

MHJN030007152012



Presented on : 12 03 2012

Registered on : 12 03 2012

Decided on : 21 05 2026

Y M D

Duration : 14 02 09

FORM NO. XXXII

Part- 'A'

(Para-44(i) of Chapter VI of Criminal Manual)

IN THE COURT OF JOINT JUDICIAL MAGISTRATE FIRST CLASS, JALNA

(Presided over by Supriya N. Pund)

Summary Criminal Case No.283/2012

Exh. No.77

COMPLAINANT	Shriram City Union Finance Ltd., A Company Incorporated Under Companies Act Having Their Registered Office At - 123, Angappa Naichen Street, Chennai – 600001 And, Having Their Administrative Office At 202/203, Monarch Plaza, 02 nd Floor, Sector 11, CBD, Belapur, Navi Mumbai – 400614 and, Having One of Their Branches At Sahil Plaza, Ground Floor, Station Road, Near Swami Garage, Jana. machindrabhojane@rediffmail.com Through Mr. Machindra Kaduba Bhojane, Aged : 31 Yrs., Occ. : Service As legal Officer, Posted At Complainants Aurangabad Branch.
REPRESENTED BY	Adv. Shri. P. O. Khedwal.
	<u>VERSUS</u>
ACCUSED	Mr. Rajesh Shamrao Kadam, Age: Major yrs., Occ.: Business, R/o A/P. Devmurti, Tq. Dist. Jalna, Jalna H.O., Jalna.

REPRESENTED BY	Adv. Shri. B. B. Veer.
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Part- 'B'**(Para-44(ii) of Chapter VI of Criminal Manual)**

DATE OF OFFENCE	15.02.2012
DATE OF FIR	--
DATE OF COMPLAINT	12.03.2012
DATE OF PLEA	28.06.2013
DATE OF COMMENCEMENT OF EVIDENCE	28.06.2013
DATE ON WHICH JUDGMENT IS RESERVED	----
DATE OF JUDGMENT	21.05.2026
DATE OF SENTENCING ORDER, IF ANY	21.05.2026

Accused Details

Rank of the accused	Name of the 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 Section 428, Cr.P.C.
	Rajesh Shamrao Kadam	--	28.06.2013	Section 138 of the N.I. Act, 1881.	Convicted	As per final order.	----

Part 'C'**[Para 44(iii) of Chapter VI of Criminal Manual]****LIST OF COMPLAINANT AND ACCUSED WITNESSES****A. Complainant:**

<u>RANK</u>	<u>NAME</u>	<u>NATURE OF EVIDENCE</u>
CW1 – Exh.38	Ajay Shankarrao Madre	Witness

B. Defence Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
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C. Court Witnesses, if any:

RANK	NAME	NATURE OF EVIDENCE
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LIST OF COMPLAINANT / DEFENCE / COURT EXHIBITS**A. Complainant:**

Sr. No.	Exhibit No.	Description
1.	Exh.70	Original Cheque bearing No.1178813
2.	Exh.71	Return Memo
3.	Exh.72	Notice dated 07.01.2012
4.	Exh.73	Postal receipt
5.	Exh.74	General Power of Attorney

B. Accused:

Sr. No.	Exhibit No.	Description
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C. Court Exhibits:

Sr. No.	Exhibit No.	Description
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D. Material Objects:

Sr. No.	Material Object Number	Description
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JUDGMENT

(Delivered on 21.05.2026)

Accused stands tried for an offence punishable under Sections 138 of the Negotiable Instruments Act, (in short N.I. Act).

Complainant's case in brief :-

2] Complainant is a company registered under the Companies Act, 1956 (hereinafter referred as “Complainant Company”). Complainant company is engaged in the business of advancing loans finances and providing financial accommodation of like nature. Complainant Company having it’s various branches. The Complainant Company is represented by General Power of Attorney namely Mr. Ajay Shankarrao Madre.

3] Complainant Company contented that, accused is a customer and he approached for availing consumer loan for purpose of consumer article “Bajaj RE2S”. The loan amount Rs.75,000/- was sanctioned upon the terms and conditions of the Complainant Company. Accused undertake to repay the loan by executing necessary documents. An agreement to that effect was executed on 31.03.2010.

4] It is further contented that, it is towards repayment of loan amount accused issued cheque bearing No.1178813, dated 07.12.2011 amount Rs.3,185/- (hereinafter referred as disputed cheque) drawn on Priyadarshani Nagari Sahkari Bank Ltd. Branch-

Jalna. Complainant Company deposited said cheque with its Banker. The cheque was returned unpaid for the reasons "Funds insufficient". Complainant issued demand notice dated 07.01.2012. The complainant sent notice for the repayment of the cheque amount on correct address of the accused on 17.01.2012. The accused received the notice on 31.01.2012. Despite of the legal notice the accused failed to repay the cheque amount within a statutory period. Hence, this complaint.

5] Plea (Exh.22) has been recorded against the accused for an offence punishable under Section 138 of the Negotiable Instrument Act. Accused pleaded not guilty and claimed to be tried. Complainant has examined himself. Accused failed to cross-examine the complainant witness. Accused has neither cross-examined the complainant witness nor appeared for Statement under section 313 of the Code of Criminal Procedure (in short Cr. P.C.). Consequently, the Statement under section 313 of the Cr. P.C. has been dispensed with by order dated 16.03.2026 vide Exh.75 along with Exh.1.

6] Heard Mr. P. O. Khedwal, the learned advocate for Complainant Company. Accused and learned advocate for accused, failed to appear and advance argument.

