MHMM150047662021				
	Instituted on	10.04.2013		
	Registered on	10.04.2013		
	Decided on	24.06.2026		
	Duration	13 Years	02 Months	14 Days

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
7TH COURT, DADAR, MUMBAI
[Presided over by Smt. M. R. Dhanorkar]
Case No.: 675/SS/2021
(Old C. C. No. 1380/SS/2013)
(Old C. C. No. 697/SS/2015)

Exh. 70

Mrs. Sangeeta Vinayak Jadhav
Age : 35 Years, Occu.: Housemaid,
Address : Room No. 4, First Floor, Plot No. B-43, Vasudev Patil Chawl, Kranti Lane, Worli Koli Wada, Mumbai - 30 } **COMPLAINANT**

-VERSUS-

Mr. Nitin Motilal Jain
Age : 42 Years, Occupation : Business,
R/o.: Flat No. 1102, 11th Floor, Arihant Towers, T. B. Kadam Marg, Byculla, Mumbai – 400027. } **ACCUSED**

Offence :- Under section 138 of the Negotiable Instruments Act.

APPEARANCES

Ld. Advocate for the complainant	:	Mr. C. B. Yadav
Ld. Advocate for the accused	:	Mr. Manish Bohra Ms. Nilofar Khan

JUDGMENT

(Decided on 24th June, 2026)

The accused is facing trial for an offence punishable under section 138 of the Negotiable Instruments Act, 1881 (in short the '**N.I. Act**').

Factual matrix of the case are as under :

02] The accused is a Developer and doing redevelopment work. The accused started redevelopment work of House No. 123-A situated at Worli Koliwada, Mumbai admeasuring 100 Sq.Ft. at the rate of Rs.8,000/- per Sq.Ft. The complainant approached through broker Mr. Satish Kashid and Mrs. Shivani Santosh Kashid to the accused as she desires to purchase the residential premises which was undertaken by the accused for redevelopment. The accused issued writing dated 09.09.2011 and 15.09.2011 with the complainant mentioned the amenities and accordingly the complainant paid total sum of Rs.6,00,000/- and Rs.1,50,000/- in cash and agreed to handover the possession of the residential premises within two to three months after completing the interior work and executed agreement.

03] The complainant repeatedly approached to the accused after three months as agreed by the accused. The accused extended the time and promises to provide the room after six months. Again he extended the period and ultimately failed to provide the room premises as promised and the accused promise to return the double amount to the complainant which she had paid. In discharge of it the accused issued a cheque bearing No. 325919 dated 21.11.2012 for Rs.9,00,000/- drawn on the Bank of India, Girgaon Branch in favour of the complainant. The said cheque was signed by the accused. The complainant presented the said cheque for encashment which was returned for the reason “Funds Insufficient”. The complainant again approached the accused but the accused again promised that he will arrange the funds and suggested the complainant to present the cheque again for encashment. The complainant again presented the cheque for encashment but the same was returned for the reason “Funds Insufficient” with cheque return memo dated 08.02.2013. The complainant issued statutory notice to the accused by RPAD and Courier on 06.03.2013. The RPAD envelope has returned to the complainant with remark “Left” and the courier packet has been accepted by the accused. In spite of service of notice, the accused failed to make payment of the cheque amount despite giving statutory notice. Hence, the complaint.

04] My Ld. Predecessor has recorded the plea of accused at **Exh. 23**. The particulars of the offence were read over and explained to the accused. He pleaded not guilty and claimed to be tried.

