


MHKO150003462022 	Presented on : 30.08.2022 Registered on : 30.08.2022 Decided on : 28.08.2023 Duration : Ys. Ms. Ds. 00 11 28
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Part 'A'

**IN THE COURT OF JUDICIAL MAGISTRATE F. C. AT AJARA,
DISTRICT- KOLHAPUR**

[Presided Over by Sharadchandra P. Jadhav]

JUDGMENT

(Delivered on this 28th August, 2023)

S.C.C. No. 112/2022

Exh. No. /B

	<u>Details of F.I.R.</u>
	C.R.No. ----- Ajara Police Station, Tal. Ajara, Dist. Kolhapur.
COMPLAINANT / PROSECUTION	The Ajara Urban Co-Operative Bank Ltd. Ajara. Tal. Ajara, Dist. Kolhapur. through- Recovery Officer – Dinkar Vishnu Pavane. Age 53 yrs., Occu. - Service, R/o. Ajara, Tal. Ajara, Dist. Kolhapur.
REPRESENTED BY	Shri. D. D. Ajagekar, Advocate for Complainant.
ACCUSED	Akash Bhimrao Pachchhapure. Age 45 yrs, Occu. Service, R/o. 'Pachchhapur Banglow', Back of Gandhi Hospital, Pant Nagar, Nipani, Tal. Chikkodi, Dist. Belgaum.
REPRESENTED BY	In person.

Part 'B'

Date of offence	The offence Punishable under section 138 of the Negotiable Instruments Act, 1881.
Date of F.I.R.	N.A.
Date of Charge sheet	N.A.
Date of Framing of Charges / Plea	15.11.2022.

Date of Commencement of evidence	30.01.2023.
Date on which judgment is reserved	28.08.2023.
Date of the Judgment	28.08.2023.
Date of the Sentencing Order, if any	28.08.2023.

Accused Details

Rank of accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged-with	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr.P.C.
1	Akash Bhimrao Pachchhapure.	--	--	U/s. 138 of the Negotiable Instruments Act, 1881.	Convicted	One year simple imprisonment.	NIL

Part 'C'

LIST OF PROSECUTION / DEFENCE / COURT WITNESSES

A. Prosecution / Complainant :-

RANK	NAME	NATURE OF EVIDENCE
P.W. - 1	Dinkar Vishnu Pavane.	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 PROSECUTION / DEFENCE / COURT EXHIBITS.

A. Prosecution / Complainant :-

SR. NO.	Exhibit Number	Description
1	Exh.No. 15	Disputed cheque bearing no. 000009.
2	Exh.No. 16	Cheque return memo.
3	Exh.No. 17	Legal demand notice.
4	Exh.No. 18	Notice receipt.
5	Exh.No. 19	Acknowledgement.
6	Exh.No. 20	Application of loan, Approved letter & Promissory note.
7	Exh.No. 21 & 22	Loan account statement of accused.
8	Exh.No. 23	Resolution of complainant credit society.

B. Defence :-

SR.NO.	Exhibit Number	Description
1	--	--

C. Court Exhibits :-

SR.NO.	Exhibit Number	Description
1	Exh.No. 11	Plea
2	Exh.No. 27	Statement of accused u/s. 313 of Cr.P.C.

D. Material Objects :-

SR.NO.	Exhibit Number	Description
1	--	--

JUDGMENT

(Delivered on this 28th Day of August, 2023)

The accused tried for the offence punishable under section 138 of the Negotiable Instruments Act, 1881.

In short the complainant's case is as under-

2. The complainant is Co-operative Bank under registered of Co-operative Societies Act & rules of Reserve Bank having its office at

Ajara, Tal. Ajara and represented by its authorized person. According to complainant, the business of complainant is to provide various types of loan.

3. The accused requested loan to the complainant bank and approached to the complainant bank. The complainant bank has given loan of Rs. 12,00,000/- to the accused. Thereafter, the accused has fails to repay the loan amount along with interest.

4. The officers of complainant bank was approached to the accused and requested for repayment of loan. That time, the accused has given cheque of Rs. 13,85,000/- dated 04/05/2022 bearing no. 000009 (In short 'disputed cheque') in favour of complainant. The accused has given assurance for honoring the cheque.

5. The complainant has presented disputed cheque in account. But, the said cheque was dishonored and return to the complainant bank with an endorsement of 'Funds Insufficient' on 09.06.2022.

6. Thereafter, the complainant has issued legal demand notice to the accused on 07.07.2022. In spite of legal notice, accused has not paid the cheque amount within stipulated period. Hence, the complainant has filed present case. Even after institution of the case, accused enlarged on the bail but not paid the cheque amount to the complainant. The complainant lastly prayed for compensation of cheque amount and for convicting accused.

