

CNR No.MHLA060011142021



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Decided on : 30/03/2026

Duration : Ys Ms Ds

04 09 14

Sum. Cri. Case No.106/2021

Exh. No.116/B

Form No. XXXII

Part 'A'

(Title Page of Judgment)

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

	<p><b><u>IN THE COURT OF 2<sup>nd</sup> JT. JUDICIAL MAGISTRATE FIRST CLASS, AT AHMEDPUR, DISTRICT- LATUR</u></b> (Presided over by Megha C. Hasge) (Summery Criminal Case No. 106/2021)</p>
	(Section 138 of Negotiable Instrument Act 1881)
Complainant	Ajay Balurao Bansode, Age:42 years, Occupation- Private Job, R/o. Ahmedpur, Tq. Ahmedpur Dist.Latur.
Represented by	Shri. D.L. Ghogre,
Accused	Sunil Sudhakar Gaikwad, Age : 40 yrs., Occupation - Business, R/o. Behind Hina Lodge & Behind Dr. Holkar Hospital Ahmedpur Tq. Ahmedpur Dist.Latur. At P. Samta Nagar, Behind Court, Ahmedpur, Tq.Ahmedpur, Dist.Latur
Represented by	Shri. V.A. Sonkamble,

**Part "B"**

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

Date of Offence	After 15 days of service of Notice
Date of Complaint	16/06/2021

Date of Plea	22/11/2021
Date of Commencement of evidence	20/01/2023
Date on which judgment is reserved	-
Date of the Judgment	30/03 /2026
Date of Sentencing Order,if anywhere	

### Accused Details

Rank of Accused.	Name of the Accused	Date of issue process	Date of release on bail	Offence charged	Whether acquitted or convicted	Sentence period of imposed detention or undergone convicted during trial for purpose of sec 428 Cr.P.C
01.	Sunil Sudhakar Gaikwad	05/08/2021	22/11/2021	Sec.138 of the Negotiable Instrument Act.	Convicted	Nil

### JUDGMENT

(Delivered on 30/03/2026)

The trial was conducted prior to 1st July, 2024 hence, in accordance with the provision of Section 531(2)(a), the Judgment has been rendered pursuant to the Code of Criminal Procedure.

02. The accused is facing trial for an offence punishable u/s. 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as 'N.I. Act' In short.)

The case of the Complainant is as under:

03. The complainant and the accused are close friends residing in the same village, Ahmedpur, Dist. Latur. On 04.01.2021, the accused approached the complainant seeking financial assistance of Rs.2,50,000/- (Two Lakh Fifty Thousand) for family and medical needs. Trusting the accused, the complainant paid Rs.1,00,000/- (Rupees One Lakh) on 04.01.2021 and Rs.1,50,000/- (One Lakh Fifty Thousand) on 05.01.2021 (after encashing a fixed deposit), thereby advancing a total hand loan of Rs.2,50,000/- (Two Lakh Fifty Thousand) for three months.

04. After expiry of the said period, the complainant demanded repayment on 08.04.2021. In discharge of the liability, the accused issued a cheque bearing No. 611911 dated 08.04.2021 drawn on the State Bank of India branch Ahmedpur, However, upon presentation, the cheque was dishonoured on 20.04.2021 for “insufficient funds.”

05. Thereafter, the complainant issued a statutory notice dated 23.04.2021, which was served on 26.04.2021, calling upon the accused to repay the amount within 15 days. Despite service of notice, the accused failed to make payment. Hence, the present complaint under Section 138 of the Negotiable Instruments Act. Hence, the present complaint was filed.

06. After verification of the Complainant and upon perusal of documents on record, process was issued against the accused for an offence punishable u/s. 138 of the Negotiable Instrument Act, 1881. In response to the same, the accused appeared before the court. Particulars of the offence were explained to accused vide (Exh.11) and the accused pleaded not guilty and claimed to be tried.

07. The evidence of complainant was duly recorded. Statement of the accused U/s. 313 (1)(b) of the Code of Criminal Procedure was recorded at (Exh.47). The defence of the accused is that he only borrowed Rs.1,00,000 and had issued a blank cheque to the complainant as security; however, the complainant subsequently misused the said cheque.