05] To bring home the guilt of accused, the complainant has examined herself as CW1 at **Exh. 28**. The evidence close pursis of complainant is at **Exh. 55**. The complainant has adduced following documentary evidence :-

LIST OF DOCUMENTS OF COMPLAINANT

Sr. No.	Description of document (s)	Exhibit Number
1.	Affidavit Cum Declaration dated 09.09.2011 and 15.09.2011	**30 and 31**
2.	Subject cheque	**32**
3.	Cheque return memo	**33**
4.	Statutory notice	**34**
5.	Postal receipt	**35**
6.	Courier receipt	**36**
7.	Postal envelope	**37**
8.	Cheque return memo	**29**

06] The statement of accused under section 313 of the Code of Criminal Procedure (for short ***"the Cr.P.C."***) was recorded at **Exh. 57**. The accused has come up with a defence that, the complainant never approached him. He was forced to give disputed cheques under pressure by Police Officers Mr. Prakash Patil and Mr. Anant Jadhav of the Dadar Police station. He had made complaint against them before the Hon'ble Sessions Court, Mumbai. There was no liability. He never made affidavit-cum-declarations Exh. 30 and Exh. 31. The accused failed to avail the opportunity of adducing defence evidence despite grant of sufficient time. Hence, the defence evidence was closed vide order below **Exh. 1** dated **14.02.2025.** The accused has referred following documents in cross-examination of complainant :-

LIST OF DOCUMENTS OF ACCUSED

Sr. No.	Description of document (s)	Exhibit Number
1.	Certified copy of affidavit dated 09.09.2011	**46**
2.	Certified copy of affidavit dated 15.09.2011	**47**
3.	True copy of affidavit-cum-declarations	**48 and 49**
4.	Certified copy of notice	**50**

07] In the light of inducement, evidence led by complaint, defense of accused and rival submissions advanced at bar, following points arise for my determination and I have recorded my findings against each of them for the reason as stated below:-

Sr. No.	Points	Findings
1.	Whether the complaint proves that the accused issued cheque bearing No. 325919 **(Exh. 32)** dated 21.11.2012 towards the discharge of legally enforceable debt or any legal liability?	**In the affirmative**
2.	Whether the complaint proves that due to “Funds Insufficient” in the account of the accused the disputed cheque was dishonored?	**In the affirmative**
3.	Whether the complaint proves that the demand notice **(Exh. 34)** was send to the accused and in spite of service of notice the accused failed to make payment of alleged cheque within prescribed period?	**In the affirmative**

Sr. No.	Points	Findings
4.	What Order ?	**The accused is convicted.**

:: R E A S O N S ::

08] In order to bring home guilt of the accused under Section 138 of N. I. Act, the complainant has to prove that :-

(i) The alleged cheque issued by the accused in discharge of part or full legally enforceable liability.

(ii) The alleged cheque was dishonored within a period of validity from the date of issuance.

(iii) In spite of service of written demand notice of dishonor of cheque within 15 days the accused failed to make the payment.

09] The Ld. Advocate on behalf of complainant filed written notes of arguments at **Exh. 65** which is nothing but the repetition of contents of complaint and evidence affidavit and orally submitted that the statutory presumption U/s. 118 and 139 of the N.I. Act are in favour of complainant. Prayed that the accused be convicted for the offenses punishable under 138 of the N.I. Act.

10] Per contra, the Ld. Advocate on behalf of accused filed written notes of arguments at **Exh. 69** and submitted that the accused was a developer. There are contradiction in complaint, notice and cross-examination in respect of amount.

It is also admitted by the complainant he has not received any receipt of amount. The cheque is not issued for legal liability. The disputed cheque Exh. 32 was given in police station and the cheque was obtained through police. Therefore, the disputed cheque is not given for legally enforceable debt or liability. The complainant has not proved her financial capacity. Though the complainant stated she sale out house to one Mr. Umesh but not filed any documentary evidence. The affidavit-cum-declaration Exh. 30 and Exh. 31 are false and fabricated. Considering the defense the accused be acquitted. In support of contention the accused has relied upon following case laws :

