

MHKO050003372021		Received on : 12-01-2021 Registered on : 12-01-2021 Decided on : 15-07-2026 Duration on : 05Y-06M-03D	
			
IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, ICHALKARANJI (Presided over by: Monali Gawade) Summary Criminal Case No.246/2021 <u>S.C.C. No. 246/2021</u> <u>EXH. No.61</u>			
Complainant:		: Sumaiyya Salim Shaikh Age-27, Occ- Service and homemaker. R/o- Near Laxmi Mandir, Shirdhon, Tal.Shirol, Dist.Kolhapur.	
Represented By		: Adv. I.M. Jamadar	
Accused:		: Sachin Ashok Gaikwad Age- 31, Occ- Business R/o- Powar Galli, Nagdevvadi, Balinge, Tal.Karveer, Dist.Kolhapur.	
Represented By		: Adv. P.M. Makne	
Date of Offence		17/12/2020	
Date of Complaint		12/01/2021	
Date of plea		05/08/2024	
Date of commencement of evidence		26/08/2024	
Date on which judgment is pronounced		15/07/2026	

Details of the Accused

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on bail	Offenes charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention Under gone during Trial for purpose of Section 428, Cr.PC.
1.	Sachin Ashok Gaikwad	N.A	05/08/2024	Sec.138 of the N.I. Act	Convicted	S.I for Four months & Fine of Rs.1,56,000/-	-----

JUDGMENT

The present complaint is filed against the accused **Sachin Ashok Gaikwad** for the offence punishable under section 138 of the Negotiable Instruments Act, 1881 ('N.I. Act').

The Complainants case in brief is as under:-

02. The Complainant works as 'Machine Sider' at 'Mahesh Mill', Tardal and the accused used to run canteen at Mayura Castco Co., Kolhapur. Both of them were acquainted with each other. During Corona Pandemic, the accused lost his business and he was in need of money for restarting his business. He demanded amount of Rs. 1,20,000/- to the complainant for his business and promised to repay it within three months in installments of Rs. 40,000/- per month. On 09/07/2020, the complainant paid him Rs. 1,20,000/- in cash.

03. The accused issued three cheques and executed a notarized agreement on 11/08/2020. He drew cheque nos. 058988, 058989 and 058990 on 10/11/2020, 18/11/2020 and 21/11/2020 respectively. The accused failed to repay the amount as agreed. The complainant presented these cheques to Gopinath Patil Parsik Janata Sahkari Bank, Ichalkaranji on 21/11/2020. The cheques returned unpaid on 23/11/2020 with remark 'Funds Insufficient'. The complainant sent demands notices for each cheque to the accused on 01/12/2020. Despite receipt of the notices, the accused neither replied to it nor repaid the cheque amounts. Hence, the present complaint filed under Sec. 138 of the Negotiable Instruments Act, 1881.

04. The substance of accusation stated to the accused and his plea was recorded at Exh. 17/C. The accused pleaded not guilty and claimed to be tried.

05. The complainant examined herself at Exh. 17/C. To support

her claim, she also filed documentary evidence on record. The complainant filed evidence closed pursis at Exh. 37/C.

06. Statement of the accused as per section 313 (1)(b) of the Code of Criminal Procedure, 1973 ('Cr.P.C.') recorded at Exh. 42/C. The defence of the accused is of total denial. The accused did not lead his evidence.

07. Heard Ld. Advocates for both the parties. On perusal of the record and considering the submissions by Ld. Advocate for the complainant, following points arose for my determination and findings thereon are recorded for the reasons stated below. They are as under;

Sr. No.	Points for Determination	Findings
1.	Whether the impugned cheques bearing nos. 1) 058989, Rs. 40,000/-, dated 18/11/2020, 2) 058988, Rs. 40,000/-, dated 10/11/2020, 3) 058990, Rs. 40,000/-, dated 21/11/2020 were drawn by the accused for the discharge of legally enforceable liability towards the complainant?	Yes.
2.	Whether the complainant proves that the accused dishonored the cheque and committed an offence punishable U/Sec.138 of the Negotiable Instruments Act 1881?	Yes.
3.	What order?	Accused is convicted as per final order.

