

CNR: MHGO040004632019



Presented On : 13/09/2019
Registered On: 13/09/2019
Decided On : 02/05/2026
Duration : 19 07 06

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**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
COURT, AT AMGAON**

(Presided over by Atul R. Joshi)

S. Cri. Case No. 463/2019

Exhibit No.50

Suman Gramin Biger Sheti Sahakari Patsanstha,
Through Power of Attorney,
Nandkishor Kusoba Walthare,
Age-32, Occ-Manager
R/O-Bodalbodi,
Tal-Salekasa, Dist.-Gondia

...COMPLAINANT

-Versus-

Kastorchand Nama Jog,
Age-35, Occ-Private Work
R/O-Zaliya.
Tal-Salekasa, Dist.-Gondia

..ACCUSED

.....

APPEARANCES:

Shri. R.D. Lilhare, learned Advocate for the complainant.

Shri. M. H. Gupta, learned Advocate for the accused.

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J U D G M E N T

The accused is tried for the offences punishable under section 138 of the Negotiable Instrument Act, 1881.

2. **The case of the complainant in brief is as follows:**

That on 25/10/2016 accused has approached the complainant bank for loan. The complainant has given loan of Rs.60,000 (Rupees Sixty Thousand Only) to the accused with 16% rate of interest. The accused did not return the money within time. The complainant made several requests to the accused to return the money. But all in vain. On repeated demands of the complainant, the accused himself issued a cheque on 09.07.2019 bearing No. 660068 drawn on Bank of India, branch Amgaon of amount Rs.75,734 (Rupees Seventy-Five Thousand Seven Hundred Thirty-Five Only). Accused assured that complainant will get the amount by depositing the said cheque

3. Accordingly, on 10.07.2019 complainant deposited the said cheque for encashment in Canera Bank, branch Amgaon. But the said cheque was returned to the complainant on 11.07.2019 with a memo stating the reason for dishonor as 'funds insufficient'.

4. Thereafter, complainant issued a legal notice to accused through its advocate on 03.08.2019 by RPAD demanding therein to deposit the cheque amount within 15 days. Accused refused to accept the said notice. The accused has neither replied to the notice nor repaid the amount of cheque within statutory period. Hence, this complaint.

5. Process came to be issued against the accused for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (hereinafter

called the 'NI Act'). Plea of accused was recorded below **Exh.27** after explaining the particulars of offence, to which accused pleaded not guilty and claimed trial. His defense is of total denial and that false case has been filed. The examination of accused under section 313(1)(b) of the Code of Criminal Procedure was recorded at Exh. 49.

6. Following points arise for my determination and I recorded my findings thereon for the reasons stated as under:

SR. No.	POINTS FOR DETERMINATION	FINDINGS
1.	Does the complainant prove that the on 09.07.2019 accused has issued cheque bearing No.660068 drawn on Bank of India, branch Amgaon of amount Rs.75734 in his favor for the discharge of any debt or legally enforceable liability?	Not proved
2.	Does complainant prove that the accused committed an offence punishable under Section 138 of N.I. Act?	Not proved
3.	What order?	Acquitted

7. The complainant has examined himself and closed the evidence vide order below Exh.o1.

REASONS

Point No. 1

8. Before discussing the evidence, I consider it necessary to mention here certain provisions of law relevant to the present matter. That, there are certain presumptions in N.I. Act in favor of the complainant.

09. The presumption under Section 139 of the NI Act is as under;

139. Presumption in favor of holder. - *it shall be presumed, unless the contrary is proved, that the holder of a cheque, received the cheque for discharge, in whole or in part, of any debt or other liability.*

10. There is another presumption under Section 118(a) of the NI Act which reads as under:

118. Presumptions as to negotiable instrument. - *Until the contrary is proved, the following presumption shall be made: -*

(a) of consideration. - *that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration.*

11. Needless to mention here that these presumptions are rebuttable. Now, it is necessary here to see whether in the present case, the accused has rebutted the presumptions up to the requisite degree i.e. the standard of proof for rebuttal is that of 'preponderance of probabilities', in view of settled position of law.