08. The points for determination along with my findings thereon and reasons are as follows.

Sr. No.	Points		Findings
1.	Does the Complainant prove that the accused issued cheque bearing No. 611911 drawn on State Bank of India dated 08.04.2021 for Rs.2,50,000/- (Two Lakh Fifty Thousand) towards discharge of a legally enforceable debt or liability, which was returned unpaid by the bank due to "Funds Insufficient"?	..	Yes
2	Does the Complainant prove that, the complainant issued a valid demand notice dated 23.04.2021 at the correct and complete address of accused and the accused failed to pay the amount mentioned in disputed cheque within 15 days from the date of receipt of notice?	..	Yes
3	Does the complainant prove that the accused has committed an offence punishable under section 138 of N.I.Act?	..	Yes
4.	What order?	..	The accused is convicted

## REASONS

### **Arguments advanced by Ld. Advocate for the complainant:**

09. The complainant argued that the accused approached him on 04.01.2021 and 05.01.2021 for financial assistance to meet urgent family and medical expenses. Relying on their longstanding friendship, the complainant advanced a total sum of Rs.2,50,000/- (Two Lakh Fifty Thousand), partly in cash and partly by breaking a fixed deposit in his mother's name. The complainant submitted that the accused issued cheque No. 611911 dated 08.04.2021 towards repayment of this legally enforceable debt. Despite presenting the cheque to the bank, it was returned unpaid due to insufficient funds, and the accused failed to repay the amount even after receiving the statutory demand notice under Section 138 of the Negotiable Instruments Act. The complainant contended that all elements of Section 138 were thus fully satisfied and the accused's claim that the cheque was given as "security" is unsubstantiated.

### **Arguments advanced by the Ld. Advocate For the Accused:**

10. The accused contended that the cheque in question was given merely as a security and not towards the discharge of any legally enforceable debt. He further argued that the complainant is engaged in illegal money lending (unlawful usurious transactions) and habitually advances money to people at high interest, often creating disputes to take advantage of the law. The accused maintained that no formal demand for repayment was made prior to filing the complaint, and that the complainant deliberately inflated the amount claimed. He stated that he had no intent to defraud and that the complainant misused Section 138 of the N.I. Act to coerce

him into making payments. The accused sought to rely on these circumstances to show that the complainant's claim of a "legally enforceable debt" is questionable and that the cheque cannot be treated as a cheque issued towards repayment of a genuine debt.

11. **Legal provisions:** The NI Act itself raises two presumptions in favour of the holder of the cheque i.e. the Complainant in the present case. The first presumption under Section 118 pertains to (a) consideration, (b) date, (c) time of acceptance, (d) time of transfer, (e) order of endorsement, (f) stamp and (g) that the holder of the negotiable instrument is a holder in due course.

12. The second presumption (under Section 139 of the NI Act) is that, the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, of any debt or other liability. Both the said presumptions are rebuttable presumptions,

13. As soon as the cheque is admitted by the accused or proved by the complainant, the presumption under section 139 N.I.Act is raised in favour of the complainant. However, such presumption is not final or un-rebuttable proof in the matter, and can be rebutted by the accused by way of cross -examination or by adducing evidence in this regard. Such defence has to appear probable adjudged on the principal of preponderance of probabilities, to be tested through the eyes of a prudent man.

14. Section 138 of the N.I. Act being a penal statute, the same has to be interpreted strictly and the ingredients given therein have to be strictly construed to examine whether the case for conviction of

the accused is proved or not. The said Section in its proviso also provides three ingredients that have to be considered. Thus, the following points have to be examined whether the same have been fulfilled: -

- i) Presentation of the cheque to the bank within the time limit of its validity,
- ii) The payee or the holder in due course (in this case, the Complainant) send demand notice to the Accused regarding the return of cheque as unpaid, within one month of intimation of return of cheque,
- iii) The drawer (in this case, the accused) fails to make payment of the amount within 15 days of the receipt of the said notice. Section 138 of the NI Act provides that in the event any of the said points remain unfulfilled, the Accused cannot be convicted under the said section.

### **REASONS FOR THE FINDINGS**

15. The Complainant examined himself and adduced oral and documentary evidence as shown in Part-C of the Annexure of the judgment.

#### **AS TO POINT NO. 1**

#### **Legally enforceable debt on the date of issuance of disputed cheque**

16. Upon reviewing the Complaint (Exh.01) and the affidavit in lieu of examination-in-chief of the Complainant (Exh.34), it appears that the complainant re-iterate the same facts of the complaint in his affidavit.