I)	**Vinayak Nivrutti Gondhale V/s. Sopan Ananda Thakar and Anr. in Cri. Appn. No. 2235/2009 (Leave to Appeal) decided on on 17.11.2009 by the Hon'ble Bombay High Court.**
II)	**Manjit Singh Obhan V/s. State of Maharashtra and Ors. in Cri. Appln. No. 78/2007 decided on 25.04.2007 by the Hon'ble Bombay High Court.**
III)	**Subburam V/s. Rajendran in Cri. O.P. (MD) No. 14832/2004 and Cri. M. P. Nos. 5178 and 5179 of 2004 decided on 06.07.2007 by the Hon'ble Madras High Court.**
IV)	**Smt. Vandana V/s. Smt. Abhilasha in Criminal Appeal No. 360/2007 decided on 08.08.2018 by the Hon'ble Bombay High Court (Nagpur Bench).**

As to Point No. 1 :-

11] To substantiate the guilt of the accused in evidence affidavit (Exh. 28) the CW1 correctly mention the details of the documents tender in the evidence as well as the contents of complaint.

12] It is the case of complainant that, the accused had agreed to build a house admeasuring 100 Sq.Ft. for the complainant at the rate of Rs.8000/- per Sq.Ft. The complainant had paid Rs.6,00,000/- on 09.09.2018 and Rs.1,50,000/- on 15.09.2018 by arranging the said funds after sale of her residential premises situated at Worli Village. The accused failed to give possession of the room within time and he promised to return the double amount to the complainant which was paid by the complainant for said room premises. Finally, the accused issued the subject cheque towards refund of the aforesaid amount. The accused has come up with a defence that, he had no transaction with the complainant. The affidavit-cum-declaration Exh. 30 is false and fabricated. The subject cheque was handed over to complainant under the pressure by Police Officers Mr. Prakash Patil and Mr. Anant Jadhav of the Dadar Police Station and he made complaint against them with the Hon'ble Sessions Court, Mumbai.

13] Considering it, the signature on the disputed cheque is no where denied in entire cross-examination. Therefore, the presumption u/s.118 (a) and 139 of the N.I. Act come into operation and it is presumed that the cheques in question were given for discharge of legally enforceable debt or liability.

14] Once the execution of cheque is admitted section 139 of the Act mandate a presumption that the cheque was for discharge of any debt or other liability. The presumption u/s.139 is a rebuttable presumption and the onus is on the accused to raise the probable defense. The standard of proof for rebutting the presumption is that of preponderance of probability.

15] To rebut the presumption it is open for the accused to rely on evidence led by him or accused can also rely on the material submitted by the complainant in order to raise a probable defence. Inference of preponderance of probability can be adduced not only from the material brought on record by the parties but also by referring to the circumstances upon which they rely. Considering the above legal aspect let us carry out a scrutiny of the evidence adduced at the trial.

16] In the present case, in order to discharge the initial burden, the complainant is relying upon the affidavit-cum-declarations Exh. 30 and Exh. 31. The accused has disputed his signature over the affidavit-cum-declarations Exh. 30 and Exh. 31. It is defence that he never made affidavit-cum-declarations Exh. 30 and Exh. 31 and he had not received the amount mentioned in Exh. 30 and Exh. 31 from the complainant. It is the defence that Exh. 30 and Exh. 31 are forged documents. Accordingly, in cross-examination question asked to the complainant to which she denied. It is also denied that she has tampered with the affidavit-cum-declaration Exh. 30. It is denied by the complain that Exh. 30 and Exh. 31 does not bear the signature of accused hence they are forged documents and she had signed Exh. 31 after the accused handed over the same to her. It is admitted that the copy of affidavit which was signed by her was produced before the Dadar Police Station.

