Received on	:	08.07.2022
Registered on	:	08.07.2022
Decided on	:	10.07.2026
Duration	:	Y. M. D. 04 00 02

Part 'A'

CNR NO. MHAM090018582022	**IN THE COURT OF JUDICIAL MAGISTRATE (F.C.), COURT NO.3, CHANDUR BAZAR.** (Presided over by H.S. Sonar) **S.C.C No. 1153/2022** **Exh. No.53/B**
COMPLAINANT	**Janta Sahakari Bank Ltd, Amravati** Through Authorized Officer, Subhash Gulabrao Meshram, Age : 56y, Occ : Service, Resident : Asegaon Purna, Tq. Chandur Bazar, Dist : Amravati
REPRESENTED BY	Ld. Adv. Shri. S.S. Yawale.
ACCUSED	**Atharva Krushi Kendra, Chincholi** Through its Proprietor, Sudesh Shankarrao Sonone, Age. 46 yrs, Occ. Krushi Kendra, R/o. Chincholi, Chandurbazar, Tal. Chandurbazar, Dist. Amravati.
REPRESENTED BY	Ld. Adv. I.S. Juned.

Part 'B'

Date of Offence	16.06.2022
Date of Filing of Complaint	08.07.2022
Date of recording of evidence(Verification)	22.07.2022
Date of Recording Plea	28.06.2023
Date on which Judgment is reserved	05.06.2026
Date of the Judgment	10.07.2026
Date of the sentencing order, if any	10.07.2026

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.
Sudesh Shankarrao Sonone	N.A.	06.07. 2024	Section 138 of Negotiable Instruments Act, 1881	Acquitted	N.A.	N.A.

JUDGMENT

(Delivered on 10th day of July, 2026)

The present complaint is filed for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

The case of the complainant in nutshell is as follows:

2. The complainant is a Co-operative Bank duly registered under the Maharashtra Co-operative Societies Act, 1960. The present complaint has been instituted through its authorised representative. As per complainant, the accused approached the complainant Bank for the grant of financial assistance (loan) for his business. The complainant initially sanctioned a loan of Rs. 2,00,000/- on 04.07.2014. Thereafter, the complainant also sanctioned an additional loan of Rs. 1,00,000/- on 23.12.2015 as per the request of the accused. Accordingly, the total loan amount of Rs. 3,00,000/- was sanctioned in favour of the accused. The accused executed the necessary loan agreement and agreed to repay the loan together with interest of 13% per annum and penal interest at the rate of 2%, in case of default, as per the terms and conditions of the loan transaction.

3. According to the complainant, the accused was required to repay the loan within 36 months. However, he committed default towards repayment of the outstanding loan liability. Upon demand by the complainant, the accused issued Cheque No. 004948 dated 29.04.2022 for Rs. 3,00,000/- drawn on his bank account at Central Bank of India. The complainant presented the said cheque on 20.05.2022. However, the cheque was dishonoured with the endorsement "Funds Insufficient". Thereafter, the complainant issued a statutory demand notice to the accused on 24.05.2022. Despite service of the notice on 01.06.2026, the accused failed to make payment of the cheque amount within the stipulated period of fifteen days. Hence, the present complaint came to be filed on 08.07.2022.

4. After verification, cognizance of the offence was taken and process was issued against the accused for the offence punishable under section 138 of N.I. Act. The accused appeared before the Court. The particulars of the offence were explained to him. He pleaded not guilty and claimed to be tried.

5. In order to prove its case, the complainant examined its authorised representative and produced documentary evidence. After closure of the complainant's evidence, the statement of the accused under Section 313 of the Code of Criminal Procedure was recorded. The accused denied the incriminating circumstances appearing against him. His defence is of misuse of the cheque given at the time of application of loan.

6. I have heard the Ld. Adv. S. S. Yawale, for the complainant and Ld. Adv. I.S. Juned, on behalf of the accused. I have carefully gone through the oral and documentary evidence available on record.