17. The Complainant in his cross-examination stated that he resides at Bhimnagar, Ahmedpur, near Maruti Temple, whereas the accused resides behind Hina Lodge. Both belong to the same community and are relatives/acquaintances. He stated that he became an advocate in the year 2020 and that the present case was filed in the year 2021. He further stated that at the time of filing of the complaint, he was not practising before the Court and had, therefore, mentioned his occupation as private business in his affidavit. He denied the suggestion that he is engaged in financing activities.

18. The complainant admitted that he had filed one cheque bounce case earlier, which has been settled and is to be withdrawn. He stated that the said case was filed against Bhaiyyasaheb Kamble for an amount of Rs.1,50,000.

19. Regarding the source of funds, the complainant stated that out of Rs.2,50,000/- (Two Lakh Fifty Thousand) involved in the present case, Rs1,50,000/- (One Lakh Fifty Thousand) was arranged by encashing a Fixed Deposit in the name of his mother, and Rs.1,00,000/- (One Lakh) was paid from his own savings, which belonged to his father, a retired teacher. He stated that he has two brothers and that he had taken the said amount with family consent, informing them that the accused, being his close friend, required money for domestic and medical purposes. He admitted that it is not specifically mentioned that the accused had stated that any particular person was to be hospitalized.

20. He further stated that the Fixed Deposit in his mother's

name was created from his father's pension. He admitted that he has not produced documents showing the retirement benefits received by his father but stated that he can produce the same. He also stated that his father retired in 2008 and that the retirement benefits from 2008 to 2020 were deposited in the bank. He asserted that he can produce relevant bank statements as well as documents pertaining to the Fixed Deposit and withdrawals.

21. The complainant denied the suggestion that he had lent money to his neighbour Kalubai Kamble or that he had any monetary dispute with her. He admitted that Sunil Gaikwad visited him on 04.01.2021 and further admitted that his complaint and affidavit do not mention that the amount was paid in the presence of witnesses. He denied the suggestion that he did not advance Rs.2,50,000/- (Two Lakh Fifty Thousand) to the accused.

22. He stated that Supriya Sheshrao Bansode is a leader of Dalit Panther but denied that he worked with her or participated in any protests at Ahmedpur or Nanded. He denied that his acquaintance with Sunil Gaikwad was through her and stated that he knows him as he is related to her.

23. He denied the suggestion that Supriy Bansode instructed him to lend Rs.1,00,000/- (One Lakh) to the accused or that Sunil Gaikwad paid him Rs.60,000/- (Sixty Thousand) during the COVID period. He further denied the suggestion that he is engaged in money lending, takes cheques from persons, fills in higher amounts, and files false cases.

24. He stated that in Case No. 386/2022, he withdrew the

matter after receiving the entire cheque amount. He denied that he is carrying on illegal money lending or that he has misused the provisions of Section 138 of the Negotiable Instruments Act by filing a false case or affidavit.

25. The accused examined himself in his defence vide (Exh.50) The accused, in his affidavit, has denied that he was ever in need of money for meeting any family or medical expenses. He has further denied that the complainant had advanced a sum of Rs.2,50,000/- (Two Lakh Fifty Thousand) to him as a hand loan for a period of three months or that he had ever demanded such amount from the complainant. He has specifically denied that he had borrowed Rs.1,00,000 on 04.01.2021 and any further amount on 05.01.2021 for a period of three months. He has also denied that the complainant had approached him on 08.04.2021 demanding repayment of the said amount.

26. The accused has further denied that he had issued any cheque to the complainant on 08.04.2021 towards discharge of any liability. According to him, the present complaint has been falsely filed by the complainant by misusing the provisions of Section 138 of the Negotiable Instruments Act, with an intention to extract money from him. He has contended that the contents of the complaint are false and fabricated.

27. The accused has stated that he is engaged in the business of construction at Ahmedpur. He has further stated that in July 2020, on the suggestion of Supriy Sheshrao Bansode, he approached the complainant for financial assistance of Rs.1,00,000/- (One Lakh) due

to difficulties in his construction business. He has stated that the complainant agreed to lend the said amount in the presence of Supriya Bansode and accordingly paid Rs.1,00,000/- (One Lakh) to him. He has further stated that, for the purpose of security of the said amount, he had issued a cheque to the complainant.

