MHKO100001502019	Received on	:	29/01/2019
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IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, COURT NO.3 GADHINGLAJ, DIST. KOLHAPUR
(Presided over by S. D. Mehta)

S. C. C. NO. 79/2019 **EXH. NO.69/B.**
CNR NO. MHKO100001502019.

1. Kamal Narayan Kulkarni, (Deceased)
1-A Sou. Shivani Shivshankar Jakknavar,
Age: 54 years, Occ.- Household,
R/o. Vakil Colony, Church Road, Gadhinglaj,
Tal. Gadhinglaj, Dist. Kolhapur. … **Complainant.**

Versus

Sadashiv Dattatray Korvi,
Age: 42 years, Occ.- Service,
R/o. Near Mahadev Temple, Uttur
Tal. Ajara, Dist. Kolhapur. … **Accused.**

OFFENCE PUNISHABLE UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881.

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-: APPEARANCE: -
Shri. R. I. Palkar : Ld. Advocate for the complainant.
Shri. M. L. Shaikh : Ld. Advocate for the accused.

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-: J U D G M E N T: -
(Delivered on this 06/08/2026)

The accused is facing trial for the offence punishable U/s.138 of the Negotiable Instrument Act for dishonor of cheque amount of Rs.4,00,000/- (Rupees Four Lac only).

Brief facts of the complaint are as under: -

02. The Complainant is a resident of Mouje Gadhinglaj, Taluka Gadhinglaj and the Accused is a resident of Mouje Uttur, Taluka Ajara. They have known each other for a long time. Out of this acquaintance, the Accused used to visit the Complainant house frequently. Such being the facts, in the month of January 2015, the Accused needed money due to his domestic and family difficulties, and therefore, he demanded a hand loan of Rs. 4,00,000/- (Rupees Four Lac Only) from the Complainant. Recognizing his difficulty and considering the friendly relationship with him, the Complainant decided to help resolve his difficulty. Accordingly, after arranging the amount, she paid the said sum of Rs. 4,00,000/- (Rupees Four Lac Only) in cash to the him on 05/01/2015. He accepted the said amount in cash from the Complainant and agreed and promised to repay it to her within one year. Furthermore, on 05/01/2015, the accused also executed an agreement in her favor regarding taking the said hand loan.

03. Thus, expecting that the accused would return the loan amount borrowed from her within the agreed time frame, she waited for a considerable period. However, within the agreed time, the Accused failed to return the money borrowed from her and began evading repayment on the pretext of paying today or tomorrow. When she demanded the repayment of the aforesaid amount, he said, "There is currently a financial constraint; please wait for one more year, and I will return the amount within a year." Relying on this representation, she waited for another year. When she again demanded repayment

after one year, he again cited financial difficulty and requested a further extension of one year. However, even after obtaining the extension of another year, he failed to return her money. When she made a demand for the amount, he continued to avoid payment by giving assurances of paying today or tomorrow.

04. Consequently, upon continuous and persistent demands made by her for the repayment of the aforesaid amount, the Accused finally, in order to discharge the said liability, issued a signed cheque bearing Cheque No. 005316 dated 17/11/2018 for an amount of Rs. 4,00,000/- (Rupees Four Lac Only) drawn on Kolhapur District Central Co-operative Bank Ltd., Kolhapur, Uttur Branch, and assured that the said cheque would be honored upon encashment.

05. When she deposited the said cheque issued by the accused for encashment within the valid period at Shri. Veershaiv Co-op. Bank Ltd., Kolhapur, Gadhinglaj Branch, the said cheque was returned unpaid on 20/11/2018 with the endorsement "Funds Insufficient", along with a return memo from the said bank. Therefore, she sent a legal notice dated 12/12/2018 through her advocate by registered post to him. Although the postal department attempted service of the notice upon him on 15/12/2018, he deliberately refused to accept the notice, as a result of which the sealed envelope containing the notice was returned with the postal remark "Unclaimed". Even thereafter, He failed to pay the cheque amount to her within the stipulated period given in the notice, i.e., by 30/12/2018. Consequently, she was compelled to file the present complaint u/s. 138 of the N.I.Act against him.

