

MHDH050017302019



Presented On : 12/11/2019
Registered On : 12/11/2019
Decided On : 09/03/2026
Duration : 06 Yr. 03 M. 27 D.

<u>IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, (COURT NO.2) SAKRI, DIST. - DHULE.</u> (Presided over by : Milind R. Gadhave) (Delivered on : 09th March, 2026) <u>Sum. Cri. Case No. 599/2019</u> <u>Exh. :-93</u> (CNR No. MHDH05-001730-2019)	
Complainant:	Shri. Madhukar Namdeo Gharte, Age - 60 years, Occu.:- Agriculturist, R/o., Samode, Tal. - Sakri, Dist.- Dhule.
Represented by:	Shri. R. A. Patil.
Accused:	Shri. Ananda Shankar Suryawanshi, Age - Adult, Occu.:- Service, R/o., Pimpalgaon Bu., Wadpada (Deolipada), Tal. - Sakri, Dist.- Dhule.
Represented by:	Shri. P. D. Deore
Date of Offence	31/10/2019
Date of Presentation of Complaint	12/11/2019
Date of Framing Particulars	10/01/2024
Date of commencement of evidence	21/02/2024
Date on which judgment is reserved	21/02/2026
Date of Judgment	09/03/2026
Date of Sentencing Order, if any	NIL

Details of Accused

Rank of accused	Name of the accused	Date of Arrest	Date of release	Offences charged with	Whether Acquitted or Convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428 Cr.P.c
	Shri. Ananda Shankar Suryawan shi,	Not Applicable	26/07/2023	138 of Negotiable Instrument Act	Acquitted	NIL	NIL

J U D G M E N T

(Delivered on : 09th March, 2026)

The accused is facing trial for the offence punishable under section 138 of Negotiable Instruments Act, 1881. (Hereinafter for the sake of brevity referred as "N. I. Act")

The case of the complainant in brief is as under :

02] The complainant and the accused were friends. The accused was in need of Rs. 1,00,000/- (One Lakh only) for his family arrangements. He approached the complainant. The complainant has advanced the amount of Rs. 1,00,000/- (One Lakh only) to the accused as hand loan without interest. It was agreed between them that accused will repay the amount within one month. After the lapse of one month the complainant demanded Rs. 1,00,000/- (One Lakh only) from the accused. The accused in discharge of said liability issued the cheque drawn on State Bank of India, Branch Pimpalner bearing No. 866209 dated 01/08/2019 for sum of Rs. 1,00,000/- (One Lakh only) in favour of complainant.

03] Thereafter, complainant deposited the said cheque in his bank for encashment. However, the cheque was dishonored and returned to complainant unpaid with a bank memo dated 04/09/2019 for the reason 'Funds Insufficient'. On 03/10/2019 the complainant issued statutory

demand notice by R.P.A.D. calling upon accused to pay amount due under the subject cheque within 15 days. However, despite receipt of notice dated 16/10/2019, the accused did not comply the demand notice. Hence, the complainant filed the present complaint under section 138 of N.I. Act.

04] The cognizance was taken. After appearance of accused, particulars of the offence were explained to him vide Exh.32 to which he pleaded not guilty and claimed to be tried. The complainant examined himself at Exh.34 and filed relevant documents. Further, complainant has examined another 6 witnesses namely Nana Ramdas Naware as (CW-1) at (Exh.50), Ravindra Ramesh Pankhewal as (CW-2) at (Exh.51), Ashok Chaitram Sonawane as (CW-3) at (Exh.52), Shriram Punju Gangurde as (CW-5) at (Exh.53), Raosaheb Sitaram Gharte as (CW-6) at (Exh.61) and Krushna Eknath Gharate as (CW-7) at (Exh.62). After the closure of complainant's evidence, the statement of accused under section 313 of Cr.P.C. was recorded vide Exh.73. The accused denied the incriminating evidence. His defence is that false complaint is filed against him.

05] Heard Shri. R. A. Patil learned advocate for the complainant and Shri. P. D. Deore learned advocate for the accused at length.

