ganeshrao Raut, who claims to have been duly authorised by the Board of Directors to prosecute the present proceedings on behalf of the complainant Society.

The case of the complainant in a nutshell is as follows:

3. The case of the complainant, in brief, is that the accused had approached the complainant Society for a personal loan for construction of his house. After completion of the requisite formalities, the complainant sanctioned and disbursed a loan of Rs.1,00,000/- to the accused on 10.10.2014. The loan was repayable in 24 monthly instalments carrying interest at the agreed rate of 14%

per annum and additional penal interest of 2%, in case of default.

4. It is alleged by the complainant that the accused committed default in repayment of the loan. Towards discharge of the outstanding liability, the accused issued Cheque No.151581 dated 18.09.2019 for an amount of Rs.1,76,753/-, drawn on The Amravati District Central Co-operative Bank Ltd., Shirajgaon Kasba Branch, in favour of the complainant. When the said cheque was presented for encashment, it came to be dishonoured on 18.09.2019 with the endorsement "Funds Insufficient". Thereafter, the complainant caused a statutory demand notice dated 26.09.2019 to be issued to the accused demanding payment of the cheque amount. Despite service of the notice, the accused failed to make payment within the statutory period of fifteen days. Hence, the present complaint under Section 138 of the Negotiable Instruments Act.

5. Upon presentation of the complaint, cognizance of the offence was taken and process came to be issued against the accused. The accused appeared before the Court pursuant to the process and was enlarged on bail. The substance of accusation under Section 251 of the Code of Criminal Procedure was explained to the accused. The accused pleaded not guilty and claimed to be tried.

6. In support of its case, the complainant led oral and documentary evidence. After completion of the complainant's evidence, the statement of the accused under Section 313(1)(b) of the Code of Criminal Procedure, 1973 (Cr.P.C.) was recorded. The accused denied the incriminating circumstances appearing against him and did not adduce any defence evidence.

7. I have heard the learned counsel appearing for the complainant and the learned counsel appearing for the accused. I have carefully considered the rival contentions, the evidence on record and the submissions advanced by both sides. Accordingly, the following Points for Determination arise for my consideration. I have answered them for the reasons to follow as under :

Sr. No.	**Points for Determination**	**Findings**
1.	Whether the complainant proves that the accused had issued Cheque No.151581 dated 18.09.2019 for Rs.1,76,753/- drawn on The Amravati District Central Co-operative Bank Ltd., Shirajgaon Kasba Branch, towards discharge, in whole or in part, of a legally enforceable debt or other liability?	**... Yes**
2.	Whether the complainant further proves that the said cheque was dishonoured for the reason "Funds Insufficient"?	**... Yes**
3.	Whether the complainant proves that the statutory notice was duly issued and served upon the accused within the prescribed period, and that despite receipt thereof the accused failed to make payment within fifteen days, thereby committing an offence punishable under Section 138 of the Negotiable Instruments Act, 1881?	**... Yes**
4.	What Order?	**The accused is convicted.**

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

As to Point Nos. 1 to 3 :

8. Point nos. 1 to 3 arise out of the same transaction and are founded upon common oral as well as documentary evidence, therefore, they are taken up together for consideration to avoid repetition.

9. Before appreciating the evidence on record, it would be appropriate to refer to the essential ingredients of an offence punishable under Section 138 of the N.I. Act. The complainant is required to establish that the cheque in question was issued by the accused on an account maintained by him towards discharge, wholly or in part, of a legally enforceable debt or other liability. Further, the cheque was presented within its validity period and that it came to be dishonoured by the drawee bank. The complainant is also required to establish that a statutory demand notice was issued within the prescribed period and that despite receipt of such notice, the accused failed to make payment of the cheque amount within fifteen days.

10. It is equally settled that once the execution of the cheque is admitted or proved, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act come into operation. Section 118(a) raises a presumption that every negotiable instrument was made or drawn for consideration, while Section 139 mandates that the holder of the cheque shall be presumed to have received it in discharge, wholly or in part, of a legally enforceable debt or liability. Though these presumptions are rebuttable, the burden shifts upon the accused to rebut the same by raising a probable defence on the standard of preponderance of probabilities.

11. In order to substantiate the complaint, the complainant has examined its authorised representative, Sunil Ganeshrao Raut (CW-1). Through his evidence, the complainant has produced the authority letter (Exh.6), the original cheque bearing No.151581 dated 18.09.2019 for Rs.1,76,753/- (Exh.7), the original return memo showing dishonour for the reason "Funds Insufficient" (Exh.8), the statutory demand notice (Exh.9), the original postal receipt and acknowledgement (Exhs.10 and 11) and the certified statement of the accused's loan account (Exh.12).