7. In view of the rival submissions and the material placed on record, the following points arise for my determination:

Sr. No.	Points for Determination	Findings
1.	Whether the complainant proves that the accused issued Cheque No. 004948 dated 29.04.2022 for Rs. 3,00,000/- towards discharge, in whole or in part, of a legally enforceable debt or liability?	**… In the negative**
2.	Whether the complainant further proves that the said cheque was dishonoured for "Funds Insufficient", that the statutory notice was duly issued and served, and that despite receipt thereof the accused failed to make payment within the stipulated period, thereby committing an offence punishable under Section 138 of the Negotiable Instruments Act, 1881?	**… In the negative**
3.	What order?	**The accused is acquitted**

:: **<u>R E A S O N S</u>** ::

<u>As to Point Nos.1 and 2 :-</u>

8. The present complaint is filed under Section 138 of the Negotiable Instruments Act, 1881. Before appreciating the evidence adduced by the parties, it would be apposite to refer to the essential ingredients constituting the offence under Section 138 of the Negotiable Instruments Act. To establish the offence, the complainant is required to prove that:

(i) the accused drew a cheque on an account maintained by him;

(ii) the cheque was issued in discharge, wholly or in part, of a legally enforceable debt or liability;

(iii) the cheque was presented to the bank within the prescribed period;

(iv) the cheque was returned unpaid;

(v) the complainant issued a statutory notice of demand within the prescribed period of thirty days; and

(vi) despite receipt of the notice, the accused failed to make payment of the cheque amount within fifteen days.

9. Sections 118(a) and 139 of the Negotiable Instruments Act incorporate statutory presumptions in favour of the holder of the cheque. Once the execution of the cheque is admitted or proved, the Court shall presume that the cheque was issued for consideration and in discharge of a legally enforceable debt or liability unless the contrary is established. However, the presumptions are rebuttable. The presumption under Section 139 extends to the existence of a legally enforceable debt. At the same time, the accused can rebut the presumption by raising a probable defence.

10. It is a settled law that the burden upon the accused is not as heavy as that of the complainant. The accused is only required to establish a probable defence on the touchstone of preponderance of probabilities. Such defence can be established either by leading independent evidence or from the material produced by the complainant and the admissions elicited during cross-examination. Once the accused succeeds in raising a probable defence, the burden shifts back upon the complainant to establish the legally enforceable debt by cogent evidence.

11. The evidence on record is required to be appreciated in view of the aforesaid legal principles.

12. The complainant had initially verified the complaint through its then Branch Manager Shri Subhash Meshram. Thereafter, the complainant filed the affidavit in lieu of examination-in-chief of CW-1 Nilesh Kalbande, who had subsequently taken charge as Branch Manager. However, owing to his transfer, the complainant examined CW-2 Satish Darokar at Exh.39. CW-2 adopted the contents of the complaint and reiterated the case of the complainant in his examination-in-chief.

13. In support of the complaint, CW-2 proved the authority letter authorising him to prosecute the complaint on behalf of the complainant Bank at Exh.42. He further proved the original cheque bearing No.004948 dated 29.04.2022 for Rs.3,00,000/- at Exh.44, the cheque return memo dated 20.05.2022 showing dishonour of the cheque for the reason "Funds Insufficient" at Exh.45, the statutory demand notice dated 24.05.2022 at Exh.46, the postal receipt at Exh.47 and the postal acknowledgment at Exh.48. He also proved the statement of the loan account of the accused along with the certificate issued under the provisions of the Bankers' Books Evidence Act signed by the then Branch Manager, which is marked at Exh.49 by identifying the signature on it.

14. From the documentary evidence produced by the complainant, it is evident that the cheque belongs to the account of the accused and that the same was dishonoured for insufficiency of funds. The evidence further discloses that the statutory demand notice was issued within the prescribed period and was served upon the accused. These facts are not seriously disputed. Therefore, the real controversy does not revolve around the execution of the cheque, its dishonour or the issuance of statutory notice. The principal question is whether the cheque was issued towards discharge of a legally enforceable debt or liability on 29.04.2022.