06. My learned predecessor has recorded plea of accused at Exh.26 for the offence punishable u/s. 138 of The Negotiable Instruments Act. The contents of plea were read over and explained to the accused. He abjured the guilt and claimed to be tried.

07. In order to prove her case, the complainant has examined herself as C.W. No.1 at Exh.27, C.W. No.2 Sandeep Shankarrao Kagwade at Exh.49 and C.W. No.3 Shivani Shivshankar Jakkanavar at Exh.50. The statement of the accused u/s. 313 of the Code of Criminal Procedure is recorded at Exh.52. The defence of the accused is of total denial. He further stated that, he knows the complainant's son-in-law, Shivashankar Jakannavar. His own a plot of land measuring 13 Gunthe on Dhamne Road, Uttur. Shivashankar Jakannavar said that he would sell that land for ₹26 lac. For that purpose, he said he would take an amount of ₹4 lac. To that end, he took a blank cheque from him which did not bear his signature. However, since Shivashankar could not sell the said land, he sold the land himself. However, Shivashankar Jakannavar wanted that land for himself for his educational institution. Because accused sold the land himself, Shivashankar put his mother-in-law forward to file a false complaint against him.

08. From the complaint following points arises for my determination and I record my findings against each of them for reasons enumerated below.

Sr. No.	Points for determination	Findings
01.	Whether the complainant proves that, the accused has issued cheque bearing	

	No. 005316 of Rs.4,00,000/- dated 17/11/2018 drawn on K.D.C.C. Bank, Branch-Uttur towards the discharge of legally enforceable debt or other liability?	In affirmative.
02.	Whether the complainant proves that, the above referred cheque was returned by the bank unpaid with the reason "**Funds Insufficient**"?	In affirmative.
03.	Whether the complainant proves that, the complainant had made demand for the payment of said amount of money by giving a notice in writing to the accused within 30 days of the receipt of the information by him from the bank regarding return of the cheque as unpaid?	In affirmative.
04.	Whether the complainant bank proves that, the accused failed to make the payment of the said amount of money to the complainant within 15 days from the receipt of notice?	In affirmative.
05.	What order?	**Accused is Convicted.**

:: **REASONS** ::

09. The Ld. Adv. Shri R. I. Palkar, appearing for the complainant, argued that the accused took 4,00,000/- in cash as a hand loan from the complainant for stipulated period. The accused mortgaged land bearing Gat no. 1561, A- 13 R as security and executed an agreement (Exh. 42) in her favour. However, the accused sold that land behind her back. The Accused had drawn a cheque in her favour toward the repayment of the hand loan. When it was deposited for encashment, it bounced. The Complainant issued a demand

notice for the hand loan amount, but the notice was not received and was returned as unclaimed. The Complainant has complied with the requirement of sec. 142 of the N.I.Act. It is the defence of the accused that he had given 3 cheques to the son- in- law of the complainant, one of which was misused to file this compliant. This defence itself shows that the accused issued the cheque. Apart from this, he has not denied his signature on the cheque. Hence, the presumption under section 118 and 139 of the N.I Act shall operate in her favour. The Accused also raised questions regarding her financial capacity to advance the hand loan, but the complainant has produced document with list Exh.55 and proved her financial capacity in that period. The Complainant has examined the scribe of the agreement and her daughter as witnesses to the said transaction. Overall, the complainant has proved the agreement vide Exh. 42. There is no suggestion put forth that the alleged cheque was given to the son-in law of complainant and that it was misused by her. The defence taken by the accused is not probable. In such circumstances, the complainant has proved her case beyond reasonable doubt, and hence, prayed for conviction and for imposing a fine on him equal to twice the cheque amount. In support of his argument, Ld. Advocate has relied upon ***Prem Chand Vijay Kumar v/s Yashpal Singh & Another (2005) 2 Bom CR (Cri) 844; Purushottam Maniklal Gandhi v/s Manohar K. Deshmukh & Another (2007) 1 MhLJ 210.*** **case laws.**

