

MHLA13000315-2021

Received On :-	30/03/2021
Registration On :-	30/01/2021
Decided On :-	05/05/2026
Duration :-	Y M D 05 01 06

**In the Court of 1<sup>st</sup> Judicial Magistrate, First Class, Renapur,  
Tal. Renapur Dist. Latur**

( Presided over by D. M. Gitte )

**S. C. C. No. 105/2021**

**Exh. No :**

**Pradeep Hanmant Chewale,**  
Age – 40 Years, Occ – Farmer,  
R/o. Sindhgaon, Tal – Renapur,  
Dist – Latur.

... **Complainant.**

**Versus**

**Sandeep Kishanrao Rathod,**  
Age :- 24 years, Occ :- Business,  
R/at :- Swapnapurti Apartment,  
Flat No. 302, LIC Colony,  
Tal – Dist :- Latur.

... **Accused.**

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**-: Appearances :-**

Adv. for the complainant - Shri. A. S. Salunkhe  
Adv. for the accused – Shri. M. B. Jadhav

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**-: Judgment :-**

( Delivered on 5<sup>th</sup> May 2026 )

This complaint is filed for the offence punishable under Section 138 of the Negotiable Instruments Act,1881. (Hereinafter referred to as 'the N.I. Act').

02] The case of the complainant in short is as under :

The complainant is a farmer. The accused and complainant know each other and they are having friendly cordial relationship. They would help each other in their financial difficulty. On 04.01.2020, accused told the complainant that he was in financial need of Rs. 5 lakh and asked for hand loan. He promised that he will repay the said amount within six months. On 07.01.2020, the complainant got deposited the said amount by taking it from his friend to his account and gave cheque bearing No. 004637 of Bank of Maharashtra to the accused. The accused deposited that cheque with his Bank of Maharashtra branch Chincholiraowadi, Tal-Dist- Latur on that day itself. After six months, on 15.07.2020, complainant asked the accused to repay the hand loan amount. Accused avoided to repay the said amount and asked for three months' time to repay it.

03] Considering the friendly relationship between them, complainant gave three months' time to accused. Thereafter, on 25.10.2020, complainant asked for that hand loan amount. At that time, accused issued his signed cheque of Bank of Maharashtra bearing No. 022980. On 19.11.2020, complainant deposited said cheque with Bank of Maharashtra, branch Poharegaon. The said cheque was dishonoured with remark 'Funds Insufficient'. Complainant told the said fact to accused. The accused promised that on 25.11.2020 the cheque will be cleared. Therefore, again on 25.11.2020, complainant deposited said cheque, but it dishonored with remark 'Funds Insufficient' with memo dated 25.11.2020. Therefore, on 17.12.2020, the complainant sent a statutory demand notice by RPAD to the accused and on 30.12.2020, accused received it.

04] On 01.01.2020, accused approached the complainant and asked

one month period to repay. Again, complainant gave one month period to him. On 01.02.2021, complainant deposited said cheque with Latur District Central Cooperative Bank Ltd., Branch Poharegaon. The cheque came to be dishonored with remark 'Funds Insufficient' with memo dated 04.02.2021. Thereafter, on 17.02.2021, complainant sent a legal notice to accused and on 19.02.2021 and 22.02.2021, the postal department informed him but he refused to receive it. Therefore, said notice returned with 'unclaimed' remark. The accused did not bother to pay the cheque amount within fifteen days from the receipt or refusal of statutory notice. Hence, the complainant has filed this complaint against the accused.

05] Process was issued against the accused for the offence punishable under Section 138 of the N.I. Act. The accused appeared before Court. Plea of accused is recorded, to which he pleaded not guilty and claimed to be tried. After completion of complainant's evidence, statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Cr.P.C') is recorded. After considering the same, it is gathered that the defence of the accused is that Abhimanyu Salunke took signed blank cheque from him. He filled all the cheque details and filed present false case.

06] Therefore, following points arise for my determination. I have recorded my findings against them for the reasons as follows-

<b>Sr. No.</b>	<b>Points</b>	<b>Findings</b>
1	Whether Complainant proves that accused issued the cheque to complainant towards the discharge of debt or legal liability ?	..... In the affirmative

2	Whether complainant proves that the cheque was drawn by the accused on an account maintained by him and the same were dishonored ?	..... In the Affirmative.
3	Whether complainant proves that the accused committed an offence punishable under Section 138 of the N.I. Act?	..... In the Affirmative.
4	What order ?	..... The Accused is Convicted.

**-: REASONS :-**

07] In order to substantiate the guilt of the accused, the complainant has examined himself as CW – 1 by filing his affidavit in lieu of examination-in-chief at Exh.36. The complainant has relied on following documentary evidence - Cheque bearing no. 022980 dated 10.11.2020 of Rs. 5 lakh at Exh.46, Bank Return Memos dated 19.11.2020 and 25.11.2020 at Exh. 47 and 48, legal notice dated 17.12.2020 at Exh. 49, postal receipt at Exh. 50, postal packet at Exh. 51, bank return memo dated 04.02.2021 at Exh. 52, legal notice at Exh. 53, postal tracking report at Exh. 54, bank account statement at Exh. 55. On the other hand, accused has not examined any witness nor did he produce any documentary evidence in his defence.