06] In view of submission of both advocates and upon perusal of oral and documentary evidence available on record, following point arises for determination. I have recorded my findings against each point for the reason stated below.

Sr. No.	Points	Findings
1	Whether the complainant proves that the accused issued cheque bearing No. 866209 of Rs. 1,00,000/- (One Lakh only) of State Bank of India, Branch – Pimpalner, dated 01/08/2019, towards the discharge of legally enforceable debt or liability?	No

2	Whether the complainant proves that the said cheque was dishonored?	No
3	Whether complainant proves that he issued notice to the accused within limitation?	No
4	Whether complainant proves that despite its receipt the accused failed to repay to the cheque amount to him?	No
5	Whether the complaint is within limitation?	Yes
6	What Order?	... As per final order

REASONS

Ingredients Of Offence:

07] Before entering into the marshaling of evidence, it will be appropriate to sort out the ingredients of offence punishable under section 138 of N.I. Act. In order to prove such charge, complainant must establish that,

- (i)** Cheque had been issued by accused.
- (ii)** Said cheque had been issued towards payment of an amount of money for discharge, in whole or any part, of any debt or any other legal liability of accused.
- (iii)** Cheque was presented to 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.
- (iv)** Cheque had been returned unpaid by the bank.
- (v)** Reason for non-payment of cheque was due to default on the part of accused
- (vi)** Payee or the holder in due course of the cheque makes a demand for payment of the amount of money under the cheque by giving a notice in writing to the drawer of the cheque within 30 days of receiving the information from the Bank regarding its dishonour.

- (vii) Drawer of cheque fails to make the payment of cheque amount within 15 days of receiving the said notice.

AS TO POINT NO. 1:-

08] In order to prove the case, the complainant has examined himself at Exh.34. The complainant deposed that he is having friendly relation with accused. The accused demanded the hand loan from him for family necessity. On his demand, he advanced Rs. 1,00,000/- to him and towards repayment the accused has issued a cheque of State Bank of India, Branch Pimpalner bearing No. 866209 dated 01/08/2019 for 1,00,000/-. He further deposed that he has presented the said cheque for encashment in his bank. But the same was returned to him on 04/09/2019 for reasons funds insufficient. Therefore, on 03.10.2019 he issued the notice to the accused and despite the receipt of notice accused on 16.10.2019 he failed to repay the amount. Thus, the evidence of the complainant is to be evaluated in the light of these points.

09] On this background, the defence taken by the accused is to be considered. The accused choose not to enter into the witness box. To rebut the presumption the accused relied upon the cross examination of the complainant.

10] Coming to the oral evidence, the complainant examined several witnesses to prove the transaction. The complainant examined CW-1 to CW-5, who are employees of the school institution of the accused. However, these witnesses did not support the case of the complainant. They specifically denied that any cheque was issued by the accused to the complainant in their presence. They also denied that the alleged transaction had taken place in the school premises. Thus, the material witnesses relied upon by the complainant in that regard have not supported his version.

11] The complainant has mainly relied upon Raosaheb (CW-6)

and Krushna (CW-7) to prove the alleged transaction. According to the complainant, the hand loan transaction had taken place in their presence. However, their evidence also suffers from material inconsistencies. The complainant through suggestions to (CW-1) to (CW-5) attempted to establish that the transaction had taken place in the school premises, whereas through Raosaheb (CW-6) and Krushna (CW-7) the complainant attempted to establish that the transaction had taken place at the house of the complainant. Thus, two different versions regarding the place of transaction are brought on record by the complainant himself. This inconsistency creates serious doubt regarding the complainant story.

12] Furthermore, in the complaint as well as in the affidavit of examination-in-chief of the complainant, there is no specific averment regarding when the accused demanded the amount, in whose presence the amount was paid and at what place the hand loan was given. The complainant has also not produced any documentary evidence to show his financial capacity or availability of Rs.1,00,000/- at the relevant time. The alleged transaction is stated to be a cash transaction and no independent documentary evidence such as bank withdrawal or any written document is produced.