7] After hearing and after considering oral and documentary evidence on record, points that arise for my determination are given below and I have recorded my findings against each of them for the reasons discussed :

Sr. No.	POINTS	FINDINGS
1.	Whether disputed cheque was issued by the accused in order to discharge his legal liability as alleged by complainant ?	Yes.
2.	Whether disputed cheque was dishonoured for the reasons "Funds Insufficient" as alleged ?	Yes.
3.	Whether statutory notice served upon accused ?	Yes.
4.	Whether accused failed to pay cheque amount within stipulated period, inspite of receipt of notice ?	Yes.
5.	Whether the accused has committed an offence punishable under section 138 of Negotiable Instrument Act ?	Yes.
6.	What order ?	Accused is convicted.

REASONS

8] To constitute an offence under section 138 of the N. I. Act, complainant has to prove that accused drawn a cheque on an account maintained by him in a Bank for payment of certain amount of money, of which he is liable to pay. Explanation to section 138 of N. I. Act provides that, "debt or other liability" means legally enforceable debt or other liability. It has to be seen whether complainant would establish the ingredients of sections 118 and 139 of the N.I. Act, so as to justify drawing of the presumptions. Similarly, whether the accused is able to displace such presumption and establish a probable defence

whereby the onus would shift again to the complainant.

AS TO POINT Nos.1 to 5 :-

9] All these points are taken together, as the complainant has adduced similar evidence in that regard.

10] To prove its case, Complainant Company adduced evidence through its General Power of Attorney namely Mr. Ajay Shankarrao Madre. The said witness adduced evidence on affidavit (Exh.38) and reiterated the contents of the complaint.

11] Complainant Company relied upon General Power of Attorney (Exh.74) to show the authorization of the witness to proceed with the matter. Further, Complainant Company relied upon disputed cheque (Exh.70), cheque return Memo (Exh.71), Legal Notice (Exh.72), Postal Receipt (Exh.73).

12] The evidence so adduced by Complainant Company remained unchallenged. Accused though appeared, failed to proceed with cross-examination of witness. Accused failed to appear for the Statement under section 313 of Cr.P.C.. Thus, Statement under section 313 of Cr. P.C. is dispensed with by order dated 16.03.2026 vide Exh.75 and Exh.01. As such, accused failed to rebut the presumption. Accused also failed to raise probable defence to infer that, existence of liability is highly improbable.

13] It is held in **Rohitbhai Jivanlal Patel vs State of Gujrat reported in 2019 SCC Online SC 389**, that presumption mandated by

section 139 does indeed include existence of legally enforceable debt or liability. It is open to accused to raise defence wherein existence of legally enforceable debt or liability can be contested. However there can be no doubt that there is an initial presumption which favours the complainant.

14] Considering the documentary proof on record and the unchallenged evidence, it stands proved that accused issued cheque towards legally enforceable liability. The cheque was dishonoured for the reasons "Funds Insufficient". Complainant issued demand notice dated 07.01.2012. The complainant sent notice for the repayment of the cheque amount on correct address of the accused on 17.01.2012. The accused received the notice on 31.01.2012. Despite of the legal notice the accused failed to repay the cheque amount within a statutory period. All the afore-mentioned ingredients are proved beyond reasonable doubt. For all the aforementioned reasons, I have answered Point Nos.1 to 4 in affirmative and recorded my finding accordingly.

AS TO POINT No.5 :-

15] In view of affirmative findings as to Point Nos.1 to 4, Complainant Company succeeded in proving an offence under Section 138 of N. I. Act against accused. As I have come to the conclusion that, accused is guilty of an offence under Section 138 of N. I. Act.

16] As earlier mentioned the accused and the Learned Advocate for accused, failed to appear. Again, accused has failed to

avail opportunity of being heard. It is proved that there was a transaction between the accused and complainant company. He ought to have paid the amount to the complainant. However, accused failed to do so. Accused has chosen to contest the matter. Considering this aspect, I am of the opinion that the benefit of Probation of Offenders Act, cannot be granted to the accused.

17) As held in the **Rohitbhai's** case cited supra section 139 is example of reverse onus clause that has been included in furtherance of the legislative objective of improving credibility of negotiable instruments. Section 138 of N.I.Act is introduced with view to encourage the use of cheque and to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. Considering the afore-mentioned aspects, the sentence in terms of compensation amount shall serve the purpose.

18] In the result, following order is passed.

ORDER

1. Accused namely Rajesh Shamrao Kadam, Age : Major Yrs. R/o. A/P. Devmurti, Tq. Dist. Jalna, H.O. Jalna is hereby convicted under Section 255 (2) of the Code of Criminal Procedure, for an offence punishable under Section 138 of the Negotiable Instruments Act.
2. The accused is sentence to pay fine of Rs.6,370/-(twice the amount of the cheque i.e. Rs.3,185/-).

3. Out of the fine amount accused are directed to pay the compensation of Rs.5,370/- to the complainant within 30 days from the date of passing of this order vide section 357 (3) of the code of Criminal Procedure, 1973.
4. Out of the fine amount Rs.1,000/- shall be paid to the state and in default of payment of fine the accused shall suffer simple imprisonment for 2 month.
5. Accused shall surrender his bail bonds.
6. A copy of this Judgment be supplied to the accused free of costs.

(Judgment dictated and pronounced in open court)

Date: 21.05.2026

(Supriya N. Pund)
Judicial Magistrate First Class,
Jalna. Court No.3

CERTIFICATE

“ I affirm that, the contents of this PDF file are word to word as per original judgment/order ”.

Name of Steno	:-	U. R. Dasare.
Name of Court	:-	3 rd JMFC. Court, Jalna.
Judgment signed by the presiding officer on	:-	21.05.2026.
Judgment uploaded on	:-	21.05.2026.

Sd/-
Signature of Stenographer.