**As to Point Nos. 1 :-**

08] Complainant Pradeep Chewale (CW 1) has filed his evidence affidavit at Exh. 36. He deposed that there was friendly relation between accused and him. On 04.01.2020, accused was in financial need of Rs. 5 lakh and he demanded hand loan of said amount. On 07.01.2020, complainant advanced the said amount to accused by taking said amount from his friend by cheque bearing No. 004637. On the same day, accused

deposited the said cheque with his Bank of Maharashtra, branch Chicholiraowadi.

09] In cross-examination, complainant denied that he is doing his agriculture business at Sindhgaon therefore, there is no reason to know persons residing at Latur. Further, he deposed that accused was running Ajinkyatara restaurant and Bar in the year 2013-14 at Barshi road, Latur and he went there. In that bar, his family members, friends and his advocate were going. The husband of advocate in this case owed some amount to accused and that he has received five lakh amount from her husband Abhimanya Salunkhe. He denied the suggestion that he and Abhimanyu sent the amount of Rs. 5 lakh to the account of Ravi Savant, Hotel Enjoy, 12 number patee. Further, he denied that accused gave blank cheque as security. Further, he denied that Abhimanya Salunkhe and accused were having transaction and on his saying, he is deposing false.

10] In cross-examination, accused put story that there was some transaction between Abhimanyu Salunkhe and him. But the complainant has denied the said fact. Further, accused admitted the issuance of blank cheque as security. Accused tried to bring on record that there is no friendly relationship between complainant and accused. However, he brought on record that accused and complainant are known each other due to complainant's visits in restaurant and bar where he is working or he is running restaurant and bar. Thus, the fact is proved that complainant and accused know each other and there are friendly relations between them.

11] Now, the question is remained as to whether complainant gave hand loan amount of Rs. 5 lakh to accused for a period of six months. The

complainant has deposed accordingly and during cross-examination accused has not denied the said fact. The accused brought on record that there was a transaction between Abhimanyu Salunkhe and him. But the accused has not produced any evidence on record to prove the said fact. On the contrary, the complainant has produced his bank statement at Exh. 55. The bank account statement reveals that on 07.01.2020, complainant gave amount of Rs. 5 lakh to the accused by cheque bearing No. 4637. The evidence of complainant corroborates with his documentary evidence. Therefore, considering the above discussion, the fact is proved that complainant give hand loan amount of Rs. 5 lakh to the accused.

12] The accused took defence that he issued blank cheque as security. The accused not denied the fact of issuance of cheque. Further, the accused has not brought on record the fact to whom he issued blank cheque as security. The accused in his statement recorded under Section 313 stated that Abhimanya Salunkhe took signed cheque from him by misrepresentation. On the contrary, accused has not brought the same fact during cross-examination of complainant. He has only put the suggestion that he issued blank cheque as security. In whose favour it is issued is not put in cross-examination.

13] The accused has not denied the fact that complainant is holder in due course of cheque issued by him. The position is very well clear that when signed blank cheque is voluntarily presented to a payee towards payment, the payee may fill up the details including the amount and other particulars. Merely filling details of cheque does not itself invalidate the cheque. The burden is on the accused to prove that the cheque was not in discharge of a debt or legally enforceable liability by adducing any evidence.

In present case, accused has not adduced any evidence and not brought any fact during cross-examination of complainant.

14] The complainant has relied on judgment of Hon'ble High Court and Hon'ble Supreme Court MSR Leathers Vs. S. Palaniappan and Anr., 2013(2) MhLJ (Cri) 27, Uttam Ram Vs. Devinder Singh Hudan & Anr., 2020 ALL SCR (Cri) 64 and Navneet Singh Gogia & Anr Vs. The State of Maharashtra & Anr., Cri. Rev. APP No. 70 of 2023. With due respect to the law laid down therein, the facts of case in hand and facts discussed in above cases are not similar. Therefore, the ratio laid down by Hon'ble High Court and Hon'ble Supreme Court is not helpful to the complainant. Further, the presumptions under Sections 118 and 139 of the Negotiable Instrument Act are in favour of the complainant. The fact is proved that accused issued cheques in favour of complainant. Therefore, the fact is proved that accused issued cheque to discharge of his legal liability in favour of complainant. The accused failed to rebut said burden by adducing any evidence on record. Hence, considering the above discussion, I record my finding to point No. 1 in the affirmative.

**As to Point No. 2**

15] The complainant has deposed that he deposited the cheque for encashment and it came to be dishonoured with remark "Funds Insufficient" vide memo dated 19.11.2020, 25.11.2020 and 04.02.2021. The complainant produced memos at Exh. 47, 48 and 52. Memos bear the Seal and signature of bank. Further, the memo at Exh. 52 dated 04.02.2021 bears only stamp or official mark of bank. Therefore, in view of Section 146 of the N.I. Act, presumption can be drawn. The contents of memo reveal that the cheque bearing No. 022980 returned unpaid with remark "Funds Insufficient".