7. The process issued against accused on 30.08.2022. The plea of accused recorded at Exh. 11 u/sec.138 of the Negotiable Instruments Act, 1881. The accused pleaded not guilty and claimed to tried.

8. The complainant has examined Dinkar Vishnu Pavane as p.w.1 at Exh. 14.

9. The statement of accused u/sec. 313 of Code of Criminal Procedure is recorded at Exh. 27. The accused has not adduced any evidence.

10. The defense of the accused is total denial.

11. The *Hon'ble Supreme Court in (2014) 5 SCC 590, Indian Bank Association and others vs. Union of India* held as under,

*"18. We have indicated that under section 145 of the Act, the complainant can give his evidence by way of an affidavit and such affidavit shall be read in evidence in any inquiry, trial or other proceeding in the court, which makes it clear that a complainant is not required to examine himself twice i.e. one after filing the complaint and one after summoning of the accused. The affidavit and the documents filed by the complainant along with complaint for taking cognizance of the offence are good enough to be read in evidence at both the stages i.e. pre-summoning stage and the post-summoning stage. In other words, there is no necessity to recall and re-examine the complainant after summoning of the accused, **unless the Magistrate passes a specific order as to why the complainant is to be recalled. Such an order is to be passed on an application made by the accused or under section 145 (2) of the Act suomotu by the court.** In summary trial, **after the accused is summoned, his plea is to be recorded under section 263 (g) Cr.P.C. and his examination, if any, can be done by a Magistrate and a finding can be given by the court under section 263 (h) Cr.P.C.** and the same procedure can be followed by a Magistrate for offence of dishonour of cheque since offence under section 138 of the Act is a document based offence. We make it clear that if provisos (a), (b) and (c) to section 138 of the Act are shown to have been complied with, technically the commission of the offence stands completed and it is for the accused to show that no offence could have been committed by him for specific reasons and defences."*

12. The Hon'ble Supreme Court in above ratio held that, unless the Magistrate passes a specific order as to why the complainant is to be recalled. Such an order is to be passed on an application made by the accused or under section 145 (2) of the Act suomotu by the court, in summary trial, after the accused is summoned, his plea is to be recorded under section 263 (g) Cr.P.C. and his examination, if any, can be done by a Magistrate and a finding can be given by the court under section 263 (h) Cr.P.C.

13. In case in hand, the accused appeared his plea was recorded under section 263 (g). The accused has not made application for recall the complainant or he has not examined himself under section 263 (g) of Cr.P.C. Further, the accused has not shown that, no offence could have been committed by him for specific reasons and defences. In this circumstances, it is necessary to give finding as per section 263 (h) of Cr.P.C.

14. Heard learned advocate Shri. D. D. Ajagekar for complainant. The accused and advocate called repeatedly, but they fails to present.

15. The following points are arises for my determination and I have given my findings thereon with reasons-

Sr. No.	Points for determination	Findings
1.	Does the complainant prove that the accused had drawn cheque (Exh. 15) bearing No. 000009 for Rs. 13,85,000/- dated 04.05.2022 in his favour for discharge of his legally enforceable debt or liability?	Yes.
2.	Does the complainant prove that the cheque (Exh. 15) is dishonored and thereby the accused has committed an offence punishable under section 138 of the Negotiable Instruments Act, 1881?	Yes.
3.	What order?	The accused is convicted as per final order.

REASONS

16. The P.W.1 deposed that, he is authorize person of complainant bank. The complainant has given right to conduct the case and to depose on behalf of complainant by passing resolution. As per resolution, the witness deposed that, the agreement executed by accused in favour of complainant. The complainant has given loan to the accused. But, loan amount is unpaid. The complainant was requested to the accused for giving unpaid amount. That time the accused has given disputed cheque in favour of complainant. The cheque was dishonored. Thereafter, the notice was issued by complainant. In spite of notice, the accused has not paid cheque amount. Therefore, complainant filed present complaint. The witness proved documents.

As to Points No. 1 and 2 :

17. The p.w. 1 has deposed that, the complainant bank has paid loan amount to the accused. The evidence of p.w. 1 and Exh. 20 shows that, the accused has submitted application for loan amount and evidence of Exh. 20 shows that, loan was approved to the accused. Thereafter, the accused has received loan.

18. On perusing evidence of p.w. 1 and Exh. 20 it appears that, the accused has received Rs. 12,00,000/- as loan from complainant bank. Thus, from the evidence of p.w. 1 and Exh. 20 it comes on record that, the accused has applied for loan to the complainant bank. The complainant bank has approved loan of accused. The accused has received loan.