REASONS

AS TO POINT NO.1 AND 2

08. As the point nos. 1 and 2 are interconnected and to avoid repetition, they are discussed together as under.

09. The Complainant examined herself and filed affidavit in-lieu of chief-examination at Exh.17. She reiterated contents of complaint. She deposed that the accused demanded amount of Rs.1,20,000/- to her for his business purpose. She further deposed that on 09/07/2020 she paid him amount of Rs.1,20,000/- in cash. She deposed that on 11/08/2020, the accused executed a notarized document acknowledging the transaction occurred and promised to repay the amount in three installments of Rs. 40,000/- per month. She produced on record the notarized document at Exh.24. The accused also issued three cheques bearing nos. 058988, 058989 and 058990 towards the repayment. The impugned cheques produced on record at Exh. 25, 27 and 29 respectively.

10. She further deposed that the accused failed to repay the amount as agreed between them. On 21/11/2020 the complainant presented the cheques drawn by the accused to her bank for encashment. However, the said cheques returned unpaid with remark 'funds insufficient'. The cheque return memos produced at Exh. 26,28 and 30 respectively. She deposed that despite receiving demand notice, the accused failed to repay the amount within stipulated period. The demand notices dated 01/12/2020 are at Exh.31,33 and 35 along-with acknowledgments at Exh.32, 34 and 36 respectively.

11. In cross-examination, the complainant denied suggestion that accused deposited amount of Rs. 50,000/- in her bank account. She also denied that the accused repaid amount of Rs.80,000/- to her

through cheque. She further denied that a person named Sushant Dhere deposited amounts of Rs. 70,000/- and 10,000/- through cheques bearing nos. 480252 and 480251 respectively on behalf of the accused in her bank account. The complainant deposed that she was not ready to produce her bank account statement before the Court. She further denied that she received amount of Rs.1,50,000/- for the loan amount of Rs.1,20,000/- from the accused.

12. From the oral as well as documentary evidence on record, it clears that the accused did not deny his signature on the impugned cheques nor he denied receipt of demand notices from the complainant. Moreover, in his statement recorded under Sec.313 (1) (b) of the Cr.PC, he admitted transaction occurred between them; the notarized agreement executed by him; impugned cheques drawn by him; the cheque return memos, etc. However, he took a defence that he issued another cheques for the repayment in the name of the complainant and those cheques were en-cashed by her.

13. On perusal of the cross-examination of the complainant and statement of accused recorded under Sec.313 Cr.PC at Exh.42, it appears that he took two defences. In cross-examination, he tried to put a defence that the hand-loan amount was repaid to the complainant through a person named Sushant Dhere. On the other hand, in his statement under Sec. 313 (1) (b) of Cr.PC. recorded at Exh.42, he put a defence that he issued another cheques towards the repayment and the same was honored, the complainant received whole hand-loan amount.

14. The statement of accused under Sec. 313 (1) (b) Cr.PC. recorded at Exh.42 on 04/08/2025. The accused showed willingness to lead his evidence. Despite giving several opportunities/adjournments

he failed to lead evidence on record. The complainant produced on record impugned cheques, cheque return memos, three independent notices along-with postal acknowledgments. It shows that accused was given sufficient opportunity to resolve the dispute or make a payment. However, he kept mum and did not reply to the notice. The complainant fulfills all essential requirement provided under Sec.138 of the Negotiable Instruments Act. It clears that the allegations of complainant has substance and guilt of the accused for offence punishable under Sec.138 of the NI Act has proved beyond reasonable doubt. The accused drew the impugned cheques for discharge of legally recoverable liability. Therefore, considering the material on record and discussion made, I answer **point nos.1 and 2 in affirmative.**

15. In view of the affirmative findings of point number 1 and 2, it is held, that the complainant has proved guilt of the accused under Sec. 138 of the NI Act beyond reasonable doubt. Therefore, the accused is liable to be convicted. However, before proceeding further I take a pause to hear the accused and the complainant on the point of sentence.

16. Heard Ld. Advocates for both the parties. For the Complainant it is submitted that the accused be punished with fine double the cheque amount and maximum imprisonment. Per contra, Ld. Advocate for the accused submitted that the accused has been falsely implicated in the offence, he is not liable to pay the cheque amount and minimum punishment be awarded.

17. Offence punishable under Sec.138 of NI Act is a commercial offence. The object of legislation is to promote banking operations and strengthen credibility in business transactions through negotiable instrument's. Although, the dispute is quasi-civil in nature, but the effect of trial is certainly criminal in nature. In the present case, the accused had sufficient opportunity to either settle the

matter amicably (if possible) or lead his evidence and contest the claim. However, the accused remained silent and never took initiative to resolve the dispute amicably. He failed to put his defence. Such attitude towards the trial caused unnecessary harassment to the complainant as well as the matter became 5 years old. The complainant being middle class working women suffered huge monetary loss. Therefore, I am not inclined to extend benefit of Probation Of Offenders Act, 1958 to the accused.

