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Form No. XXXII
Part – 'A'
(Para 44(i) of Chapter VI of Criminal Manual)

IN THE COURT OF JUDICIAL MAGISTRATE,
(FIRST CLASS), DEONI, DIST. LATUR.
(Presided over by S. A. Surjuse)

SUM.CRI.CASE NO.164/2023 **Exh.No.87**

Complainant		Sabiyabegum Imtiyaz Shaikh, Age 50 years, Occ. Tution classes, R/o. Borol Road, Deoni, Taluka Deoni, District Latur.
Represented by		Learned Adv. S.K. Malbhage.
	Versus	
Accused		Javed Husain Pathan, Age 28 years, Occ. Business. R/o Behind Yashwant Bank Deoni, Taluka Deoni, District Latur.
Represented by		Learned adv. M.S. Nagrale

Date of cheque	26/04/2023
Date of Dishonor of cheque	02/05/2023
Date of Notice	30/05/2023
Date of service of Notice	02/06/2023
Date of Offence	17/06/2023

Date of Complaint	28/06/2023
Date of recording of accusation	23/06/2026
Date of commencement of evidence	23/06/2026
Date of judgment is reserved	04/06/2026
Date of the Judgment	23/06/2026
Date of Sentence, if any	Nil.

Part – 'B'
(Para 44(i) of Chapter VI of Criminal Manual)

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 468, BNSS.
1.	Javed Husain Pathan	Nil	10/02/2025	138 of N.I. Act	Convicted	Nil.	No

Note :- The oral as well as documentary evidence produced by the prosecution and accused is shown in Part- 'C' appended to the judgment, as directed in Para 44(i) of Chapter VI of Criminal Manual.

<u>J U D G M E N T</u>
(Delivered on 23/06/2026)

This is trial of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (Shortly called as "N.I. Act").

The complainant case as under :

2. Her son Altaf Imtiyaz Shaikh and the accused are friends. The accused had demanded Rs.2,75,000/- for purchasing a truck, in the year 2021 to her and assured to return the same within 6 months. Accordingly, she paid Rs.2,75,000/- in cash on 01/01/2022 to the accused in the presence of Mainoddin Yakubsab Shaikh and Altaf Imtiyaz Shaikh. Thereafter, the accused failed to repay that amount within the agreed period and several requests. The accused had firstly avoided to repay that amount and lastly on 20/04/2024 issued and signed a Cheque No.114992, dated 26/04/2023, of Rs.2,75,000/- drawn from the State Bank of India, Branch Deoni. She presented that cheque on 26/04/2023. It was dishonored with a reason of 'fund insufficient' in the account of accused vide bank memo dated 02/05/2023. Thereafter, a demand notice of cheque amount had been issued through her advocate to the accused on 30/05/2023 by the registered post with acknowledgment. It was duly served on 02/06/2023. But the accused failed to comply or reply the notice within 15 days. She preferred this complaint for an offence punishable under section 138 of the N.I. Act on 28/06/2023 and prayed to punish the accused.

3. Then learned Magistrate took cognizance of an aforesaid offence, proceeded further as a summons case, recorded the particulars (Exh.16) of offence and plea of the accused and recorded evidence of witnesses on the separate sheet. I have explained incriminating evidence to the accused and recorded his statement (Exh.65) under section 351(1)(b) of the Bharatiya Nagarik Suraksha Sanhita corresponding section 313 (1)(b) of the Code of Criminal Procedure. He took a defence of no legal liability or debt, false implication and misuse of cheque, which was a security against the loan of her son. It is gathered from his statement and modes and manners of cross examination.

4. I have carefully gone through available evidence, documents and record. The following points are arises for my determination and I recorded my findings thereon for the reasons stated hereinafter.