13] Another significant circumstance appearing on record is that in Summary Criminal Case No.354/2019, the complainant in his cross-examination admitted that the accused had not issued any cheque after 10/06/2019. The cheque in the present case is dated 01/08/2019. This admission creates further doubt regarding the case of the complainant. It is true that once execution of cheque is admitted or proved, presumption under Section 118 and 139 of the Negotiable Instruments Act arises in favour of the complainant. However, such presumption is rebuttable and the accused can rebut it by raising a probable defence from the material available on record.

14] The complainant further relied upon documentary evidence such as cheque at Exh.37, bank return memo at Exh.38, postal receipt at Exh.39 and postal acknowledgment at Exh.40. At the outset, it is necessary to consider the documentary evidence relied upon by the complainant. The cheque produced at Exh.37 shows that it bears No.866209 dated 01/08/2019 for an amount of Rs.1,00,000/-. However, on careful perusal of the cheque it appears that there is a black mark/line over the signature of the accused. The complainant has not offered any satisfactory explanation regarding the said marking on the alleged signature of the accused. This circumstance creates doubt regarding the genuineness of the signature appearing on the cheque.

15] Further, the bank return memo at Exh.38 is relied upon by the complainant to show dishonour of the cheque. However, on perusal of the said memo it is seen that the cheque number, date of cheque and amount of cheque are not mentioned in the memo. Thus, the memo at Exh.38 does not specifically relate to the cheque at Exh.37. Therefore, the evidentiary value of the said memo also becomes doubtful.

16] The complainant has also relied upon postal receipt at Exh.39 and postal acknowledgment at Exh.40 to show service of statutory notice. However, the postal acknowledgment at Exh.40 bears a signature which appears different from the admitted signature of the accused appearing on the Vakalatnama. The complainant has not examined any postal authority to prove that the acknowledgment was signed by the accused. Moreover, it is also significant that the alleged demand notice itself is not produced on record nor proved. Thus, the complainant has failed to prove issuance and service of statutory demand notice in accordance with law.

17] In the present case, the complainant has failed to establish the foundational facts necessary to attract the presumption. The discrepancies

in documentary evidence, absence of demand notice on record, doubtful nature of bank memo, contradictions in oral evidence regarding place of transaction and lack of proof regarding advancement of hand loan create serious doubt regarding the existence of legally enforceable debt. The accused, through cross-examination of the complainant and other witnesses, has successfully brought on record circumstances which probabalize the defence that the alleged transaction is doubtful. Considering the entire evidence on record, the complainant has failed to prove that the cheque at Exh.37 was issued by the accused towards discharge of a legally enforceable debt or liability. **Hence, I answer to point number 1 in the negative.**

AS TO POINT NO.2 : (Dishonor of cheque)

18] The complainant has contended that the cheque bearing No.866209 dated 01/08/2019 drawn on State Bank of India, Pimpalner Branch for an amount of Rs.1,00,000/- was presented by him in his bank for encashment and the same came to be dishonoured for the reason “Funds Insufficient”. In order to establish this fact, the complainant has relied upon the bank return memo produced at Exh.38.

19] It is settled law that for establishing the offence under Section 138 of the Negotiable Instruments Act, the complainant must prove that the cheque issued by the accused was presented to the bank and the same was returned unpaid for the reasons mentioned under the Act. Ordinarily, the bank return memo issued by the bank serves as primary documentary evidence to establish the fact of dishonour.

20] In the present case, the complainant has relied upon the memo at Exh.38 which is alleged to have been issued by State Bank of India, Pimpalner Branch. However, upon careful scrutiny of the said memo it is seen that the cheque number, date of the cheque and the amount of the

cheque are not mentioned in the said memo. In absence of these essential particulars, it becomes difficult to connect the memo at Exh.38 with the cheque at Exh.37 relied upon by the complainant. The memo at Exh.38 merely mentions that the cheque has been returned for the reason “Funds Insufficient”, but since the memo does not specify the details of the cheque, the Court cannot conclusively determine that the memo pertains to the cheque bearing No.866209 dated 01/08/2019 produced at Exh.37.

