

MHMM170017732015



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Decided on : 09.06.2026.
Duration : 11-Y 04-M 23-D.

**IN THE COURT OF METROPOLITAN MAGISTRATE,
43rd COURT, BORIVALI, MUMBAI**

(BEFORE SHRI. S. A. KHALANE)

C. C. No. : 4300382/SS/2015
(CNR NO.MHMM17-001773-2015)

Exh.16.

Mr.Mukesh Jain.
Proprietor of Vinayak Agencies,
C-5, Royal Garden, Carter Road No.2,
Borivali(E.), Mumbai-400 066.

...COMPLAINANT.

V/s.

Shri.Mukesh Kumar Jain.
Proprietor of Riddhi Pharma
Residing at : C-4/204, 2nd Floor,
Hari Om Apartment,
Nwar Sumer Nagar Road,
Borivali(W.), Mumbai-400 092.

...ACCUSED.

**OFFENCE PUNISHABLE U/SEC. 138 OF THE NEGOTIABLE
INSTRUMENTS ACT, 1881.**

Metropolitan
Magistrate.
Dt.09.06.2026.

Advocates appeared :-

For the complainant :- Smt.Sunita Sutrale.

For Accused :- Shri.Mukesh H.Singh.

JUDGMENT
(Delivered on 09.06.2026)

The accused is tried for the offence punishable under section 138 of the Negotiable Instruments Act, 1881(hereinafter referred to as “N.I. Act” for brevity).

Complainant's case in nutshell is as follows-

2. That, the complainant is the wholesaler of medicines. He is supplying medicines to accused's firm Riddhi Pharma. For payment of medicines supplied to the accused, the accused had issued two cheques drawn on Bank of India of the following description-

SR.No.	Cheque Number	Dated	Issued for the Amount of Rs.	Dishonoured on Date
1.	000084	06.11.2014	70,094/-	07.11.2014
2.	000099	01.12.2014	1,00,000/-	03.12.2014

3. The above said cheques were deposited for their realization with the Abhyudaya Co-operative Bank, Dahisar(E.) branch. Both the cheques have returned unpaid with an endorsement 'Funds Insufficient'. The complainant issued demand notice to the accused on 05.12.2014. The accused has not accepted the demand notice. So, it came back to the complainant on 06.12.2014. He failed to pay the amount of dishonoured cheques. Hence, the complainant has filed the present complaint praying for conviction of the accused and compensation under section 357 of the Cr.P.C.

PLEA

4. Ld. Predecessor of this Court has recorded the Plea (Exh.P-4) of accused, to which he pleaded not guilty and claimed to be tried.

Metropolitan
Magistrate.
Dt.09.06.2026.

**ORAL AND DOCUMENTARY EVIDENCE ADDUCED ON
BEHALF OF THE COMPLAINANT**

5. To prove his contentions in the complaint, the complainant has examined himself.

6. Besides, the above oral evidence, the complainant has relied upon the following documentary evidence-

SR.No.	Name of document	Exh.No.
1.	Tax Invoices	7 colly'
2.	Cheques	8 colly'
3.	Cheque return memos	9 colly'
4.	Demand Notice	10
5.	Courier receipt	11
6.	Postal receipt	12

STATEMENT OF THE ACCUSED AND HIS DEFENCE

7. The accused did not cross-examine the complainant despite opportunity. The Ld. Predecessor of this Court has dispensed with the statement of the accused under section 313 of Cr.P.C.

Argument on behalf of the complainant-

8. The Ld. Advocate for the complainant has filed on record the written notes of arguments(Exh.15). It is argued that accused in the case has issued the disputed cheques for discharge of his legally enforceable liability. He received the demand notice. He failed to make payment of dishonoured cheques despite receipt of the demand notice. He has failed to conduct cross-examination of the complainant. He as well has remained absent for recording his

statement under section 313 of the Cr.P.C. He thereby has failed to explain the incriminating circumstances against him.

9. There is presumption in favour of the complainant. It is for the accused to rebut the presumption contemplated under section 139 of the N.I.Act. He may rebut that presumption either through cross-examination of the complainant or through adducing evidence on his behalf. Here, in the case in hand the accused has failed to bring any probable defence in the case. Thereby he has miserably failed to rebut the presumption under section 139 of the N.I.Act. So, it is prayed that the accused be convicted and appropriate amount of compensation be awarded to the complainant.