10. The Ld. Adv. Shri M.L. Shaikh, appearing for the accused, argued that nothing is mentioned about an agreement in notice Exh. 40. The Notice is the foundation of the complaint and the complaint cannot be gone beyond it. The Accused

cannot lead oral evidence against documentary evidence vide sec. 91 and 92 of The Indian Evidence Act. The Complainant deposed that her daughter was not present at the time of execution of agreement, whereas her daughter deposed that she was present, both statements are contradictory. The complainant has not disclosed from where she brought 4,00,000/-. As per the agreement, the occupancy of the land was given to her, however she denied it. As per the agreement, if occupancy of the land is given, then only liability of hand loan will arise. She has not produced any bank statement to show her bank balance. There is no liability arise upon the accused. The Presumption under Sec. 118 & 139 shall not favour the complainant. It is not mandatory to reply to a notice. On the basis of the alleged agreement, this cheque amount cannot be legally enforceable. There is no bank document or witness about the said transactions. Inconsistency in the evidence of complainant and her witnesses creates reasonable doubt in the version of complainant's case. Cheque cannot be automatically proved. The mere presence of cheque does not prove the case of the complainant. The Complaint is not in consonance with the notice. There is doubt arising about her financial capacity. The accused has rebutted the presumptions. Lability arising out of an agreement does not come within the purview of Section 138 of the N.I.Act the Defence taken by the accused is a probable one. Onus is shifted under Section 118 and 139 of the N.I.Act on complainant, which is not proved by him. Hence, benefit of doubt must be given to the accused and acquit him from this case. In support of his argument Ld. Advocate has relied upon ***Kumar Exports v/s Sharam Carpets (2009) AIR (SC) 1518;***

Basalingappa V/s Mudibasappa (2019) 5SCC 418; Shri Mohammad Ismail v/s Bharathi Souharda Credit Co.Op. Ltd. 2025 (2) DCR 756; Selvaraj v/s Pugalenthi 2024 (3) DCR 278; Rashmi Goyal v/s M/s Mahalaxmi fabrics 2024 (20) DCR 456 & M. Vijayan v/s K. Vijayarathi case laws.

As to Point No.1 –

11. The complainant in her evidence has reproduced and retreated the contents of the complaint. She has also relied on following documents.

Sr. No.	Particulars	Exh. No.
01.	Cheque bearing No.005316.	38
02.	Return Memo.	39
03.	Postal Receipt.	40
12.	Sealed Envelope of notice	41
13.	Agreement dt. 05.01.2015	42

12. The accused has not led any oral or documentary evidence in support of his defence.

13. It is the case of the complainant that she knows the accused because he was a friend of her son-in law and used to visit her home, thereby developing a friendly relationship with her. As per the version of the complainant, in January 2015, the accused required financial help and requested a hand loan of Rs. 4,00,000/- from her. Considering his need, the complainant gave 4,00,000/- to him in cash dated 05.01.2015, and on the same day, the accused executed an agreement (Exh. 42) in her favour and mortgaged his land bearing no. 1561, A- 13 R situated at

village Uttur, Tal. Ajara, as security. The accused has written in the aforesaid agreement that within a year he shall repay the hand loan amount to her and till then, possession of the abovesaid land remains with her, and once repaid, the said land possession will be handed over to him.