21] It is argued by the learned advocate for the complainant that though memo Exh. 38 does not contain the particular about the cheque in question however the bank memo is prima-facie evidence of dishonour. It is further argued that therefore the burden is on the accused to prove the said fact by examining the bank official. On the other hand learned advocate for the accused argued that in order to considered the memo as prima-facie evidence it should bear the material particulars in respect of the cheque in question. The complainant has not prove the said memo even prima-facie as it does not mention the necessary particulars about the cheque.

22] In this regard, the reliance can be placed on the case of **Smt. Vandana Akhilesh Pandey V.S. Smt. Abhilasha Anil Pandey, Criminal Appeal No. 360/2017**, decided on 08/08/2018 wherein Hon’ble Bombay High Court dealt with the similar situation in which it held that “*when the complainant asserted that the cheque was returned or dishonoured it was for her to prove this basic facts. Section 164 of the N.I. Act provides that if the complainant places on record a slip or memo issued by the bank having official mark denoting that the cheque was dishonour the Court would presume the fact of dishonour. But when the memo produced in the present case by the appellant/complainant did not bear official mark of the bank. There was no document as contemplated under Section 146 of the N.I. Act to presume the fact of dishonour of cheque had been proved by the*

appellant/complainant. The burden continued to lie on the appellant/complainant to prove the basic fact of dishonour of cheque in the facts and circumstances of the present case.” The said ratio is completely applicable to case in hand as the complainant places on record memo which does not contains the necessary particulars to considered the dishonour. Therefore, the burden to prove the dishonour is lie on the complainant to prove the fact of dishonour.

23] Furthermore, the complainant has not examined any bank official from the concerned bank to prove that the cheque at Exh.37 was actually presented for encashment and that the same was returned unpaid for the reason mentioned in the memo. The complainant has also not produced any additional bank record or endorsement which could link the cheque at Exh.37 with the memo at Exh.38. Thus, the documentary evidence relied upon by the complainant does not satisfactorily establish the fact that the cheque in question was presented and dishonored by the bank.

24] It is true that in proceedings under Section 138 of the Negotiable Instruments Act, the complainant is required to prove dishonour of the cheque by producing the bank return memo. However, the memo must clearly correspond to the cheque in question. In the present case, due to absence of necessary particulars in the memo at Exh.38, such correspondence between the cheque and the memo is not established. Therefore, the evidence placed on record by the complainant is insufficient to prove beyond reasonable doubt that the cheque bearing No.866209 dated 01/08/2019 was dishonored by the bank. Hence, the complainant has failed to prove that the cheque in question was dishonoured. **Accordingly, Point No.2 is answered in the Negative.**

AS TO POINTS NO. 3 to 5 (Notice)

25] The learned advocate for the complainant submitted that the complainant has issued statutory demand notice to the accused within the prescribed period after dishonour of the cheque. It is argued that the postal receipt at Exh.39 clearly shows that the notice was sent on 03/10/2019 through Registered Post. According to him, the postal acknowledgment at Exh.40 shows that the article was delivered at the address of the accused. It is further argued that if the accused disputes the signature appearing on the acknowledgment, the accused ought to have examined the concerned postal authority or any other competent person to prove that the said signature does not belong to him. Therefore, the service of notice is duly established.

26] Per contra, the learned advocate for the accused submitted that the burden of proving issuance and service of statutory notice lies entirely upon the complainant. It is argued that merely producing a postal receipt and acknowledgment is not sufficient when the signature appearing on the acknowledgment is disputed. It is further argued that the complainant has not even produced or proved the statutory demand notice itself on record. According to him, when the complainant relies upon service of notice, it is his duty to prove the same by examining the concerned postal authority or by producing proper evidence and such burden cannot be shifted upon the accused.

27] In order to prove issuance of notice, the complainant has relied upon the postal receipt at Exh.39 which shows that an article was sent through Registered Post on 03/10/2019. The said receipt indicates that a postal article was dispatched to the address of the accused on the said date. However, it is important to note that the alleged statutory demand notice itself is not produced on record nor proved during the evidence of the complainant. The complainant has only produced the postal receipt showing

dispatch of an article. In absence of the notice itself on record, the Court is unable to ascertain the contents of the alleged notice or whether the said notice actually contained the statutory demand for payment of the cheque amount as contemplated under Section 138 of the Negotiable Instruments Act.