Sr.No.	POINTS	FINDINGS
1.	Does the complainant prove that, the accused had issued cheque No.114992, of Rs.2,75,000/- dated 26/04/2023, drawn on the State Bank of India, Branch Deoni to discharge legal enforceable debt and liability ?	Yes.
2.	Does the complainant further prove that, the cheque was presented within stipulated period and dishonored with reason of 'Funds Insufficient' ?	Yes.
3.	Does the complainant further prove that, he made demand in writing within stipulated period to the accused to pay cheque amount?	Yes.
4.	Does the complainant further prove that, demand notice is duly served and the accused failed to pay cheque amount within stipulated period ?	Yes.
5.	Is any offence proved against the accused ?	Yes, as per final order.

6.	What order ?	As per final.

R E A S O N S

Submission on behalf of complainant :-

5. Learned advocate Shri. S.K. Malbhage for the complainant has taken me through the complaint and evidence. According to him, an oral evidence is remained unshaken. The defence has collected evidence and suggested in support of the complaint. The multiple defences are not probable. The debt and an existing legal liability is duly proved. The presumption provided under sections 139 and 118 of the NI Act are established. The complainant is succeeded proved disputed fact and the alleged offence beyond reasonable doubt.

Submission on behalf of accused :-

6. Learned advocate Shri. M. S. Nagrale for the accused has taken me through the complaint and evidence. According to him, there is no conclusive proof of alleged business, accused's need, alleged payment and legal debt. The complainant failed to prove disputed fact and base legal liability. He also submitted that economic capacity of complainant and source of possession of huge amount are not proved. The complainant's husband and son are doing illegal money lending business. The defence of security of disputed cheque for a loan of Altaf is duly proved. The complainant had misused the disputed cheque.

7. Learned defence Advocate also argued that the complainant has made forged bank slip (Exh.P-22) and thereafter filed another bank slip. It has created doubt on the conduct of complainant. Her evidence is not trustworthy. The complainant also failed to prove the other components and alleged offence beyond reasonable doubt.

AS TO POINT NO.1 :-

8. Sabiyabegum (PW-1) and Altaf (PW-2) are star witnesses. They have reiterated the contents of complaint in their examination-in-chief. In cross-examination, they have admitted friendship between Altaf and the accused. Sabiyabegum cannot deposed her annual income. She does not pay income tax. Altaf is professor at collage, but Sabiyabegum did not know name of the collage or nature of service or friends circle of Altaf. She admitted Altaf lived in company of educated persons. She completed Montessori Course, but not qualified as D.Ed. or B.Ed. She and her husband Imtiyaz conducts private tuition at Deoni. But she did not know its registration. She has not maintained record of tuition. The accused was classmate of Altaf till 10th standard. But she did not know education of the accused. She admitted the accused treated her as mother and had relations with her and her son. But she did not know name of his mother. In the year 2021, the accused was doing business of supply sand through Tractor. The accused demanded hand loan at her house on 12/02/2021 in presence of Altaf. She made inquiry of income of accused with Altaf. She went to the house of the accused on 20/04/2023. The accused had filled up all

contents of the cheque. She denied adverse suggestions of no tuition class, no debt or payment, money lending business of her husband and son Altaf, issuance of cheque for that transaction, the accused repaid that loan to Altaf, no transaction between Altaf and the accused and Altaf paid money to Faiyaj Shaikh.

9. As per cross-examination of Altaf, he did service and reside at Pune, Baramati and Gulbarga since the year 2017 and got salary of Rs.67,000/- per month. He admitted the tuition classes of his father, but he does not depose numbers of students. The accused had stated his difficulties, but he cannot depose its dates. The accused demanded amount on 12/01/2021. He also denied the suggestion of defence.

10. I have carefully gone through the record and argument of both parties. The complainant has burden to prove aforesaid offence beyond reasonable doubt. Before appreciation of evidence, need to go through the settled principle of law and presumptions. The section 118 of the N.I. Act provides presumption, until the contrary is proved, that every negotiable instrument was made or drawn for consideration. The section 139 of the N.I. Act makes it mandatory for the court, unless contrary is proved, to presume that the holder of the cheque holds the same for the discharge, in whole or in part, of the debt or other liability, of the drawer. That presumptions are rebuttable.