14. To prove the fact regarding the execution of the above said agreement, the complainant produced the original document vide Exh. 42 on record. After perusal of its recitals, they support the case of the complainant. The Complainant has examined C. W. 2, who is the scribe of this agreement, which also supports the version of the complainant, and C. W. No. 3, the daughter of the complainant, is a witness who signed the agreement and also supports the execution of the said agreement. However, the Ld. Adv. of accused argued that the notice is the foundation of the complaint, yet nothing is mentioned about the agreement in the said notice vide Exh. 40. Therefore, the complainant cannot go beyond the notice. To merely bring evidence regarding the agreement, the said portion was inserted into the complaint and the evidence of the complainant vide Exh. 27. It is the further argument of the defence that oral evidence is not permitted to contradict documentary evidence vide section 91 and 92 of the Indian Evidence Act.

15. It is the defence of the accused that he knew the complainant's son-in-law, Shivashankar Jakannavar as he ran an English medium school in the village of Uttur, and accused is a school teacher. As stated earlier, he owned a plot of land measuring 13 Gunthe in Gat no. 1561 situated at Uttur.

Shivashankar Jakannavar said that he would sell that land for ₹26 lac. For that purpose, he said he would take an amount of ₹4 lac. To that end, he took 3 blank cheques from him which did not bear his signature, and also executed an agreement in that regard. However, since Shivashankar could not sell the said land, the accused sold the land himself. However, Shivashankar Jakannavar wanted that land for himself for his educational institution. Because the accused sold the land himself, Shivashankar put his mother-in-law forward and, by misusing a cheque, filed this false complaint against him. It is also argued that, on the basis of alleged agreement, the complainant cannot legally enforce liability against him, as the alleged agreement was executed in respect of above said land only.

16. Here after perusal of the oral evidence brought on record, it has been indirectly admitted in cross-examination by the accused that the agreement vide exh.42 was executed between him and the complainant. Therefore, it has been proved that accused has taken Rs. 4,00,000/- as a hand lone from her. Now, it is the defence that the said agreement was executed and 13 R land in Gat no. 1561 was kept as security for the complainant. On the same day, i.e., 05.01.2015, possession of the said land was hand over to her, but in cross-examination, the complainant denied that possession of the said land was handed over to her. It is brought on record by the advocate for the accused himself stated that the said land has been sold on 23.12.2015 to Asmita Ashok Patil. This admission itself, brought forth by the accused that the security land given for a hand loan of Rs.4,00,000/- has been sold out, contradicts his claim. It is the defence of the accused that possession was handed over as

per the recital of that agreement to the complainant. For the sake of argument, if it considered, then how could it be possible to sell that land by the accused to a third party? Hence, the defence raised by the accused that possession of the said land is with the complainant his not sustainable. It is the another defence of the accused that nothing is mentioned about the agreement in the complaint, therefore the case of the complainant is doubtful. However, as the execution of the agreement is indirectly admitted by the accused, therefore, it will not affect upon the case of the complainant. Hence, this defence is also does not collapse the complainant's case.

17. Now, from the above evidence, it has been established by the complainant that an agreement was executed between the complainant and the accused when a hand lone transaction of Rs.4,00,000/- took place. But the accused failed to repay the said amount after the expiry of the stipulated time period. Here, In the present case, the defence taken by accused himself admits that 3 blank cheques were given to the son-in-law, and one of them was misused to file this false complaint. Here It is admitted by the accused that he had given a cheque to his son-in law, but the suggestion put forward by the accused regarding in his defence was totally denied by the complainant. There was no suggestion put forth that the complainant misused the cheque given to his son- in-law. The accused formally denied his signature on the cheque vide Exh. 38. However, the accused had an opportunity to verify his signature through a handwriting expert. However, after comparing the signature on the cheque with the signature on the agreement vide Exh. 42 of the accused, I found that both signatures of the accused on the

documents are the same. Therefore, it has been proved that the accused had issued cheque with his signature to the complainant. Therefore, the presumption under Sec. 118 and 139 of the N. I. Act shall lie in favour to the complainant.