28] Further, the complainant has also relied upon the postal acknowledgment at Exh.40 in order to show that the said notice was served upon the accused. However, the signature appearing on the said acknowledgment appears different from the signature of the accused which is available on the Vakalatnama filed in the present proceedings. The complainant has not examined any postal authority to establish that the acknowledgment bears the signature of the accused or that the notice was in fact delivered to him.

29] It is also significant that since the notice itself is not produced and proved, the Court cannot determine whether the alleged notice was issued within the prescribed period after dishonour of the cheque and whether the notice contained the necessary demand as required by law. Thus, although the complainant has produced a postal receipt indicating dispatch of an article, the essential document i.e. the statutory demand notice is not placed on record and the service of the alleged notice is also not satisfactorily proved. In absence of proof of the statutory notice itself and its contents, the Court cannot safely conclude that the complainant issued a valid statutory demand notice within limitation as required under Section 138 of the Negotiable Instruments Act. Therefore, the complainant has failed to prove that he issued the statutory demand notice to the accused within the prescribed period. **Hence, Point No.3 is answered in the Negative.**

30] The learned advocate for the complainant submitted that after dishonour of the cheque the complainant issued statutory demand notice to

the accused demanding payment of the cheque amount. It is argued that despite receipt of the notice the accused failed to make payment of the cheque amount within the stipulated period and therefore the accused has committed an offence under Section 138 of the Negotiable Instruments Act.

31] Per contra, the learned advocate for the accused submitted that the complainant has failed to prove issuance and service of statutory notice upon the accused. It is argued that the demand notice itself is not produced on record and the signature appearing on the postal acknowledgment is disputed. Therefore, according to the learned advocate for the accused, the question of failure of the accused to repay the amount after receipt of notice does not arise.

32] In the present case, the complainant has relied upon the postal receipt at Exh.39 and postal acknowledgment at Exh.40 to establish service of notice. However, as discussed while dealing with Point No.3, the complainant has not produced or proved the statutory demand notice itself on record. Moreover, the signature appearing on the postal acknowledgment at Exh.40 appears different from the admitted signature of the accused appearing on the Vakalatnama and the complainant has not examined any postal authority or any other competent witness to establish that the notice was actually received by the accused. Thus, the complainant has failed to satisfactorily prove that the statutory notice was served upon the accused. When the receipt of notice itself is not proved, the question of failure of the accused to make payment after receipt of such notice cannot be presumed. Therefore, the complainant has failed to establish that despite receipt of notice the accused did not repay the cheque amount within the statutory period. **Hence, Point No.4 is answered in the Negative.**

33] The learned advocate for the complainant further submitted that the present complaint has been filed within the period of limitation as

prescribed under Section 142 of the Negotiable Instruments Act. It is submitted that the cheque was dishonoured on 04/09/2019 and thereafter the complainant issued notice on 03/10/2019. According to him, the present complaint came to be filed on 12/11/2019 and therefore the complaint is within limitation.

34] Per contra, the learned advocate for the accused submitted that the complainant has failed to prove the statutory notice and its service upon the accused. It is argued that the demand notice itself is not produced on record and therefore the complainant has failed to establish the date of service of notice and the cause of action for filing the complaint. Hence, according to him, the limitation aspect also becomes doubtful.