12. CW-1 has deposed that the complainant is a duly registered Co-operative Credit Society engaged in advancing loans to its members. According to him, the accused had obtained a personal loan of Rs.1,00,000/- from the complainant Society. On account of persistent default in repayment, the outstanding liability together with contractual and penal interest accumulated to Rs.1,76,753/-. It is his evidence that towards discharge of the said liability, the accused issued the cheque in question, which, upon presentation, was dishonoured for insufficiency of funds. Thereafter, statutory demand notice was duly issued, but despite service thereof, the accused failed to make payment.

13. The complainant has further produced the certified statement of the loan account at Exhibit-12. The said statement is accompanied by the certificate contemplated under the Bankers' Books Evidence Act and is therefore admissible in evidence. The statement reflects the loan account maintained in the name of the accused and the outstanding balance payable by him. Significantly, the amount shown as outstanding in the said account is exactly Rs.1,76,753/-, which is identical to the amount mentioned in the cheque in question. The account statement thus lends assurance to the complainant's version that the cheque was issued towards discharge of the subsisting liability.

14. During cross-examination, CW-1 admitted that the accused had obtained a personal loan of Rs.1,00,000/- carrying interest at the rate of 14% per annum and that the loan account subsequently became a Non-Performing Asset. He also admitted that the original loan agreement and notices allegedly issued to the guarantors have not been produced before the Court. However, except eliciting these admissions, nothing substantial has been brought on record to impeach the authenticity of the documentary evidence produced by the complainant.

15. As far as the contention regarding non-production of the original loan agreement is concerned, the same is not sifficient to discard the complainant's case. The present prosecution is founded upon dishonour of the cheque and not upon enforcement of the loan agreement. Once the complainant has established the foundational facts and the statutory presumptions have come into operation, non-production of the original loan documents by itself does not displace those presumptions, particularly when the certified statement of account evidencing the outstanding liability has been produced on record.

16. Likewise, the suggestion that the cheque in question is a non-CTS cheque is of no consequence. The cheque was not returned by the bank on account of any technical defect or invalidity. It was dishonoured solely for the reason "Funds Insufficient" as reflected in the return memo at Exhibit-8. Therefore, the nature of the cheque as CTS or non-CTS has no bearing upon the ingredients of the offence under Section 138 of the Negotiable Instruments Act.

17. Thus, the complainant has succeeded in establishing the foundational facts necessary for invoking the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments Act. The burden, therefore, shifts upon the accused to rebut the said presumptions by placing before the Court a probable and acceptable defence. Whether the accused has been able to discharge such burden is the next question which requires consideration.

18. During the cross-examination of CW-1, the defence attempted to challenge the existence of the loan transaction by suggesting that no loan documents such as the loan application, agreement or other connected papers have been produced before the Court. The said contention by itself does not advance the defence. The complainant has produced the certified statement of the accused's loan account at Exhibit-12 along with the certificate under the Bankers' Books Evidence Act, which renders the entries therein admissible in evidence. Although, the said statement is allegedly disputed by accused but he failed to bring any material on record to show that the outstanding balance reflected therein is erroneous.

19. A significant circumstance emerging from Exhibit-12 is that the outstanding balance shown in the loan account is Rs.1,76,753/-, which is the very amount mentioned in Cheque No.151581 dated 18.09.2019. The account statement further discloses that the amount consists of the principal together with accrued contractual interest and penal interest chargeable under the terms of the loan. The exact correspondence between the outstanding balance and the cheque amount lends substantial corroboration to the complainant's case that the cheque was issued towards liquidation of the outstanding liability. If the cheque had been issued for any purpose unconnected with the loan account, such exact matching of figures would not have ordinarily occurred.

20. The defence has also suggested that the cheque in question had been obtained by the complainant at the time of sanction of the loan or for any other purpose in 2014 and that the same has subsequently been misused. This plea is, however, wholly inconsistent with another defence simultaneously suggested during cross-examination, namely, that the complainant has failed to prove the loan transaction itself. These two defences cannot stand together. If the cheque was allegedly handed over at the time of availing the loan back in 2014, the very suggestion necessarily acknowledges the existence of the loan transaction. Conversely, if no loan transaction existed, the question of handing over a cheque at the time of obtaining such loan would not arise. Such mutually destructive pleas considerably weaken the defence.

21. Even assuming for the sake of argument that the cheque had initially been delivered as a security at the time of sanction of the loan, such circumstance by itself would not exonerate the accused. It is now well settled that where a legally enforceable liability subsists on the date of presentation, even a cheque initially issued as a security may attract the provisions of Section 138 of the N.I. Act. The accused has failed to establish that no liability existed when the cheque was presented. On the contrary, the certified statement of account demonstrates the subsisting outstanding dues corresponding to the cheque amount.