17] In order to prove the same the accused relied on Copy of FIR, Xerox Copy of Affidavit-cum-Declarations Exh. 46 and Exh. 47 by way of cross-examination of complainant. Also referred the copy of Affidavit-cum-Declarations filed by the complainant at the time of filing of complaint which marked as Exh. 48 and Exh. 49. The complainant shown the copy of affidavit-cum-declaration Exh. 46, the complainant admitted that there is no signature "Before me" which is marked as Portion Marked "A". No one has signed on Exh. 30 for the purpose of identification. Though the said document is marked as Exh. 46 but on perusal of Exh. 46 and Exh. 47 both cannot be called as certified copy as there is no signature on it of the Judicial Clerk only the seal of Court is mentioned on it. Therefore, they cannot be read in evidence. By way of cross-examination it is came on record that the Exh. 48 and Exh. 49 true copy is made by her Advocate. On the contrary the complainant filed on record Exh. 30 and Exh. 31 which are the original of Exh. 46 and Exh. 47.

18] Moreover for the sake of arguments it can be considered that it does not bear the signature of the person who identified the complainant but the complainant filed on record the original Exh. 30 and Exh. 31. Which bears the signature of complainant and in the bottom line there is signature of Advocate Mr. Manoj H. Chippa on Exh. 30 and Exh. 31. Also Exh. 31 does not bear the signature of complainant before her name. But on the left side she has mentioned her name.

Therefore, merely on this count it cannot be stated that the documents Exh. 30 and Exh. 31 are false and fabricated.

19] As the complainant proved the execution of Exh. 30 and Exh. 31 which is the original affidavit-cum-declarations which shows that the accused received sum of Rs.6,00,000/- and sum of Rs.1,50,000/- from the complainant on 15.09.2018. The Exh. 30 and Exh. 31 are the original documents which bears the signature of deponent. Also the signature of Advocate on record. Though in cross-examination it is stated by the complainant that there appear some difference in the signature on the Exh. 30 and Exh. 32 but the complainant voluntarily stated that the signature are of accused. At this stage, the burden is shift on the accused to prove that there is difference in the signatures on Exh. 30 and Exh. 32. In order to prove the accused not brought any contrary evidence on record which shows that the signatures are different on Exh. 30 and Exh. 32. Considering it, as mentioned above the defence in respect of forged documents taken by the accused is not probable.

20] Moreover, in cross-examination the complainant stated that the documents Exh. 30 and Exh. 31 are correct and Exh. 46 and Exh. 47 are incorrect. As mentioned above Exh. 46 and Exh. 47 cannot be read in evidence they are not certified copies in true sense. In order to prove defence, the accused not examined any witness to show that the Exh. 30 and Exh. 31 have never executed. On the contrary, it is the defence of accused that one police complaint is filed against him. The said fact is admitted by the accused and as per the FIR it is came on record that the complainant paid Rs.7,50,000/- to the accused. The copy of FIR is filed on record. The accused has not denied this fact. Though it is defence that the police by threatening him taken the cheque from him and given to the complainant and the complainant has misused it and he lodged complaint against the concerned police officers before the Hon'ble Sessions Court. But the accused has not filed on record the copy of complaint made by him to the Hon'ble Sessions Court. Moreover, as per the cheque return memo the disputed cheque is return for the reason "Funds Insufficient" and not for the reason "Payment Stopped By Drawer". In such situation, merely because the complainant admitted that the disputed cheque was not issued till the date of filing of complaint in Dadar Police Station, it cannot be stated that the accused has rebutted the presumption. On the contrary, there is FIR against the accused which can be treated as an cogent evidence in support of the case of the complainant.

21] Though at this stage the Ld. Advocate for accused has relied upon the judgments of **Vinayak Nivrutti Gondhale (Supra)**, **Manjit Singh Obhan (Supra)** and **Subburam V/s. Rajendran (Supra)**. But the facts of this case and facts mentioned in the citation are different hence the accused is not entitled to get benefit of these citations.