28. The accused has further deposed that when he later approached the complainant to repay the amount of Rs.1,00,000/- (One Lakh), the complainant demanded interest at the rate of 10% per month. He has stated that he repeatedly requested the complainant to return the blank cheque; however, the complainant did not return the same. Instead, the complainant allegedly filled in exaggerated amounts in the cheque and misused it by inserting a higher amount, thereby committing breach of trust.

29. The accused has further contended that upon inquiry, he came to know that several criminal and civil cases are pending against the complainant and that the complainant is of a criminal background. He has alleged that the complainant is engaged in illegal money lending without licence and is exploiting poor persons. He has further alleged that the complainant has attempted to threaten and coerce him in order to wrongfully obtain money from him.

30. The accused has thus contended that he is liable to pay only Rs.1,00,000/- (One Lakh), if at all, and that the present complaint has been falsely filed by the complainant by misusing the cheque and the provisions of law. He has therefore prayed that the complaint be dismissed.

31. The accused in his cross-examination, has stated that he is engaged in the business of construction contracting. He has deposed that he has known the complainant since prior to the incident and that they were on good terms. He has admitted that on 04.01.2021, he was in need of money for medical purposes and had approached the complainant by stating his family and medical difficulties and requested for a hand loan.

32. He has further admitted that pursuant to his request, the complainant had advanced money to him. He has admitted that the complainant had agreed to pay an amount of Rs.2,50,000/- (Two Lakh Fifty Thousand) and that on 04.01.2021, the complainant had paid him Rs.1,00,000/- (One Lakh). However, he has denied that on 05.01.2021, the complainant had broken a Fixed Deposit standing in the name of his mother and paid an additional sum of Rs.1,50,000/- (One Lakh Fifty-Thousand ) to him for a period of three months.

33. The accused has further admitted that on 08.04.2021, the complainant demanded repayment of the amount. He has admitted that he issued a cheque to the complainant towards the said amount. He has further admitted that the said cheque bears No. 611911 and contains his signature. However, he has stated that the said cheque was issued as a blank cheque and that he had not filled in its contents.

34. He has denied the suggestion that he had instructed the complainant to fill in the contents of the cheque and thereafter signed the same. He has stated that he had issued the said cheque (Exh. 37) towards repayment of the amount taken. At the same time,

he has also stated that the cheque was given as security.

35. The accused has further stated that he is educated up to 10th standard and is able to read and write Marathi. He has deposed that he is not aware whether the complainant had deposited the cheque in the bank on 08.04.2021. He has further stated that he is not aware that the cheque was dishonoured due to insufficiency of funds and returned with a bank memo, and that he came to know about the same only after receipt of the legal notice.

36. He has admitted that the complainant had issued a legal notice dated 23.04.2021 demanding the amount, and that the said notice (Exh.38) was received by him. He has further admitted that the signature on the acknowledgment (Exh. 43), along with his name and address, is correct. He has also admitted that he did not send any reply to the said notice and has stated that he cannot assign any reason for not replying.

37. The accused has further admitted that at the time when the cheque was dishonoured, the balance in his bank account was approximately Rs.5,000 (Five Thousand) to Rs.10,000 (Ten Thousand). He has also admitted that despite receipt of the notice demanding the amount, he has not repaid any amount to the complainant till date. He has admitted that non-payment of the amount has caused financial and mental hardship to the complainant.

38. However, he has denied that he is liable to pay Rs.2,50,000/- (Two Lakh Fifty Thousand) to the complainant and has voluntarily stated that he is liable to pay only Rs.1,00,000/- (One

Lakh). He has further alleged that the complainant is engaged in money lending business and has stated that he can produce evidence to that effect, though he has denied that he is making false allegations.

39. He has denied that he is falsely stating that he had taken Rs.1,00,000/- (One Lakh) through Supriy Bansode or that the cheque (Exh. 37) was issued only as security. He has also denied that he is falsely stating that when he approached the complainant to repay the amount, the complainant demanded interest at the rate of 10% per month.

40. He has further denied that he is falsely alleging that the complainant refused to return the cheque and instead misused it by filling in inflated amounts. He has also denied that he is falsely stating that the complainant has a criminal background or is of a criminal nature.

41. He has denied that he is liable to pay the cheque amount mentioned therein, while reiterating that he is liable only to the extent of Rs.1,00,000/- (One Lakh). He has admitted that recovery proceedings are pending against him by Shriram Finance and that a warrant has also been issued against him in that regard.