Therefore, the fact is proved that the cheque is dishonoured. Hence, I answer point No. 2 in the affirmative.

**As to Point No. 3 :-**

16] The complainant has deposed that after dishonour of cheque, on 04.02.2021, he sent a statutory notice through his advocate. The accused refused to accept it. It returned with remark Unclaimed. The complainant has produced envelope at Exh. 51 and postal receipt at Exh. 50. The envelope and acknowledgment reveal that notice is sent at accused's address. Further, the notice is produced at Exh. 49. The notice reveals that it is not signed by complainant nor his advocate. Therefore, it is necessary to see whether the duly signed notice is served on accused.

17] The complainant has relied on judgment of Vardhman Steel Vs. Sai Engineering, 2020 (2) MhLJ 374. In this judgment, the Hon'ble High Court has observed that the notice was not signed either by complainant or his counsel. The evidence reveals that demand notice was duly served. Further, the contents of said notice were deposed by complainant during trial. Therefore, the Hon'ble High Court held that the notice is proved. In present case, notice produced on record is not signed either by the complainant and advocate. Therefore, the evidence came on record needs to be looked into.

18] After opening the sealed envelope sent to accused, it reveals that signed notice by advocate and complainant sent to the accused. Therefore, the fact is proved that after dishonour of cheque, accused sent statutory notice to accused and thereby demanded cheque amount within fifteen days from the date of receipt of notice. The complainant has produced envelope at Exh. 51 which reveals that on 22.02.202, accused refused to receive it. Therefore,

in view of presumption under Section 27 of the General Clauses Act, ratio laid down by Hon'ble High Court and documentary evidence produced on record, it is proved that the complainant had issued the statutory notice to the accused calling upon him to make the payment of the cheque amount within fifteen days and he has failed to make cheque payment and committed the offence punishable under Section 138 of the NI Act. Hence, I answer Point Nos. 3 in the affirmative.

**As to Point No.4 :-**

19] I have recorded my findings to point Nos.1 to 3 in the affirmative. The complainant has proved legal liability of accused to make repayment. The cheque is presented well within the period of its validity. Further, the cheque is dishonored and despite service of demand notice, accused failed to make payment to the complainant. Thus, all the ingredients required to constitute the commission of offence under Section 138 of N.I. Act are proved by the complainant. Hence, I record my finding to point No.4 in affirmative. Thus, I am taking pause to hear accused on quantum of sentence.

**Place:-Renapur**  
**Date:-05/05/2026**

**(D. M. Gitte)**  
**Judicial Magistrate F. C.,**  
**(Court No.1), Renapurur**

**As to point No.5:-**

20] Despite availing various opportunities, accused failed to appear and argue his case as well as upon the quantum of sentence. Hence the judgment is being pronounced without hearing accused on it. On the contrary learned advocate prayed one year imprisonment and fine of Rs. 10 lakh. The offence under Section 138 of N.I. Act, 1881 comes within the

category of economic offence. The benefit of Probation of offenders Act cannot be extended to the person guilty of economic offences. Hence I do not wish to extend the benefit of Probation of Offender Act to the accused.

21] In order to decide the quantum of sentence, it is necessary to take into account the nature of offence, the circumstances under which it is committed, the criminal antecedents of accused aggravating and mitigating factors, if any, and the amount of the time and expenses incurred by the complainant to file the litigation. Neither party has brought on record the special circumstances under which the offence is committed or the aggravating or mitigating factors.

22] It is important to mention here that the offence punishable under Section 138 of N.I. Act is in the nature of regulatory offence since the bouncing of cheque is largely in the nature of a Civil Wrong which affects the private parties involved in the commercial transactions. The provision of Section 138 not only provides for the imprisonment of the accused but also ensures that the victim of offence is compensated.

23] Record reveals that the complainant is deprived of the use of cheque amount for period of around five years. Had the complainant invested this amount, he might have earned more amount there from. Hence having regard to the nature of litigation, the sentence of period of six month and fine amount of Rs.10 lakh and in default of fine one month imprisonment would meet the end of justice. Hence in the result, I proceed to pass the following order in answer to point No.5-

**:- ORDER :-**

01. Accused is held guilty for the offence punishable u/S.138 of Negotiable Instrument Act, 1881 and convicted vide section 255(2) of The Code of Criminal Procedure.
02. He is sentenced to suffer simple imprisonment for a term of six months and to pay fine of Rs.10,00,000/- (Rupees Ten lakh only ). In default of payment of fine, to suffer simple imprisonment for a period of One month.
03. After realization of fine amount from the accused, compensation of Rs.10,00,000/- (Rupees Ten lakh only ) shall be paid to the complainant under Section 357(3) of Code of Criminal Procedure.
04. Copy of judgment be provide to the accused free of cost.
05. Issue conviction warrant against accused as he is absent.

(Pronounced in open court.)

Place : Renapur.

Date : 05/05/2026.

( D. M. Gitte )  
1<sup>st</sup> Judicial Magistrate, First Class,  
Renapur.