15. The defence of the accused is specific. According to him, while applying for a loan in the year 2014, he had handed over five signed cheques to the complainant Bank. As the loan was not sanctioned, he demanded return of the cheques. Four cheques were returned whereas he was informed that one cheque had already been destroyed. According to the accused, the complainant subsequently misused the said cheque and instituted the present complaint. Though the accused has not entered the witness box, the law does not insist upon such course. If the defence appears probable from the complainant's own evidence, the statutory presumptions stand rebutted.

16. The accused has consistently took the defence that he had not obtained any loan from the complainant. In view of such defence, a careful reading of the cross-examination of CW-2 assumes considerable importance. CW-2 candidly admitted that he had no personal knowledge regarding the original loan transaction. He was not the officer who sanctioned the loan, nor was he associated with its disbursement. His evidence is entirely based upon the record maintained by the Bank. Though the complainant is entitled to examine an authorised representative, such witness cannot depose regarding facts which are beyond his personal knowledge unless the contemporary record satisfactorily establishes the transaction.

17. The complainant has principally relied upon the statement of account produced at Exh.49. The said document is accompanied by a certificate under the Bankers' Books Evidence Act and is therefore admissible in evidence. Nevertheless, admissibility of a statement of account does not by itself establish the circumstances in which the cheque came to be issued. The entries in the account books are relevant, but they cannot substitute proof of the foundational facts when those facts are specifically disputed.

18. Another circumstance creates serious doubt about the complainant's version. The statement of account at Exh.49 shows that as on 31.03.2022, the outstanding liability of the accused was Rs.3,12,749/-. However, the cheque relied upon by the complainant is only for Rs.3,00,000/. The complainant has not offered any explanation whatsoever as to why the accused would issue a cheque for an amount lesser than the outstanding liability reflected in its own books of account. There is neither any pleading nor evidence that the cheque represented part payment or that any settlement had taken place between the parties. Significantly, according to the complainant itself, the original loan amount sanctioned was also Rs.3,00,000/-. This unexplained discrepancy lends considerable support to the defence that the cheque was obtained at the inception of the transaction and not towards discharge of the outstanding liability existing on the date of its presentation.

19. The omission on the part of the complainant to produce the loan application, proposal papers, sanction order or any contemporaneous record evidencing approval and disbursement of the loan is of equal significance. These documents constitute the very foundation of the transaction. When the accused has specifically disputed the genesis of the cheque and has pleaded misuse of a security cheque, production of these primary documents became necessary. The complainant has offered no satisfactory explanation for withholding the same.

20. The authority of CW-2 to depose on behalf of the complainant also does not inspire confidence. During cross-examination, CW-2 admitted that the resolution of the Bank requires approval by majority. He further admitted that the relevant resolution does not bear the signatures of the proposer and seconder. He also admitted that the authority letter relied upon by him does not bear the signature of the President of the Bank. Though every irregularity in authorisation may not vitiate the complaint, these admissions assume significance because CW-2 admittedly lacks personal knowledge of the transaction. Consequently, the evidentiary value of his testimony stands considerably weakened.

21. CW-2 further admitted that the complainant Bank maintains an inward and outward register regarding receipt of cheques from borrowers. Such register would have been the best contemporary evidence to establish when and under what circumstances the cheque in question was received by the complainant. Despite admitting the existence of such record, the complainant failed to produce the same before the Court. No explanation is forthcoming for its non-production. In such circumstances, an adverse inference under Section 114 illustration (g) of the Indian Evidence Act deserves to be drawn against the complainant.