11. The complainant firstly bound to prove foundational fact of an offence and then that presumptions would be operated. Onus of proving that a cheque had not been issued for a debt or liability or no existing debt is on the accused. He should be established his defence on standard of preponderance of probability. It can be considered from direct evidence or circumstances available on record and no need the accused to enter in witness box for that purpose.

12. An existing legal liability i.e. payments of advance, outstanding amount and cause of issuance of cheque are essential components of offence. The accused has taken defence of money lending transaction and security of cheque. Accordingly, issuance of cheque is undisputed fact. Therefore, the accused is bound to prove the alleged defence.

13. On behalf of the accused simultaneously collected evidence and suggested circumstance of friendship between the accused and Altaf, relations with the complainant and the accused treated her like as mother, and no relations and acquaintance between the accused and complainant. That evidence has supported to the complaint. The accused has also admitted the fact of friendship and acquaintance in his statement (Exh.65). The complainant succeeded to prove alleged relations and acquaintance.

14. The accused simultaneously took contrary and destructive defence of the complainant had no economic capacity and her husband and son Altaf doing money lending business. The defence has also collected evidence of income source of the complainant’s family member. The complainant and her husband are conducting private tuition. Altaf is in service and having handsome salary. Under such circumstance, their economic condition or capacity to pay the amount is duly established. Mere because her lack of knowledge of annual income or lack of document of her education and not paying tax would not create any circumstance against her economic capacity or helpful circumstance to the accused.

15. The defence challenged evidence of alleged need and alleged payment. As per available record and evidence, the complainant and Altaf are members of the same family. Their total income and profession have established their economic capacity and status. The defence advocate has also collected evidence of date of demands of money, its payment and witnesses and demands regarding return the hand loan. It has supported to the complaint. Similarly, in cross-examination both witnesses have deposed in support of profession of accused and need of money for that purpose. An evidence of alleged need is remained unshaken. Altaf (PW-2) is witness of demand and payment. There are no sufficient reasons to disbelieve their evidence or reasons of false deposition.

16. The defence has filed copy of bank statement of accused below list (Exh.84), after completion of evidence and at the time of argument. But it is neither referred to the witness nor part of statement of accused. Similarly, the accused has not examined bank witness regarding that statement. Therefore, that statement shall not read in evidence. It is insufficient to establish alleged defence.

17. The defence has disputed place of issuance of cheque. As per cross-examination of Sabiyabegum, she visited the house of accused on 20/04/2023. The evidence collected in cross-examination can be read collectively. Mere because the place of issuance of cheque is not mentioned in the complaint or examination-in-chief would not create any suspicious circumstance or circumstances in favour of the defence.

18. The accused took defence of he issued disputed cheque (Exh.P-27) against the money lending transaction and the hand loan, paid by Altaf. The accused has also not denied or challenged signature therefrom. Issuance of that cheque and it belonging to the bank account of the accused are undisputed fact. The defence collected evidence in support of accused's signature on the cheque and it filled up by the accused. It has proved the fact of accused filled and singed the said cheque. Under such circumstance, there must be material and details of alleged loan credited by Altaf and its repayment. But aforesaid witnesses have not given single admission in that support. Similarly, the defence has not collected circumstances in support of alleged defence. The accused has not adduced his oral evidence or stated in his statement. Alleged defence is not probable.

19. The accused took defence of Altaf and his father are money lenders, Altaf paid money to Faiyaz and him. But both witnesses have denied its suggestion. The accused has not examined himself or said Faiyaz or filed and proved any document in that support. Accordingly, there is no material evidence in support of that defence. The accused has not stated regarding that defence in the statement. That defence is not probable.