19. The documentary evidence corroborated with the evidence of p.w. 1. There is no reason to disbelieve the evidence of p.w. 1 and Exh. 20. The evidence is trustworthy and reliable one. Hence, I conclude that, the complainant has proved that, the accused has received loan amount form complainant bank. Hence, I conclude that, the complainant has proved that, the accused has not paid loan amount.

20. On perusing Exh. 21 & 22 it appears that, Rs. 13,85,000/- is unpaid amount from accused to the complainant on the date of cheque. The evidence of Exh. 21 & 22 are reliable and trustworthy evidence. There is no reason to disbelieve the evidence of Exh. 21 & 22. Thus, from the Exh. 21 & 22 it comes on record that, the accused has not paid Rs. 13,85,000/- to the complainant bank. The evidence of Exh. 21 & 22 corroborated with evidence of p.w. 1.

21. On perusing Exh. 15 it appears that, the accused has issued cheque in favour of complainant of Rs. 13,85,000/-. The memo at Exh. 16 shows that, the cheque was dishonored. The notice at Exh. 17 shows that, the complainant has issued notice to the accused for demanding the cheque amount. The Exh. 19 shows that, the notice was served to the accused. These documents shows that, the accused has issued disputed cheque in favour of complainant. The cheque was dishonored. The complainant has issued legal demand notice. The accused fails to pay the cheque amount within stipulated period. The evidence is reliable and trustworthy. There is no reason to disbelieve the evidence.

22. The evidence of p.w. 1 and documentary evidence specifically proved the case of complainant. Considering all above discussion and evidence, I am coming to conclusion that, the complainant has established that, the cheque which is at Exh. 15 drawn by accused for discharge of debt and legally enforceable liability towards the complainant. The cheque was dishonored. From these circumstances, I answer point no. 1 and 2 affirmative.

As to point no. 3 :

23. In answer to point no. 1 and 2 I found that, the complainant has established that, the accused has issued disputed cheque for the discharge of debt and legally enforceable liability. The complainant has also established that, the cheque was dishonored. The liability of accused was not discharged by accused. Therefore, I am coming to conclusion

that, the accused has committed offence punishable under section 138 of N. I. Act. At this stage, it is necessary to heard accused on the point of quantum of sentence. But, various time the accused was called out, but accused is absent.

24. At this stage, it is necessary to decide whether judgment can be delivered in the absence of accused. The *Hon'ble Gujrat High Court in Cri.Misc.Application No. 19862/2015, Sharad Jethalal Savala vs. State of Gujarat dated 14.11.2016.* held that, the Magistrate may pronounce judgment in the absence of accused by itself will not vitiate the judgment. Sub- section (7) of section 353 of the Cr.P.C. clearly lays down that, no judgment delivered by any criminal court shall be deemed to be invalid by reason only of the absence of any party.

25. In above ratio Hon'ble Gujrat High Court held that, the magistrate may pronounce judgment in absence of party and it is valid judgment. Therefore, I conclude that, it is necessary to give judgment in absence of accused. The record shows that, the matter was pending since from many years. The accused and advocate repeatedly called, but they fails to appear. Therefore, it is necessary to deliver judgment in absence of accused.

26. Heard learned advocate Shri. D. D. Ajagekar for complainant. The advocate for complainant prayed for convicting accused and to repay the cheque amount as compensation. Perused record.

27. On perusing record it appears that, the present case was filed in the year 2022. The accused has not paid the cheque amount to the complainant and used that amount without any reason. Considering the period of dispute and consequence in my view one year simple imprisonment and fine of Rs. 5,000/- is sufficient for the commission of offence. The cheque is for Rs. 13,85,000/-. Therefore, the accused is necessary to direct to pay the compensation of Rs. 13,85,000/- payable to complainant. In this circumstances, in answer to point no. 3 I pass the

following order,

ORDER

1. The accused Akash Bhimrao Pachchhapure convicted for the offence punishable under section 138 of the Negotiable Instruments Act, 1881 vide section 255 (2) of the Code of Criminal Procedure.
2. The accused is sentenced to suffer simple imprisonment for one year and pay fine of Rs. 5,000/- in default of fine to suffer simple imprisonment for three months.
3. The accused is directed to pay compensation of Rs. 13,85,000/- (Rs. Thirteen Lakh Eighty Five thousand only) to the complainant vide section 357 (3) of Criminal Procedure Code and in default to suffer simple imprisonment of six months.
4. The accused to pay compensation amount within 30 days from today.
5. The accused shall surrender his bail bonds.
6. The accused absent when called out, hence issue conviction warrant along with the true copy of the judgment for execution of sentence.
7. The officer in-charge of concern police station shall appoint special team of police for execution conviction warrant.
8. The copy of the judgment be supply to the accused free of cost.
(Declared in the Open Court.)

Date :- 28.08.2023.

(S. P. Jadhav)
Judicial Magistrate, F.C., Ajara.