35] The record shows that the cheque in question was allegedly dishonoured on 04/09/2019 as per the bank memo at Exh.38. The complainant has produced postal receipt at Exh.39 which indicates that an article was dispatched through Registered Post on 03/10/2019. The present complaint came to be filed before the Court on 12/11/2019. Thus, from the available record it appears that the complaint has been filed within the period prescribed under Section 142 of the Negotiable Instruments Act. However, it is necessary to clarify that though the complaint appears to be filed within limitation on the basis of the dates mentioned in the record, the complainant has failed to prove the statutory demand notice and its service upon the accused as discussed while deciding Points No.3 and 4. Nevertheless, for the limited purpose of deciding whether the complaint is filed within the prescribed time, the dates on record indicate that the complaint is within limitation. Therefore, the complaint cannot be said to be barred by limitation. Hence, Point No.5 is answered in the Affirmative. Hence, **I answer points no. 3 and 4 in negative and point no.5 in the affirmative.**

AS TO POINT NO. 6 :

36] In view of the findings recorded on the above points, particularly Points No.1 to 4, it is evident that the complainant has failed to prove the essential ingredients required to constitute the offence punishable under Section 138 of the Negotiable Instruments Act. The complainant has failed to establish that the cheque in question was issued by the accused towards discharge of a legally enforceable debt or liability. The complainant has also failed to satisfactorily prove dishonour of the cheque and issuance and service of statutory demand notice upon the accused.

37] The evidence on record suffers from material inconsistencies and deficiencies. The documentary evidence relied upon by the complainant does not conclusively establish the case of the complainant and the oral evidence of the witnesses also does not inspire confidence. In criminal jurisprudence, the burden lies upon the complainant to prove his case beyond reasonable doubt. In the present case, the complainant has failed to discharge the said burden.

38] Though the complaint appears to be filed within limitation, the complainant has not proved the foundational facts necessary for fastening criminal liability upon the accused under Section 138 of the Negotiable Instruments Act. Therefore, the accused is entitled to the benefit of doubt. Hence, I proceed to pass the following order.

::O R D E R::

1.	The accused Ananda Shankar Suryawanshi is hereby acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, vide Section 255(1) of the Code of Criminal Procedure, 1973.
2.	The accused is set at liberty.

3.	The accused shall furnish P.B. and S.B. of Rs. 15,000/-(Fifteen Thousand Only) vide section 437(A) of Code of Criminal Procedure, 1973 and it shall be remain in force for six months.
4.	Judgment pronounced in the open court.

Sakri.
Dt. 09/03/2026.

SD/-
(Milind R. Gadhave)
Judicial Magistrate F.C.,
(Court No.2), Sakri.

: **PART C** :**A. Complainant's Witnesses:**

Rank	Name	Nature of Evidence	Exhibit
CW- 1.	Madhukar Namdeo Gharate	Complainant	34
CW- 2.	Nana Ramdas Naware	Witness	50
CW- 3.	Ravindra Ramesh Pankhewale	Witness	51
CW- 4.	Ashok Chaitram Sonawane	Witness	52
CW- 5.	Shriram Punju Gangurde	Witness	53
CW- 6.	Raosaheb Sitaram Gharate	Witness	61
CW- 7.	Krushana Eknath Gharate	Witness	62

B. Defence Witnesses, if any:

Rank	Name	Nature of Evidence
-	Nil	Nil

C. Court Witnesses, if any: No.: **LIST OF EXHIBITS:****A. Complainant:**

Sr. NO.	EXH. NO.	DESCRIPTION
1.	Exh 37/CW-1	Cheque bearing No. 866209
2.	Exh 38/CW- 1	Returned Memo
3.	Exh 39/CW -1	Acknowledgment receipt
4.	Exh 40/CW -1	Postal Receipt
5.	Exh 43/CW - 1	Certified copy of chief examination and cross-examination of complainant in S.T.C. No. 354/2019

B. Defence Exhibits : Nil.

C. Court Exhibits :

S. N.	EXH. NO.	DESCRIPTION
1	Exh.32	Plea

D. Material objects: Nil.

SD/-

Sakri.
Dt. 09/03/2026.

(Milind R. Gadhave)
Judicial Magistrate F.C.,
(Court No.2), Sakri

CERTIFICATE

I certify that the contents of this PDF File are word to word as per Original Order.

Name of Stenographer : H. B. Pile

Name of the Court : J.M.F.C. (Court No.2) Sakri,

Presiding officer signed on judgment : 13/03/2026

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SD/-
Stenographer(Grade-III)