18. The Negotiable Instruments Act criminalizes the act of dishonor of cheque with an object to promote ease of doing business. The difference in standard of proof for the complainant and the accused is incorporated in the provisions of the NI Act with a view to expedite the trial. However, it is also true that the legislation criminalized the wrong of civil nature. In the present case, considering the facts on the record and submissions made, I deem it proper to punish the accused with imprisonment as well fine. No commercial rate of interest agreed between the parties. Therefore, rate of interest would be decided as per the rate fixed by Nationalized Banks on Fixed Deposit's. If we consider, the savings of a common man of Rs.1,20,000/- invested as a FD in nationalized bank, he/she would have get interest on it at the rate of 6 % per annum. Therefore, considering the period of the case, inconvenience caused to the complainant as well as expenses incurred for the trial, I find that fine of Rs. 1,56,000/- would be appropriate. Therefore, in answer to **Point No. 3**, I pass the following Order

ORDER

01. The accused **Sachin Ashok Gaikwad** is convicted for an offence punishable under Sec.138 of the Negotiable Instruments Act,1881 vide Sec.255(2) of the Code of Criminal Procedure, 1973/ Sec.278 (2) of

Bharatiya Nagrik Suraksha Sanhita, 2023.

02. The accused is sentenced to suffer simple imprisonment for 4 months and fine of Rs.1,56,000/- (Rs. One Lakh Fifty Six Thousand only).

03. The accused shall pay the amount of Rs.1,56,000/- (Rs. One Lakh Fifty Six Thousand Only) to the Complainant as compensation out of fine vide Sec.357(1) of Criminal Procedure Code/ Sec.395 (1) of Bharatiya Nagrik Suraksha Sanhita, 2023 within 30 days from the date of this Judgment. In default of payment of the fine, he shall suffer simple imprisonment for a period of two months.

04. The accused shall surrender his bail bonds.

05. Muddemal property i.e., original cheque and bank memo slips to be returned to the complainant after appeal period is over.

06. Copy of this Judgment shall be given to the accused free of cost.

(Judgment is pronounced in open Court)

Date- 15/07/2026
Place- Ichalkaranji.

Sd/-
(M.S.Gawade)
Judicial Magistrate First Class,
(Court No.5), Ichalkaranji.

[PART C]**LIST OF COMPLAINANT/ACCUSED WITNESS****A. Complainants Witnesses**

Rank	Name of the Witness	Exh.no	Nature of Evidence
CW-1	Sumaiyya Salim Shaikh	17/C	Complainant

B. Accused Witnesses- Nil.**C. Court Witness – Nil****LIST OF COMPLAINANT/ACCUSED EXHIBITS****A. Complainant's Exhibits**

Sr.no	Exhibit Number	Description
1.	Exh. 24/CW-1	Agreement (मुळ करारपत्र)
2.	Exh. 25 /CW-1	058989, Rs. 40,000/-, dated 18/11/2020
3.	Exh. 26/CW-1	Cheque Return Memo
4.	Exh. 27/CW-1	058988, Rs. 40,000/-, dated 10/11/2020
5.	Exh. 28/CW-1	Cheque Return Memo
6.	Exh. 29/CW-1	058990, Rs. 40,000/-, dated 21/11/2020
7.	Exh. 30/CW-1	Cheque Return Memo
8.	Exh. 31/CW-1	Demand notice dated 01/12/2020
9.	Exh. 32/CW-1	Postal Acknowledgment
10.	Exh. 33/CW-1	Demand notice dated 01/12/2020
11.	Exh. 34/CW-1	Postal Acknowledgment
12.	Exh. 35/CW-1	Demand notice dated 01/12/2020

13.	Exh. 36/CW-1	Postal Acknowledgment
14.	Exh.37/CW-1	Evidence closed pursis by the Complainant

B. Accused Exhibits – Nil.

C. Court Exhibits – Nil

Date- 15/07/2026
Place- Ichalkaranji.

Sd/-
(M.S.Gawade)
Judicial Magistrate First Class,
(Court No.5), Ichalkaranji.