

MHJN030019522014



Presented on : 21 06 2014

Registered on : 21 06 2014

Decided on : 31 03 2026

Y M D

Duration : 11 09 10

FORM NO. XXXII

Part- 'A'

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

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE,
COURT NO.2, JALNA.**

(Presided over by : Priti D. Taru)

Summary Criminal Case No.1157/2014

Exh. No.62

COMPLAINANT	Mahesh Nagari Sahkari Patsanstha Ltd. Jalna Through Shri. Badrinarayan Rameshlalji Asawa Aged : 38 Yrs., Occ. : Service, R/o. Dr. R. P. Road, Jalna, Tq. & Dist. Jalna.
REPRESENTED BY	Adv. Shri. A. N. Jha.
	<u>VERSUS</u>
ACCUSED	Mr. Rajesh Shantilal Sharma, Age: 48 yrs., Occ.: Business, R/o. Raheman Ganj, Panchshil Apartment, House No.3, Jalna, Tq. & Dist. Jalna.
REPRESENTED BY	Adv. Shri. A. S. Murme.

Part- 'B'

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

DATE OF OFFENCE	11.04.2014
DATE OF FIR	--
DATE OF COMPLAINT	20.06.2014
DATE OF PLEA	26.02.2015

DATE OF COMMENCEMENT OF EVIDENCE	08.07.2016
DATE ON WHICH JUDGMENT IS RESERVED	----
DATE OF JUDGMENT	31.03.2026
DATE OF SENTENCING ORDER, IF ANY	31.03.2026

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.
1	Rajesh Shantilal Sharma	--	26.02.2016	Section 138 of the Negotiable Instrument 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.15	Badrinarayan Rameshlal Asawa	Witness

B. Defence Witnesses, if any:

<u>RANK</u>	<u>NAME</u>	<u>NATURE OF EVIDENCE</u>
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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.28	Authority Letter
2.	Exh.29	Original Cheque bearing No.848351
3.	Exh.30 & 31	Cheque Return Memo
4.	Exh.32	Legal Notice dated 19.05.2014
5.	Exh.33	Postal receipt
6.	Exh.34	Closed Envelope RPAD
7.	Exh.35	Account Statement alongwith certificate

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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J U D G M E N T

(Delivered on 31th March 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 Society registered under the Maharashtra Co-operative Societies Act (hereinafter referred as "Complainant Society"). Complainant Society is engaged in the business of advancing loans, mortgage and recovery. Complainant Society having its office at Jalna. The Complainant Society is represented by Authorized person namely Mr. Badrinarayan Rameshlalji Asawa.

3] Complainant Society contended that, accused approached the Complainant Society for availing loan. The loan amount Rs.3,50,000/- and Rs.2,50,000/- respectively was sanctioned upon the terms and conditions of the Complainant Society. Accused undertake to repay the loan by executing necessary documents. An agreement to that effect was executed.

4] It is further contended that, it is towards repayment of loan amount accused issued cheque bearing No.848351, dated 12.05.2014 amount Rs.55,000/- (hereinafter referred as disputed cheque) drawn on State Bank of India Branch R. P. Road, Jalna.

Complainant Society deposited said cheque with its Banker. The cheque was returned unpaid for the reasons "Funds insufficient". Complainant issued demand notice dated 19.05.2014. Accused refused the notice. Thus, inspite of deemed service of notice, accused failed to pay the cheque amount. Hence, this complaint.

5] Plea (Exh.12) of accused has been recorded for an offence punishable under Section 138 of the N. I. 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 05.02.2026 vide Exh.01.

6] Heard Mr. A. N. Jha, the learned advocate for Complainant Society. 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 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.	Has accused committed an offence punishable under section 138 of N.I. 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 4 :-

9] These points are taken together because complainant has adduced similar evidence in this regard.

10] To prove it's case, Complainant Society adduced evidence Mr. Badrinarayan Rameshlalji Asawa. The said witness adduced evidence on affidavit (Exh.15). To prove the transaction, witness has stated that, accused availed Loan from the Complainant Society. Loan amount Rs.3,50,000/- and Rs.2,50,000/- respectively was sanctioned. Accused agreed to pay loan amount as per agreement. It is towards repayment of loan amount accused issued disputed cheque, which was dishonoured for the reasons "Funds Insufficient". Complainant Society issued statutory notice. Accused refused the notice. Thus, despite of deemed service of notice, accused failed to pay cheque amount. Hence, Complainant Society has filed present complaint.

11] Complainant Society relied upon Authority Letter (Exh.28) to show the authorization of the witness to proceed with the matter. Further, Complainant Society relied upon Cheque (Exh.29), Cheque Return Memo (Exh.30 & 31), Legal Notice (Exh.32), Postal Receipt (Exh.33), Closed Envelope of RPAD (Exh.34) and Account Statement with Certificate (Exh.35).

12] The evidence so adduced by Complainant Society remained unchallenged. Accused though appeared but 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 05.02.2026 vide 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 Society issued statutory notice. The notice was issued to the accused, which was refused, which is deemed service of notice. Despite of deemed service of notice, accused failed to pay the cheque amount. All the aforementioned 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 Society 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, I stop here, to hear the accused on the point of conviction.

Date: 31.03.2026

(**Smt. Priti D. Taru**)
Addl. Chief Judicial Magistrate,
Jalna.

16] Accused and the Learned Advocate for accused, failed to appear. Again, accused has failed to avail opportunity as to hearing. Accused appears to have made transaction with the Complainant Society. He ought to have paid the amount to the Complainant Society. Accused failed to do so. Accused has chosen to contest the matter. Considering this aspect, I am not of the opinion to extend benefit of the Probation of Offenders Act, 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.

AS TO POINT No.6 :-

18] In the result, following order is passed :-

ORDER

1.	Accused namely Rajesh Shantilal Sharma, Age : 48 Yrs. R/o. Raheman Ganj, Panchshil Apartment, House No.3, Jalna, Tq. & Dist. 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 sentenced to suffer simple imprisonment for one month.
3.	Accused is further directed to pay : i) The Cheque amount i.e. Rs.55,000/-. ii] Amount of costs of proceeding Rs.3,000/-. iii] Total amount Rs.55,000/- + Rs.3,000/- = Rs.58,000/-. iv] All the afore-mentioned amount of Rs.58,000/-, be paid together by way of compensation under section 357(3) of the Code of Criminal Procedure; within the period of three months from the date of this judgment, to the Complainant, in default, accused shall suffer sentence of simple imprisonment for the period of one month.

4.	Accused shall surrender his bail bonds.
5.	A copy of this Judgment be supplied to the accused free of costs.
	(Judgment dictated and pronounced in open court)

Date: 31.03.2026

(Smt. Priti D. Taru)
Addl. Chief Judicial Magistrate,
Jalna.

CERTIFICATE

I affirmed that the contents of this [P.D.F.](#) file judgment are same, word to word, as per the original judgment.

Name of the Stenographer : Amar R. Gadade, Stenographer (Grade-III)

Court : Addl. CJM-2, Jalna.

Date : 31/03/2026

Judgment signed by the
presiding officer on : 31/03/2026

Judgment uploaded on : 31/03/2026