20. As above discussed, I concluded that, the complainant has brought trustworthy and credible evidence. She has proved her entitlement to receive or recover the amount stated in the cheque (Exh.P-27) from the accused. It is proved that, the accused issued disputed cheque (Exh.P-27) for payment of legal debt. The presumptions under sections 118 and 139 of the N.I.Act are established in this case. It is sufficient to prove alleged legal debt and liability.

21. I find that the case set up by the complainant that she advanced a loan Rs.2,75,000/- is believable. The accused failed to prove defence of issuance of cheque as a security for loan of Altaf and money lending transaction. Alleged defences are not probable. The accused failed to prove his onus and rebut aforesaid presumptions. The complainant succeeded to prove the legal debt and liability and issuance of disputed cheque against that liability beyond reasonable doubt. Hence, I answered point No.1 in affirmative.

POINT NOS. 2 TO 4 :-

22. Aforesaid issues are interlinked and to avoid repetition, they have been discussed simultaneously.

23. Sabiyabegum (PW-1) deposed, she presented that cheque through bank slip (Exh.P-22), it was dishonored with reason 'Funds Insufficient', vide bank memo (Exh.P-23) dated 02/05/2023. She served the demand notice (Exh.P-24) vide acknowledgment (Exh.P-26), which was issued by postal receipt

(Exh.P-25), but the accused failed to repay cheque amount within 15 days. As per cross-examination, she has not filed the cheque deposit slip and the slip (Exh.P-22) did not bears signature or seal of bank officials. She denied issuance of false notice (Exh.P-24). Altaf (PW-2) has deposed in support of presentation and dishonor of cheque in support of the complaint.

24. I have carefully gone through the evidence and submissions of both parties. The defence has disputed presentations of cheque. The Bank business has established probability of receipt of presentation of cheque. The complainant relied on the bank Slip (Exh.P-22). But it does not bear seal and signature of bank official. The complainant or her Advocate has not given satisfactory explanation regarding alleged omission. It is probable that slip was not issued by bank officials. But the defence has not rebutted evidence of dishonor of cheque and bank memo (Exh.P-23) dated 02/05/2023. Its evidence remained unshaken. Accordingly, disputed cheque was dishonored with reason fund insufficient. It has proved that the said cheque was duly presented within stipulated period of 3 months. If assumed the complainant failed to prove the bank deposit slip, then it will insufficient proof or material to take adverse view that cheque was not dishonored. The bank memo is sufficient and conclusive proof of dishonor of cheque. The fact of dishonor of cheque after presentation is duly established under section 146 of NI Act. Under such circumstance, the disputed fact is duly proved, vide section 3 of the Indian Evidence Act. The law do not permit the accused to lead or collect evidence regarding no proof of presentation of cheque.

25. The evidence of issuance of demand notice and its service are remained unshaken. There is no reason to disbelieve that evidence. An oral and documentary evidence are consistent. The bank memo, demand notice, postal receipt and return envelop have corroborated to the complaint. This court can be declared service of notice, vide section 144(2) of the NI Act in that support. There are no circumstances or grounds to make invalid the notice. The accused had not replied the notice and put forwarded the defence or reasons of false notice. Hence, the defence argument is baseless and not accepted. The disputed fact and prescribed limitation of presentation of cheque, notice and filling complaint are duly proved. Hence, I answered point Nos.2 to 4 in affirmative.

AS TO POINT NO.5 :-

26. The complainant is bound to prove all ingredients of offence punishable under section 138 of the N.I. Act. Omission of single ingredient does not constitute that offence.

27. As above discussed and affirmative findings of the point Nos.1 to 4, the accused had issued disputed cheque to make repayment of legal debt and liability, which is enforceable, that cheque was duly presentation within time, it was dishonored with reason insufficient fund in account of the accused and the accused failed to comply or reply demand notice within stipulated period. Aforesaid components have established and proved an offence under section 138 of the N.I.