22] It is has been argued on behalf of accused that, the complainant is not having financial capacity to pay the amount to the accused as she has not filed documentary evidence on record which shows that she sold out her flat and obtained money from it and paid to the accused. Accordingly, question is asked to the complainant in cross-examination in which she stated that he had sold out to Mr. Umesh Dhag, she had not brought with her agreement in that regard. In cross-examination it is stated that in the year 2011 she was having one room at Vasudev Patil Chawl and she handed over the possession of the room to purchaser along with right title in the year 2011. The complainant shown notice Exh. 43 she admitted that the residential address mentioned on it Room No. 4, 1st Floor, Plot No. B-43 and it is stated by the complainant that now she is residing in the same address. She has not brought any document pertaining to the sale transaction of her house and if she trace out she can file. It is denied that no such sale transaction had even taken place, therefore, she has unable to file copy of register document. Though the complainant has not filed the sale deed but merely on that count it cannot be stated that the complainant has not paid amount to the accused when she had filed FIR against the accused the said fact is admitted by the accused. Also as mentioned above the execution of Exh. 30 and Exh. 31 is proved by the complainant. hence, the accused is not entitled to get benefit of this defence.

23] On the contrary as per the facts of the present case the complainant has paid amount of Rs.6,00,000/- and Rs.1,50,000/- by executing affidavit-cum-declarations Exh. 30

and Exh. 31. The accused has cancelled the transaction and promise to return a double amount of consideration and accordingly issued disputed cheque for Rs.9,00,000/-.

24] The upshot of the above discussion is that, the complainant has discharged the initial burden of proving the fact that, the subject cheque (Exh. 32) was issued in discharge of a liability. The presumptions under sections 118(a) and 139 of the N.I. Act had arose in the favour of complainant and have remained intact. The accused has failed to rebut the said presumptions. Thus, the complainant has sufficiently proved that, the subject cheque (Exh. 32) was drawn by the accused in discharge of a legally enforceable liability. Hence, point No. 1 is answered in the affirmative.

<u>As to Point No. 2 :</u>

25] As per the testimony of complainant- Mrs. Sangeeta Jadhav (CW1) the disputed cheque was dishonored and returned back with memo (Exh. 33) for the reason "Funds Insufficient" on 08.02.2013 to substantiate this fact the complainant filed on record the copy of memo (Exh. 33). It is defence of accused that, there is no seal of the bank on the cheque return memo hence the memo is not proved. In support of contention the accused has relied upon the judgment of **Smt. Vandana (Supra)**, I have gone through observation made in the judgment, in this context, Section 146 of the aforesaid Act is relevant, which reads as follows :-

> “146. Bank's slip *prima-facie* evidence of certain facts.- The Court shall, in respect of every proceeding under this Chapter, on production of bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved."

> “The said provision states the manner in which a complainant can prove dishonour of cheque. The complainant is required to produce slip or memo having an official mark on it, denoting that the cheque has been dishonoured. If such a document is placed on record by the complainant it constitutes a *prima-facie* evidence of dishonour and a presumption operates about the fact of the dishonour of cheque, unless and until such fact is disproved. Thus, once such a memo or slip issued by the bank bearing its official mark concerning dishonour of cheque is placed on record by the complainant, the burden is clearly on the accused to disprove the fact of dishonour of cheque.”

26] Considering the above legal provision, as per the facts of the above mentioned judgment the memo was not bear the official mark or signature of the bank officer and it was not exhibited during evidence. But in the present matter the complainant filed on record the copy of return memo which bears the signature of the authorized signatory and the reason is mentioned on it as “Funds Insufficient”. The accused has not brought any contrary evidence in order to rebut the presumption as envisaged under section 146 of the N.I. Act. Hence, the complainant has satisfactorily proved the dishonor of alleged cheque (Exh. 32) for the reason **“Funds Insufficient”**. Hence, I answer point No. 2 in the affirmative.