Argument on behalf of the accused.

10. Neither the accused nor his counsel has remained present. No submissions are advanced on behalf of the accused.

11. After having gone through the complaint, following points do arise for determination of this Court. This Court has recorded its findings on each of them for the reasons stated here-in-under :-

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1)	Whether the complainant proves the mandatory compliance of section 142 of the N.I.Act ?	Yes.
2)	Whether the complainant proves legally enforceable debt against the accused ?	Yes.
3)	Whether accused raised probable defence to rebut the presumption under section 139 and 118 of the N.I.Act ?	No.
4)	What order ?	As per final order.

Metropolitan
Magistrate.
Dt.09.06.2026.

REASONS**AS TO POINT NO. 1 :-**

12. The offence punishable under section 138 of N.I.Act can be proved with the concatenation of the following components-

- i) Drawing of the cheque,
- ii) Presentation of the cheque to the bank in a stipulated period,
- iii) Returning the cheque unpaid by the drawee bank,
- iv) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount,
- v) Failure of the drawer to make payment within stipulated period of the receipt of notice.

13. The concatenation of all the five components is a sine-qua-non for the completion of the offence punishable under section 138 of the N.I.Act. In the light of these components it is to be seen whether the complainant succeeds in proving his case or not.

14. In order to see that in the present complaint the complainant has made mandatory compliance, it becomes necessary to see the following dates-

1)	Cheques Dated	06.11.2014 and 01.12.2014
2)	Cheques presented on	06.11.2014 and 01.12.2014
3)	Cheques dishonoured on	07.11.2014 and 03.12.2014
4)	Demand notice issued on	05.12.2014

5)	Deemed service of the demand notice	06.12.2014
6)	15 days period of notice expired on	21.12.2014
7)	Complaint filed on	17.01.2015

15. After perusal of the above said all dates, it becomes amply clear that the present complaint is filed well within the period of limitation. Hence, it is observed that the complainant has made the mandatory compliance as required for proving commission of an offence punishable under section 138 of the N.I.Act. Therefore, point No.1 is answered in the affirmative.

AS TO POINT NOS. 2 and 3 :-

16. These points being interlinked are discussed together to avoid repetitive discussion.

17. The important ingredients of the offence punishable under section 138 of the N.I.Act is that the cheque must have been issued for the discharge in whole or in part of any debt or other liability. If the cheque is not issued for the discharge of any debt or other liability, section 138 cannot be invoked.

18. Before going further, it is necessary to mention here that, as per Section 139 of N.I. Act, there is a presumption in favour of holder of cheque. So also as per Section 118 of the Said Act, there is a presumption that said cheque was issued for certain consideration. For ready reference Section 118 and 139 of the said act are quoted below:-

Metropolitan
Magistrate.
Dt.09.06.2026.

**Sec. 118-Presumptions as to negotiable instruments.-
Until the contrary is proved, the following
presumptions shall be made :-**

- a) of consideration.- that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;
- b) as to date.- that every negotiable instrument bearing a date was made or drawn on such date;
- c) as to time of acceptance.- that every accepted bill of exchange was accepted within a responsible time after its date and before its maturity;
- d) as to time of transfer- that every transfer of a negotiable instrument was made before its maturity;
- e) as to order of endorsements.- that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;
- f) as to stamp.- that a lost promissory note, bill of exchange or cheque was duly stamped;
- g) that holder is a holder in due course.- that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

Section 139. Presumption in favour of holder.- It shall be presumed, unless the contrary is proved, 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.

19. Being cumulative, it is only when all above mentioned ingredients are satisfied then the person who had drawn the cheque can be deemed to have been committed an offence u/s.138 of the Act. For the purpose of section 138, debt or other liability means a legally enforceable debt or other liability. To understand the spirit of provisions contemplated vide section 138 to 141 of Negotiable Instrument Act, Section 139 of the said act plays significant role.