22. Another circumstance which assumes significance is that the accused has offered no satisfactory explanation as to how the cheque admittedly drawn on his account remained in possession of the complainant. Apart from making suggestions during cross-examination, no positive case has been put forward explaining the circumstances under which the complainant came into possession of the cheque. Once the execution of the cheque is not effectively disputed, the burden shifts upon the accused to furnish a probable explanation consistent with his defence. In the present case, no such explanation has been forthcoming.

23. Equally relevant is the conduct of the accused after the alleged delivery of the cheque. If the cheque had in fact been retained unauthorisedly by the complainant or was intended merely as a security and apprehended to be misused, a prudent person would ordinarily take timely steps for its return or to prevent its misuse. No evidence has been brought on record to show that the accused ever demanded return of the cheque, issued any legal notice, lodged any complaint before the police, instructed his banker to stop payment, or initiated any civil or criminal proceedings alleging misuse of the cheque. The absence of any such conduct renders the defence highly improbable.

24. The defence further questioned CW-1 regarding notices allegedly issued to the guarantors and the fact that such notices have not been produced before the Court. These aspects, however, are wholly collateral to the controversy involved in the present prosecution. The liability under Section 138 of the N.I. Act arises from the dishonour of a cheque issued towards discharge of a legally enforceable debt. The question whether separate recovery proceedings were initiated against the guarantors or whether notices were served upon them has no bearing upon the criminal liability of the drawer of the cheque.

25. It is apparent from the line of cross examination of CW-1 that much emphasis was also laid on the fact that the cheque in question is not a CTS cheque. The said submission cannot be accepted. The cheque was dishonoured solely for the reason "Funds Insufficient", as reflected in the bank return memo at Exhibit-8. It was not returned on account of any technical defect relating to its format or validity. Therefore, whether the cheque is CTS compliant or otherwise is wholly irrelevant for deciding the present prosecution.

26. It is further pertinent to note that except putting suggestions in the cross-examination of CW-1, the accused has chosen not to lead any defence evidence. Though it is settled that an accused is not required to prove his defence beyond reasonable doubt, he is nevertheless expected to place before the Court such material as would probabilise his defence on the touchstone of preponderance of probabilities. Mere suggestions made during cross-examination do not constitute evidence. In the absence of any substantive material supporting the defence, the statutory presumptions continue to operate in favour of the complainant.

27. Thus, upon appreciation of the defence put forth during cross-examination, none of the circumstances relied upon by the accused either individually or collectively create any reasonable probability sufficient to rebut the presumptions available to the complainant under Sections 118(a) and 139 of the Negotiable Instruments Act. On the contrary, the defence suffers from inherent inconsistencies, remains unsupported by evidence and is inconsistent with ordinary human conduct. Consequently, the statutory presumption regarding the existence of a legally enforceable debt or liability remains unrebutted.

28. The complainant has proved that the cheque in question was presented to the drawee bank within its period of validity. The return memo at Exhibit-8 unequivocally establishes that the cheque was dishonoured for the reason "Funds Insufficient" on 18.09.2019. The accused has neither disputed the genuineness of the cheque return memo nor led any evidence to show that the dishonour occurred for any reason other than the one mentioned therein. Thus, the complainant has satisfactorily proved the dishonour of the cheque on 18.09.2019.

29. The complainant has further produced the office copy of the statutory demand notice dated 26.09.2019 at Exhibit-9, the postal receipt at Exhibit-10 and the postal acknowledgement at Exhibit-11, which establishes that the said notice was delivered to the accused on 01.10.2019. These documents establish that the statutory notice demanding payment of the cheque amount was issued within the period prescribed under Section 138(b) of the Negotiable Instruments Act and was duly served upon the accused. Despite service of notice, the accused failed to make payment of the cheque amount within the statutory period of fifteen days i.e., till 16.10.2019. The accused has also not produced any material to show that payment was made thereafter.

30. Thus, the complainant has established all the essential ingredients constituting the offence punishable under Section 138 of the Negotiable Instruments Act, viz., (i) issuance of the cheque by the accused towards discharge of a legally enforceable debt or liability, (ii) presentation of the cheque within its validity period, (iii) dishonour of the cheque for insufficiency of funds, (iv) issuance of statutory notice within the prescribed period of thirty days of receiving return memo, and (v) failure of the accused to make payment within fifteen days of receipt of the notice. Consequently, the complainant has succeeded in proving the offence beyond reasonable doubt.

31. In view of the foregoing discussion, the accused has failed to rebut the statutory presumptions available in favour of the complainant even on the touchstone of preponderance of probabilities. The defence raised during cross-examination remains unsupported by any independent evidence and is insufficient to create any reasonable doubt regarding the existence of the legally enforceable liability. The complainant, on the other hand, has successfully established the foundational facts and proved all the mandatory ingredients of Section 138 of the Negotiable Instruments Act. Consequently, I answer **Point Nos. 1, 2 and 3 in the affirmative**.