<u>As to Point No. 3 :</u>

27] The statutory notice has been issued to the accused vide (Exh. 34) on 27.12.2012 on the address available as per the evidence of complainant. The complainant filed on record the postal receipt at Exh. 35, courier receipt at Exh. 36 and postal envelope at Exh. 37 having remark “Addressee Moved”. It is the defence of the accused that he has not receive the notice. But in order to prove his defence not brought on record any contrary evidence. On the contrary, on perusal of record it reveals that the notice was sent to the accused vide Exh. 34 as address mentioned Arihant Towers, Flat No. 1102, 11th Floor, T. B. Kadam Marg, Byculla, Mumbai. Time and again warrants have issued against the accused and on 12.12.2013 as per the report of police they have executed the bailable warrant and the accused filed his bond in which he mentioned address as Arihant Towers, T. B. Kadam Marg, 11 Floor, 1102, Byculla, Mumbai. Considering it the address mentioned on notice and address mentioned on bond which fill up by the accused is the same. There is no contrary on record which shows that the accused is not residing on the address mentioned on the notice Exh. 34. Hence, the complainant proved that the statutory notice vide

(Exh. 34) has been issued and duly served upon the accused. Hence I answer point No. 3 in the affirmative.

As to point No. 4 :

28] In view of the above discussion and finding to issue Nos. 1 to 3 in the affirmative, the complainant successfully proved the guilt of the accused for the offence punishable under section 138 of N. I. Act. Now I take here a pause to hear the accused as well as the complainant and their respective Advocates on the question of sentence.

Sd/-
(M. R. Dhanorkar)
Date : 24.06.2026 Judicial Magistrate First Class,
7th Court, Dadar, Mumbai.

29] On the question of sentence. The accused submitted that, he is the only earning member of his family. He is innocent and wants to file appeal, hence, prays for leniency. The Advocate on behalf of accused prays that leniency may be shown to the accused.

30] The complainant and the Ld. Advocate for complainant are absent.

31] Having considering the submission advanced by the Ld. Advocate for accused, it is need to be noted here, that in the present matter the dishonor of cheques would certainly have resulted the complainant facing hardships.

32] As per the case of complainant, the complainant paid amount of Rs.7,50,000/- to the accused for purchase of residential premises in redevelopment project and the accused agreed to provide 100 Sq.Ft. residential premises and in discharge of it and promise made to the complainant the accused issued disputed cheque in favour of the complainant. Considering it, the complainant is legally entitled to receive amount of Rs.9,00,000/-. The complainant is absent hence no case is made out on behalf of complainant for granting compensation other than cheque amount. Considering the nature of the offence committed and age of the accused it is necessary to show some leniency to the accused in respect of sentence of imprisonment. Hence, taking into consideration the object of Section 138 of the N.I. Act, in answer to this point, I proceed to pass following order, which I feel meets the ends of justice.

ORDER

01. Accused **Nitin Motilal Jain** is convicted vide section 255(2) of the Code of Criminal Procedure, 1973 for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881.

02. The accused **Nitin Motilal Jain** is sentenced to suffer Simple Imprisonment for one (01) month in respect of the offence punishable under Section 138 of the Negotiable Instrument Act, 1881.

03. The accused **Nitin Motilal Jain** is directed to pay an amount of Rs.9,00,000/- (Rupees Nine Lakh only) to the complainant by way of compensation vide section 357 (3) of the Code of Criminal Procedure, 1973 within one month from today in default the accused **Nitin Motilal Jain** to suffer simple imprisonment for two (02) months.

04. The accused shall surrender to his bail bonds. If released on cash surety. The amount of cash surety be forfeited and credited to the Government.

05. Copy of the judgment shall, immediately, be given to the accused free of cost vide section 363 of the Code of Criminal Procedure, 1973.

(Judgment delivered and pronounced in open Court.)

MADHAVI RAJESH DHANORKAR
Digitally signed by MADHAVI RAJESH DHANORKAR
Date: 2026.06.24 16:07:13 +0530

(M. R. Dhanorkar)
Judicial Magistrate First Class,
7th Court, Dadar, Mumbai.

Date : 24.06.2026