42. The accused has examined (DW2) namely Milind Apsingekar bank witness in his examination-in-chief, the said witness has deposed that certain Fixed Deposits were maintained in the bank in the names of Bala Bansode and Nilubai Bansode.

43. He has stated that multiple Fixed Deposits standing in the

said names were encashed/withdrawn on 28.07.2022. He has referred to various Fixed Deposit account numbers, including FD No. 12103100115, 10861031001, 8603100148, 612103100165, and 08612103100141, and has deposed that the amounts under all these Fixed Deposits were withdrawn on 28.07.2022. He has further deposed that on 05.01.2021, one Fixed Deposit amounting to Rs.3,00,000/- (Three Lakh) was prematurely encashed (pre-closed).

44. Upon careful scrutiny of the evidence, this Court finds that the complainant has remained substantially consistent on all material particulars regarding the transaction. In his cross-examination, though it is elicited that there is no specific mention of payment in the presence of witnesses and that documentary proof regarding the exact source of funds, particularly his father's retirement benefits, has not been produced, such omissions do not go to the root of the case. The complainant has given a reasonable and probable explanation that Rs.1,50,000/- (One Lakh Fifty Thousand) was arranged by encashing a Fixed Deposit in his mother's name and Rs.1,00,000/- (One Lakh) was paid from family savings. His version that the amount was advanced due to friendly relations and on account of the accused's representation of financial difficulty has remained intact. It is settled that in cases of friendly loans, strict proof of source of funds is not always insisted upon when the transaction is otherwise believable. Nothing substantial has been brought on record to discredit his testimony or to show that the transaction was inherently improbable.

45. On the contrary, the defence of the accused suffers from material inconsistencies and lacks probative value. The accused has

taken contradictory stands on one hand, he denies receipt of Rs.2,50,000/- (Two Lakh Fifty Thousand), while on the other hand, he admits that he approached the complainant for financial assistance and received Rs.1,00,000/- (One Lakh). He has further admitted issuance of the cheque in question and his signature thereon, though he attempts to explain the same as a blank cheque issued by way of security. This explanation does not inspire confidence, particularly in absence of any supporting evidence or contemporaneous complaint alleging misuse of the cheque. The accused has also admitted that he did not reply to the statutory notice, despite having received the same, and has failed to assign any satisfactory reason for such omission. This conduct assumes significance, as a prudent person would ordinarily respond to such a notice if the claim was false. Further, his admission that his bank account did not have sufficient balance at the relevant time probalilises the complainant's case regarding dishonour of cheque.

46. It is also pertinent to note that the accused has admitted that he has not repaid any amount to the complainant despite receipt of notice, and has even conceded that non-payment has caused financial and mental hardship to the complainant. Though he has attempted to limit his liability to Rs.1,00,000/- (One Lakh), such partial admission, coupled with the admitted issuance of cheque, strengthens the presumption under Section 139 of the Negotiable Instruments Act. The defence that the cheque was issued as security or that it has been misused is a bald assertion, not supported by any convincing material, and is further weakened by the absence of any steps taken by the accused to recover the cheque or prevent its

misuse. In view of these circumstances, the accused has failed to rebut the statutory presumption even on the scale of preponderance of probabilities. Consequently, the evidence led by the complainant stands unrebutted and inspires confidence, leading this Court to hold that the cheque in question was issued towards discharge of a legally enforceable debt. Accordingly, I answer Point No.1 in the Affirmative.

**AS TO POINT NO 02 :-**

**Return Memo and Issue of Demand Notice**

47. The record indicates that the cheque issued by the accused was presented for encashment in the bank on 08.04.2021, but it was returned unpaid due to insufficient funds in the accused's account. The return memo clearly specifies "insufficient funds," which satisfies the requirement under Section 138(1) of the Negotiable Instruments Act. The complainant has produced the original return memo and the bank acknowledgment, which remain unrebutted. The accused, in his statement and cross-examination, admitted that there were only Rs.5,000 /- (Five Thousand) to Rs.10,000 (Ten Thousand) in his account at the time the cheque was presented and that he knew of the insufficient balance, thereby confirming the dishonour.