<u>As to Point No. 4 :</u>

32. In view of findings on Point Nos. 1 to 3, the complainant has successfully proved all the essential ingredients constituting the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Consequently, the accused is held guilty and convicted for the said offence.

33. After pronouncement of the finding of guilt, the accused was heard on the question of sentence. The learned counsel for the accused submitted that the accused is an agriculturist by occupation, is about 54 years of age and is the sole earning member of his family. It is, therefore, prayed that a lenient view be taken and that no substantive sentence of imprisonment be imposed.

34. The learned counsel for the complainant submitted that the transaction pertains to the year 2014 and despite repeated opportunities and issuance of statutory notice, the accused failed to honour his commitment. It was submitted that the complainant, being a co-operative credit society dealing with public funds, has been deprived of its legitimate dues for a considerable period and, therefore, appropriate compensation should be awarded.

35. The offence punishable under Section 138 of the Negotiable Instruments Act is primarily compensatory in nature, though it also possesses a punitive element intended to ensure the credibility of commercial transactions and banking operations. While imposing sentence, the Court is required to strike a balance between the object of compensating the complainant and the necessity of maintaining the sanctity of negotiable instruments. At the same time, the Court cannot lose sight of the fact that the complainant has been deprived of the amount covered under the cheque for a considerable period.

36. Considering the cheque amount of Rs.1,76,753/-, the period for which the complainant has been deprived of the said amount, the nature of the transaction, and the facts and circumstances of the case, the ends of justice would be adequately met by sentencing him to undergo simple imprisonment for four months and directing him to pay a fine of Rs.2,65,000/-, out of which Rs.2,60,000/- shall be paid to the complainant as compensation under Section 357(1)(b) of the Cr.P.C. and the remaining Rs.5,000/- shall be credited to the State. In default of payment of fine, the accused shall undergo simple imprisonment for one month. Accordingly, in view of the foregoing discussion, findings and reasons, the following Order is passed in answer to Point No. 4:

ORDER

1. The accused **Maksud Khan Shabbir Khan** is hereby convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 under Section 255(2) of the Code of Criminal Procedure, 1973.

2. The accused is sentenced to undergo Simple Imprisonment for a period of Four Months and to pay a fine of

Rs.2,65,000/- (Rupees Two Lakhs Sixty-Five Thousand only).

3. In default of payment of fine, the accused shall undergo Simple Imprisonment for a further period of One Month.

4. Out of the fine amount, a sum of Rs.2,60,000/- (Rupees Two Lakhs Sixty Thousand only) shall be paid to the complainant as compensation under Section 357(1)(b) of the Code of Criminal Procedure, 1973, whereas the remaining amount of Rs.5,000/- (Rupees Five Thousand only) shall be credited to the State.

5. The bail bonds of the accused shall stand forfeited.

6. The accused shall furnish P.R. Bond of Rs.15,000/- (Rupees Fifteen Thousand only) as per Section 437-A of the Code of Criminal Procedure, 1973, to appear before the Appellate Court, as and when such Court issues notice in respect of any appeal or petition filed against the judgment of this Court. Such bond shall remain in force for a period of six months.

7. A copy of this judgment be furnished to the accused forthwith, free of cost.

Sd/-

Place : Chandur Bazar.
Date : 03.07.2026

(H.S. Sonar)
Judicial Magistrate First Class,
Court No.3, Chandur Bazar.

Part 'C'

LIST OF PROSECUTION /DEFENCE/COURT WITNESSES

A. Prosecution :

RANK	NAME	NATURE OF EVIDENCE
CW-1	Sunil Ganeshrao Raut	Complainant/Authorized Officer

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE
Nil	Nil	Nil

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE
Nil	Nil	Nil

LIST OF PROSECUTION / DEFENCE/ COURT EXHIBITS

A. Prosecution :

Sr.No.	Exhibit Number	Nature of evidence
01	6/CW-1	Verified Authority Letter
02	7/CW-1	Original Cheque
03	8/CW-1	Original Return Memo
04	9/CW-1	Original Office Copy of the Notice
05	10 /CW-1	Original Postal Slip
06	11/CW-1	Original Postal Acknowledgment
07	12/CW-1	Certified copy of loan Account Statement of Accused

B. Defence :

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

C. Court Exhibits :

Sr.No.	Exhibit Number	Description
Nil	Nil	Nil

D. Material Objects :

Sr.No.	Exhibit Number	Description
Nil	Nil	Nil

Sd/-
(H.S. Sonar)
Judicial Magistrate First Class,
Court No.3, Chandur Bazar.

Place : Chandur Bazar.
Date : 03.07.2026