12. As both points are interlinked with each other, hence, to avoid repetition, I have taken them for discussion together. In order to bring guilt home, complainant has examined himself at Exh-29 and produced the following documentary evidence on record viz.

1. Cheque bearing No. 660068 at Exh-32
2. Return memo Exh-34
3. Deposit Slip Exh.33
4. Legal Notice Exh-36
5. Postal receipt Exh-35
6. Postal acknowledgement Exh-37
7. Verified Copy of bank resolution Exh.40

8. Verified Copy of Special power of attorney Exh.38

13. The complainant, in his evidence affidavit, has reiterated the contents of his complaint verbatim and brought the aforesaid documents on record. During his cross examination, complainant admitted that the bank has given him incorrect/defective power of attorney and he has no power to contest the case. The resolution giving him authority to prosecute the accused was passed after the meeting was over.

14. Heard both the sides. The contention of the accused is that, the case is pre mature and the issue process itself was illegal. The complainant did not have authority to file complaint. There is no power of attorney in his favor from the complainant bank. The advocate for the complainant argued that there is resolution of the bank Exh. 40 authorizing the complainant manager to prosecute the case. Perused the power of attorney Exh 38 and resolution Exh 40, it has authorized the complainant to prosecute the complainant. Although there are specific power of attorney and the resolution on record but the complainant himself has admitted in his cross examination that the said authority is given without due process of meeting. It is sufficient to hold that the complainant is not authorized person to proceed with the case. This is a technical point of the case. The accused has strongly objected the authority of the complainant.

15. It is needless to mention that the offence of cheque dishonor is technical one and the complainant has to comply with all the essential ingredients of section 138 of the Act.

16. Perused the entire record. The complainant/authorized person must be legally authorized by the bank to prosecute the accused. In the present case the complainant Nandakishor (CW-01) Exh.29 himself admitted that the

resolution must be passed in the monthly meeting of the bank. The resolution passed after the board meeting is illegal. The power of attorney given in his favor is incorrect. In such circumstances the case of the complainant is without merit and incomplete.

17. The offence is punishable with imprisonment and fine. The life and liberty of the accused is at stake. The accused is prosecuted for the dishonor of Cheque Exh.32. The complainant admitted in his cross examination that the accused was having fixed deposit of Rs.20,000/- in his bank. He further admitted that the bank has withdrawn the said fixed deposit and transferred the amount in loan account as loan payment. Therefore, it is not proper to hold that on the date of issuance of cheque i.e. 09.07.2019 bearing No. 660068 drawn on Bank of India, branch Amgaon of amount Rs.75,734 (Rupees Seventy-Five Thousand Seven Hundred Thirty-Five Only) was legally recoverable from the accused. The actual liability might be different. On this aspect as well, the accused is not liable for the dishonor of the amount mentioned in the disputed cheque.

18. The complainant has not proved his case on the basis of oral and documentary evidence. The failure by the complainant to comply with mandatory requirement of section 138 will lead to acquittal of accused. As per law laid down by the Honorable High courts in various landmark cases, the issue process ought not to have been issued. Howsoever, the accused is tried thereafter and hence the benefit of legal lacune must be given to the accused.

19. In the light of the legal position, legal requirements and factual aspects of the case, the complainant has failed to prove that the disputed cheque was issued by the accused for the amount due against him and the same was dishonored. The complainant has also failed to prove the legal debt against

accused. The complainant has admittedly lacked the authority to prosecute the accused. Hence, I answer the point no.1 and 2 in the negative and record my finding thereon as 'Not proved'.

Point No. 3

20. Considering the matter before the court, the complainant has failed to satisfy all the essential ingredients of the charged offence beyond reasonable doubt. Hence, the accused deserves the acquittal. Therefore, I record my finding on point no.3 as 'acquitted' and pass the following order: -

ORDER

1. Accused **Kastorchand Nama Jog** is acquitted of the offence punishable under section 138 of the Negotiable Instruments Act vide section 255(1) of the BNSS.
2. The bail bonds of the accused are cancelled. He is set at liberty.
3. Accused to furnish personal and surety bond of Rs.15,000/- towards the compliance of section 437-A.

(Pronounced in open court)

Date: 02/05/2026

(Atul R. Joshi)
JMFC, Amgaon.