48. Further, the complainant, upon dishonour of the cheque, issued a statutory demand notice vide (Exh.41) to the accused on 23.04.2021 by registered post at the correct addresses. The complainant has produced the registered post receipt and the notice itself as evidence (Exhibit Nos. 42 & 43). The accused admitted receipt of the notice in his examination, but failed to respond or make any payment to the complainant. This conduct satisfies the

statutory requirement that the notice must be issued within 30 days of receiving the return memo and that the accused must be given 15 days to repay the debt.

49. In view of the evidence, it is clear that the cheque was returned unpaid due to insufficient funds, and the complainant complied with all procedural requirements under Section 138, including issuance of a valid demand notice. The accused's admission of receipt of the notice and failure to make payment corroborates the complainant's case. Therefore, the Court finds that the statutory conditions regarding dishonour of cheque and service of demand notice have been fully complied with, and the accused cannot claim any procedural lapse in this regard. Accordingly, I answer point NO.2 in the Affirmative.

### **AS TO POINT NO.3**

50. On perusal of the evidence on record, it is established that the complainant and the accused were known to each other, and there existed a relationship of friendship and trust. The complainant has testified that he advanced a total sum of Rs.2,50,000/- (Two Lakh Fifty Thousand) to the accused on 04.01.2021 and 05.01.2021, with Rs.1,00,000/- (One Lakh) given in cash and Rs.1,50,000/- (One Lakh Fifty Thousand) withdrawn from a Fixed Deposit in his mother's name. The accused, in his cross-examination and examination, has admitted receipt of Rs.1,00,000 from the complainant and the issuance of a cheque (No. 611911) towards repayment of the money, although he attempts to describe it as a "security cheque."

51. The cheque was presented for encashment on 08.04.2021 but was returned due to insufficient funds, as reflected in the return memo issued by the bank. The complainant duly issued a statutory demand notice on 23.04.2021, calling upon the accused to repay the amount within 15 days, which was duly received by the accused, as admitted by him. Despite receipt of the notice, the accused failed to make any payment. These facts satisfy all the essential ingredients of Section 138 of the Negotiable Instruments Act: (i) issuance of cheque for discharge of a legally enforceable debt, (ii) dishonour of the cheque due to insufficient funds, and (iii) failure to make payment within the stipulated period after receiving the statutory demand notice.

52. Although the accused has tried to dispute the total amount and claimed that the cheque was given as security, such contentions are unsubstantiated and inconsistent with the documentary evidence and his own admissions. His conduct, including failure to respond to the notice and absence of any valid explanation for the cheque dishonour, reinforces the complainant's claim. In view of the above, the Court finds that the complainant has successfully proved, beyond preponderance of probabilities, that the accused committed the offence under Section 138 of the Negotiable Instruments Act.

53. The learned Advocate for the accused relied upon the following judgments in support of his contentions vide (Exh.114)

A. Dashrathbhai Patel & Ors. v. Hitesh, Mahendrabhai Patel & Ors., decided on 11.10.2022 by the Hon'ble Supreme Court of India, wherein the principles regarding the requirement of

proof of legally enforceable debt and the scope of Section 138 of the Negotiable Instruments Act were discussed.

B. *Sudhir Kumar Bhalla v. Jagdish Chand*, reported in [AIR 2008 SUPREME COURT 2407], in which the Hon'ble Supreme Court elaborated on the circumstances under which the presumption under Section 139 of the Negotiable Instruments Act can be rebutted by the accused.

C. *Shri Dattatray v. Sharanappa*, decided by Hon'ble Supreme Court Of India on 07.08.2024, which was cited for the proposition that the accused may raise issues of prior arrangement or dispute over the amount in order to defend a Section 138 complaint.

54. These judgments have been duly considered. While the accused has sought to rely upon the above decisions to contend that the cheque in question was allegedly given as security and that no legally enforceable debt existed, the facts and evidence of the present case are distinguishable. The complainant has established the existence of a legally enforceable debt, issuance of the cheque in discharge of that debt, dishonour of the cheque due to insufficient funds, and non-payment despite the statutory notice. Therefore, the principles laid down in the cited judgments do not advance the defence in the present case.

55. In view of the statutory presumption, the consistent testimony of the complainant, the admitted issuance and dishonour of cheque, and the failure of the accused to rebut the presumption even on preponderance of probabilities, this Court is satisfied that the complainant has proved beyond reasonable doubt that the

cheque was issued towards legally enforceable debt and that the accused failed to honour the same despite statutory notice. But he failed to pay disputed cheque amount (Exh.37) amount within stipulated time. Thus, accused committed an offence punishable under section 138 of Act. Hence, I answer point No.03 in affirmative and take a pause to hear him on the point of sentence.