22. The cumulative effect of the aforesaid circumstances cannot be ignored. The lack of personal knowledge of CW-2, the unexplained discrepancy between the cheque amount and the outstanding liability reflected in Exh.49, the non-production of the loan application and sanction documents, the doubtful authority of CW-2 and the withholding of the inward and outward register create a probable defence in favour of the accused. As discussed above, it is a settled principle that the accused is not required to conclusively prove his defence. It is sufficient if the material on record renders the complainant's case reasonably improbable. The evidence on record satisfies that test.

23. It is worth to mention the ruling of the Hon’ble Supreme Court in the case of ***John K. Abraham v. Simon C. Abraham,*** (2014) 2 SCC 236, that

> *“9. ...In order to draw the presumption under Section 118 read along with 139 of the Negotiable Instruments Act, the burden was heavily upon the complainant to have shown that he had required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant.”*

24. Therefore, in view of ratio laid down by Hon’ble Apex Court in a case of ***John*** (supra), where the complainant fails to establish the foundational facts relating to the transaction, the statutory presumption cannot, by itself, sustain a conviction. Once the accused rebuts the statutory presumption by raising a probable defence, the complainant must establish the existence of the legally enforceable debt by independent and reliable evidence.

25. Applying the settled principles discussed above to the facts of the present case, the accused has succeeded in rebutting the statutory presumptions available under Sections 118(a) and 139 of the Negotiable Instruments Act. Thereafter, the burden shifted back upon the complainant to establish affirmatively that the cheque was issued towards discharge of a legally enforceable debt. Except relying upon the statement of account and the statutory presumption, the complainant has failed to produce convincing evidence to establish the circumstances under which the cheque came to be issued. The material omissions and discrepancies noticed hereinabove remain unexplained. Consequently, it cannot be held that the complainant has proved beyond reasonable doubt that the cheque in question was issued towards discharge of a legally enforceable debt or liability. Accordingly, I answer **Point No.1 in the negative.**

As to Point No.2

26. The complainant has proved the dishonour of the cheque and issuance of statutory notice. However, these facts alone do not complete the offence under Section 138 of the Negotiable Instruments Act. The existence of a legally enforceable debt is the very foundation of the offence. Since as already held while deciding Point No.1 that the complainant has failed to establish the existence of such debt after the statutory presumptions stood rebutted, the subsequent dishonour of the cheque and issuance of notice do not attract penal liability under Section 138 of the Act.

27. Accordingly, the complainant has failed to prove all the essential ingredients constituting the offence punishable under Section 138 of the Negotiable Instruments Act beyond reasonable doubt. Hence, I answer **Point No.2 in the negative.**

<u>As to Point No. 3 :</u>

28. In view of reasons stated above, Point No. 1 and 2 are answered in the negative. Therefore, the accused deserves to be acquitted of the offence under Section 138 of Negotiable Instruments Act. The accused is required to furnish surety to appear before the Appellate Court for the compliance of Section 437-A of Code of Criminal Procedure. Accordingly, in view of aforesaid reasons, the following Order is passed to answer Point No. 3 :

<u>O R D E R</u>

1. The accused **Sudesh Shankarro Sonone** (Properitor of Atharv Krushi Seva Kendra) is hereby acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 under Section 255(1) of the Code of Criminal Procedure, 1973.

2. The bail bonds of the accused shall stand cancelled.

3. The accused shall furnish P.R. Bond of Rs.15,000/- (Rupees Fifteen Thousand only) and S.B. in the like amount as per Section 437-A of the Code of Criminal Procedure, 1973, to appear before the Hon'ble 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.

Sd/-

Place : Chandur Bazar.
Date : 10.07.2026

(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	Nilesh Vasantrao Kalbende	Authorized Officer
CW-2	Satish Shamraoji Darokar	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	42/CW-2	Verified Authority Letter
02	44/CW-2	Original Cheque
03	45/CW-2	Original Return Memo
04	46/CW-2	Original Office Copy of the Notice
05	47/CW-2	Original Postal Slip
06	48/CW-2	Original Postal Acknowledgment
07	49/CW-2	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 : 10.07.2026