18. *The Hon'ble Apex Court in* ***T. Vasanta Kumar v/s. Vijaya Kumari (2015) 8 SCC 378*** has held that, once the signature and issuance of cheque are admitted by the accused, the presumptions u/s. 139 of The Negotiable Instruments Act is raised in favour of the complainant. In view of ruling of the ***Hon'ble Apex Court in Rangappa V/s. Sri Mohan 2010 ALL SCR 1349*** *, the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability.* In the present case the signature of the accused on the cheque is admitted. As the signature on the cheque is admitted by the accused, the presumptions u/s. 118 and 139 of the Negotiable instruments Act are raised in favour of the complainant.

19. In *Premchand Vijay Kumar* (supra), the Hon'ble Supreme Court of India has clarified the rules regarding timeline limitations in Section 138 (NI) Act, 1881. In present case at hand, there is no issue regarding timeline limitation about the presentation of the cheque; therefore, this case law is not useful for the complainant. In *Purushottam Maniklal Gandhi* (supra), the case discusses the presumption u/s 118 & 139 of the N.I. Act.

20. In the present case in hand, it was the defence taken by the Ld. Adv. of the accused that cheque Exh. 38 was filled with different ink by someone else and not by accused, and it was

admitted by complainant in cross-examination that it might have been filled by her advocate. In this respect, the Ld. Adv. for the complainant relied on the *Purushottam Maniklal Gandhi* (supra), wherein it was ruled that relying on Section 20 of the NI Act, when a person hands over a duly signed blank cheque, they grant implied authority to the holder to fill in the missing details (such as the date and amount). The cheque does not lose its legal sanctity or validity simply because it was filled in by a person other than the drawer. Therefore, the defence taken by the accused is washed out by complainant.

21. The Ld. Adv. of accused relied upon ***Kumar Exports (supra),*** in para 11 it has laid down the procedure as to how the accused can rebut the presumptions u/s. 118 and 139 of The Negotiable Instruments Act.

> "*The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defense beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct*

evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the *court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, thereafter, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue."*

22. In the present case, the defence taken by the accused does not seem probable therefore, this case does not support the argument of the accused, but indirectly supports the complaint's case.

23. From the overall evidence placed on record by the complainant, it has been proved by her that accused had taken a hand loan of Rs.4,00,000/- from her on 05/01/2015. The question regarding the financial capacity of the complainant during that period has been established by the the complainant by producing the document under list Exh. 55 on record. Merely failing to file the bank statement does not collapse the case of the complainant. The accused himself has indirectly admitted during cross examination the execution of the agreement vide Exh. 42. Furthermore, the accused has admitted the issuance of the cheque and his signature on it. Therefore, a presumption plays in her favour under Sec. 118 and 139 of the N.I.Act. Witnesses examined by the complainant support the testimony of the complainant. Minor discrepancies cannot wash out the whole evidence of the complainant. She has proved the fact that the accused had issued a cheque in her favour towards the discharge of debt or liability upon him for the repayment of hand loan amount. The defence taken by the accused is not a probable defence, and the case laws cited by him do not support

his defence at all. Finally, here, the complainant has proved her case that the cheque vide Exh.38 was given with the signature of the accused, which raises the statutory presumption in favor of the complainant. Once the signature on the cheque is admitted, the onus to rebut the statutory presumption shifts to the accused, in which the accused has failed. Hence, I have no alternative option but to answer Point No.1 in 'affirmative'.

As to Point Nos. 2 to 4 -

24. The presentation of the cheque for encashment and the service of notice of its dishonor are not disputed. Therefore, the basic ingredients to attracts the offence under Section 138 are fulfilled by the complainant. Therefore, in view of above reasons Point Nos.2 to 4 are answered in the 'affirmative'. The accused is liable to be convicted for the above offence. Before passing the order of sentence, I would like to hear the submission of the accused on the point of sentence and compensation.

25. Accused and his advocate pray for the leniency. As against this, advocate for the complainant prays for heavy punishment and substantive compensation to the complainant.