56. The Ld Advocate for accused submitted that, accused is ready to pay Rs.1,50,000/- as he is only borrowed Rs.1,00,000/-. On the other hand, learned advocate for the complainant argued that suitable sentence of imprisonment and compensation may be imposed.

57. Considered submissions of both sides. It is established on record that, the accused knows the consequences of dishonour. Inspire of having knowledge of the consequence of dishonour of cheque, accused failed to honour the cheque.

58. This is economic offence. If lenient view is taken and flee bite sentence of fine only is imposed then the accused who is drawer of dishonoured cheque for Rs.2,50,000/- will think that dishonour of cheque was taken light heartedly. It would also frustrate the object of legislation to make dishonour of cheque punishable.

59. Prescribed punishment for the offence punishable under Section 138 of the Act is two years. Considering the amount of dishonoured cheque and fact that Section 138 is enacted to bring credibility in the transaction through cheque, I am of the opinion that if sentence of imprisonment for three months with compensation imposed and recovery of compensation secured by imposing sentence

in default will meet the ends of justice. Therefore for point No.4 I pass following order:

**ORDER**

1. Accused Sunil Sudhakar Gaikwad is hereby convicted under Section 255(2) of the Code of Criminal Procedure for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.
2. The accused is sentenced to undergo simple imprisonment for a period of three months and pay a fine of Rs.3,75,000/- [Three Lakh Seventy-Five Thousand ] [i.e cheque amount of Rs.2,50,000/- Two Lakh Fifty Thousand plus fifty percent amount of cheque i.e Rs.1,25,000/- [One Lakh Twenty-five thousand] within two months from the date of this Order i.e on or before 30.05.2026 and in default of payment of fine, Accused shall suffer simple imprisonment of one month.
3. Both sentences shall run successively and not concurrently.
4. The entire amount of fine paid/recovered shall be paid as compensation to the complainant in terms of section 357(1)(b) of Code of Criminal Procedure.
5. The accused to surrender his bail bonds.
6. The accused to furnish fresh surety of Rs.15,000/- (Rs.Fifteen Thousand Only) to appear in the event of filing appeal against this judgment vide Section 437-A of the Code of Criminal Procedure, 1973.

7. The accused is informed about his right to prefer an appeal within the prescribed period.

8. Copy of the judgment be given to the accused free of cost.  
[Dictated and pronounced in open court.]

Place : Ahmedpur.  
Date : 30.03.2026.

(Megha C. Hasge)  
Judicial Magistrate, F.C.  
Ahmedpur

**Part "C"**

(Para 44(iii) of Chapter VI of Criminal Manual)  
( List of Complainant/Defence /Court Witnesses)

**A. Complainant :-**

Sr. No.	Complainant Name	Nature of Evidence
01.	Ajay Balurao Bansode	Complainant.

**B. Defence Witnesses, If any:**

Sr. No.	Name	Nature of Evidence
01.	Sunil Sudhakar Gaikwad	Defence.
02.	Milind Apsingekar	Bank witness.

**LIST OF COMPLAINANT/DEFENCE /COURT EXHIBITS**

**A. Complainant**

Sr. No.	Exhibit No.	Description
01.	37	Cheque bearing No. 611911 dated 08/04/2021, State Bank of India, Ahmedpur branch issued by the accused in favour of the complainant.

02.	38	Cheque return memo dated 09/04/2021 issued by the bank of the complainant.
03.	39	Deposit Slip dated 08/04/2021
04.	40	Deposit Slip dated 08/04/2021
05.	41	Notice sent by advocate for complainant dated 23/04/2021
06.	42	Original Postal Receipt of notice
07.	43	Returned Envelope with remark Refused.

**B. Defence:-**

Sr. No.	Exhibit No.	Description
01	115	Certified Copy of SCC NO.386/2022

**C. Court Exhibits:-**

Sr. No.	Exhibit No.	Description
	Not applicable	---

**D Material Objects:**

Sr, No.	Exhibit NO.	Description
..		..

Place : Ahmedpur.  
Date : 30.03.2026.

(Megha C. Hasge)  
Judicial Magistrate, F.C.  
Ahmedpur