Act. Therefore, I hold that the complainant succeeded to prove an aforesaid offence beyond reasonable doubt. In result, I answered point No.5 in affirmative.

AS TO POINT NO.6 :-

28. In view of findings and discussion of aforesaid points, the complainant succeeded to prove an offence under Section 138 of N.I. Act beyond reasonable doubt. Hence, I hold that the accused is guilty and convicted for that offence. I take pause to hear both parties on the point of sentence.

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Date: 2026.06.23 16:53:52 +0530

(S.A. Surjuse)
Judicial Magistrate First Class,
Deoni.

29. After pronouncing the order of conviction, the complainant, her advocate Shri. Malbhage and accused and his Advocate Nagrale have jointly filed pursis (Exh.88) and submitted their compromise and the accused paid Rs.2,75,000/- to the complainant. Now the complainant has no grievance against the accused. They prayed to release the accused without sentence.

30. In view of Section 147 of the N.I. Act an offence under Section 138 of the N.I. Act is compoundable. The compounding of offence is permissible at any stage including appeal also. Therefore, both parties have right in that regard. This case will not end unless pronounced the sentence. The compromise took placed after recording the conviction and before pronouncing the sentence. Looking the relation between parties and to maintain that relation in future, the compounding of offence is acceptable at this stage. Therefore, this fit case to compound the offence and released the accused without sentence. In answer to point No. 6, I pass the following order.

:: O R D E R ::

1. The accused is convicted of offence punishable under Section 138 of the Negotiable Instruments Act, vide section 255 (2) of the Code of Criminal Procedure

2. The accused shall release forthwith without sentence as offence is compounded, after conviction in the interest of justice, vide Section 147 of the Negotiable Instruments Act.

3. Copy of judgment shall supply free of costs to the accused.

4. The Judgment dictated on computer and pronounced in open Court.

DISTRICT COURTS MAHARASHTRA

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Date: 2026.06.23 16:53:57 +0530

(S. A. Surjuse)

Dated : 23/06/2026 **Judicial Magistrate First Class, Deoni.**

APPENDIX

Part – 'C'
(Para 44(i) of Chapter VI of Criminal Manual)

List of Prosecution / Defence / Court Witnesses

A. Prosecution witnesses.

Rank	Name	Nature	Exh. No.
PW1	Sabiyabegum Imtiyaz Shaikh	Complainant	17
PW1	Altaf Imtiyaz Shaikh	Witness	28

B. Defence Witnesses, if any -

Rank	Name	Nature	Exh. No.
Nil	Nil	Nil	Nil

C. Court Witnesses, if any -

Rank	Name	Nature	Exh. No.
Nil	Nil	Nil	Nil

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS -

A. Prosecution Exhibits :-

Sr. No.	Description	Exhibit Nos.
1.	Cheque	Exhibit P-27/PW1
2.	Bank slip	Exhibit P-22/PW1
3.	Bank memo	Exhibit P-23/PW1
4.	Notice	Exhibit P-24/PW1
5.	Postal receipt	Exhibit P-25/PW1
6	Acknowledgment	Exhibit P-26/PW1

B. Defence Exhibits -

Sr. No.	Description	Exhibit Nos.
Nil	Nil	Nil

C. Court Exhibits -

Sr. No.	Description	Exhibit Nos.
Nil	Nil	Nil

D. Material Objects :-

Sr. No.	Material object number.	Description
Nil	Nil	Nil

DISTRICT COURTS MAHARASHTRA

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Date: 2026.06.23 16:54:03 +0530

Dated :23/06/2026.
Deoni.

(S. A. Surjuse)
Judicial Magistrate First Class,
Deoni.

CERTIFICATE

I affirm that the contents of this PDF file Order/judgment are same, word to word, as per the original order/judgment.

Name of Stenographer	:	Shri. M.N. Yenge
Name of the Court	:	Shri. S.A. Surjuse, J.M.F.C.
		Deoni, Dist. Latur.