26. In the month of Nov. 2018, the disputed cheque was presented to the drawee bank. Had it been cashed in due course, the complainant would have received the amount in the month of Nov. 2018. That amount is admittedly lying with the accused. Although, under Section 138 of the N. I. Act, the fine may extend to twice the amount of the cheque, but while deciding the quantum of compensation, one has to bear in mind the provisions of Section 73 and 74 of the Indian Contract Act.

Compensation must not be punitive, but rather reasonable. Compensation is not to be given for any remote or indirect loss or damage.

27. Section 79 and 80 of the Negotiable Instruments Act, 1881 also give guidelines for calculating interest in a suit instituted on the basis of the negotiable instrument. In this case, no rate of interest was fixed in the negotiable instrument. Thus, the help of Section 80 can be taken, which speaks about interest when no rate of interest is specified. This section empowers the court to calculate interest at the rate of 18% per annum on the cheque amount. Considering the nature of the transaction and the financial status of the parties 18% p.a. interest on the cheque amount by way of compensation could have been awarded. However, in the latest judgment in the case of ***R.Vijayan V. Baby and anthers AIR 2012, 528*** the Hon'ble Apex Court has discussed and expressed several aspects for determining the amount of compensation and interest on the cheque.

28. After going through the guidelines and expectations observed by the Hon'ble Apex Court, it is necessary to maintain uniformity by awarding interest at the rate of 9 % per annum on the cheque amount by way of compensation to the complainant. If interest on cheques amount (4,00,000/) at the rate of 9 % p.a. is calculated for the period of 90 months (17/11/2018 to 06/08/2026) it amounts to Rs/2,73,600/. Since the cheque amount is Rs/4,00,000/, the total amount of compensation comes to Rs/6,73,600/.Thus, the accused is liable to pay compensation of Rs/6,73,600/to the complainant.

29. The object of the Act is to enhance the credibility of the negotiable instruments. Considering the nature and manner of the offence, sentence to suffer Simple Imprisonment for six months will be proper and justified.

Point No. 5 :

30. The Hon'ble Apex Court, in the case of ***Sugandhi Sureshkumar Vs. Jagdishan, reported in AIR 2002 SC 681,*** held that in cases of offences under section 138 of the Negotiable Instrument Act, a Magistrate can alleviate the grievance of the complainant by resorting to Section 357 (3) of Criminal Procedure Code. In this case, the Hon’ble Apex Court also held that the Court may enforce the order of compensation by imposing a sentence in default. Further, the accused is not in a position to arrange the substantial amount of compensation today. Hence, 30 days’ time is given to comply with the order. Thus, in my view, the following sentence would serve the purpose. Resultantly, in answer to Point No.5, I proceed to pass the following order.

ORDER

01. The accused Sadashiv Dattatray Korvi is convicted U/s. 255(2) of the Code of Criminal Procedure for the offence punishable U/s.138 of The Negotiable Instruments Act.

02. The accused is sentenced to suffer simple imprisonment for Six months for the offence punishable U/s.138 of the Negotiable Instruments Act.

03. The accused is ordered to pay compensation of Rs. 6,73,600/- (Rs. Six Lac Seventy-Three Thousand Six

Hundred Only) to the complainant. In default of payment of compensation, the accused shall suffer simple imprisonment for Six months in view of Section 357(3) of The Code of Criminal Procedure.

04. The bail bonds of the accused is surrendered.

05. The period of detention undergone by the accused, if any shall be set off against the sentence of imprisonment vide Section 428 of The Code of Criminal Procedure.

06. The copy of this judgment be provided to the accused free of cost.

(Dictated and pronounced in open Court.)

SACHIN DURGASHANKAR MEHTA

Digitally signed by SACHIN DURGASHANKAR MEHTA
Date: 2026.08.07 18:21:25 +0530

Date: 06/08/2026.
Gadhinglaj.

(S. D. Mehta)
Judicial Magistrate First Class,
Court No.3, Gadhinglaj.