20. In view of express provision of section 139 of N.I. Act a presumption shall be drawn that the holder of cheque, received the cheque, of the nature referred to in Section 138 for the discharge of any debt or other liability unless contrary is proved. Thus, it gives power to Court to presume unless contrary is proved that the holder of cheque received the cheque for discharge in whole or in part of any debt or other liability. The word “shall presume” as per Section 4 of Indian Evidence Act means whenever it is directed by this act, that the court shall presume a fact, it shall regard such fact as a proved unless and until it is disproved. Thus, the burden of proof as to cheque has not been issued as a legal debt or liability is always on accused and it is for him to rebut said presumption.

21. A useful guidance on the said point can be taken from the verdict delivered by Hon'ble Supreme Court in the case of **Goa Plast Pvt. Ltd. V/s. Chico D'souza (2004 SCC (cri) 499)** wherein the court has considered the object behind section 138 and 139 of the N.I. Act and held that the entire burden is on accused to show that cheque was not issued for any debt or liability as mentioned in the complaint. Hon'ble Court has further held that presumption u/s. 139 is a rebuttable and it can be rebutted on the basis of evidence brought by the complainant or by leading his own evidence. The

Metropolitan
Magistrate.
Dt.09.06.2026.

standard of proof for rebutting the presumption is preponderance of probabilities which is a standard applicable to the accused whenever accused is required to prove a fact.

22. The evidence of the complainant Mr.Mukesh Jain(P.W.1) is the reiteration of complaint. This witness has deposed about the truthfulness of the contentions in the complaint. As mentioned here-in-above, the accused has failed to cross-examine the complainant. He has failed to adduce any evidence.

23. In respect of other criminal matters opportunity to the accused to adduce evidence is required. Case is required to be kept for defence evidence after the statement of accused under section 313. In matters pertaining to section 138 of the Act, the accused is required to file an application for calling the complainant to cross-examine him. Once the affidavit of the complainant is on record, the matter as a routine does not require to be kept for cross-examination of the complainant on application of the accused only the matter is required to be for cross-examination. The Law to this respect has very well been settled by the Hon'ble Apex Court as per Judgment in the case of **Indian Bank Association V/s. Union of India(Judgment dated 21.04.2014)**

24. Here, in the present case no such application is filed by the accused requesting to call the complainant for his cross-examination.

25. In view of the above provision, it is necessary to scrutinize evidence brought on record. Mr.Mukesh Jain(P.W.1) in his affidavit filed in lieu of examination-in-chief has reiterated the contents of the complaint.

26. After having gone through evidence on record it notices that the cheques issued by the accused, when presented by the complainant, those were returned unpaid with remark 'Funds Insufficient'. The return memos(Exh.9 colly') are placed on record by the complainant. The demand notice is issued to the accused. It is deliberately not received by the accused. He has failed to pay the amount of dishonoured cheques, despite having knowledge of dishonour of cheques issued by him.

27. In the case in hand, the accused, though appeared, he failed to conduct cross-examination of the complainant and explain the incriminating circumstances through his statement under section 313 of Cr.P.C. He also failed to adduce any evidence. Having regard to the provisions contemplated under section 139 and 118, there are presumptions in favour of the complainant. There is huge difference between standard of proof in other criminal matters and in matters relating to the offence punishable under section 138 of the N.I.Act.

28. Here, it is the duty of accused to rebut the presumptions. It is settled Law that it is not expected from the accused for rebutting presumptions to enter him into the witness box. Even he can discharge his duty of rebuttal of presumptions by way of bringing material even through cross-examination of the complainant.

29. In the present complaint, the accused has failed to bring any probable defence to doubt the genuineness, truthfulness of the case of the complainant. Therefore, it is observed that the complainant has successfully proved his case whereas the accused has miserably failed to bring on record that the cheque issued by him was not for his legally enforceable liability. For these reasons, point No.2 is answered in the affirmative and point No.3 is answered in

Metropolitan
Magistrate.
Dt.09.06.2026.

the negative.

AS TO POINT NO. 4 :-

30. As mentioned earlier, the complainant has proved that the accused drawn disputed cheques (Exh.8 colly') in his favour for the discharge of his legal liability and the same have been dishonoured. On the contrary, accused has failed to rebut the presumptions under section 118, 139 and 146 of the N.I.Act. The complainant has proved that accused has committed an offence punishable under section 138 of the N.I.Act. Therefore, the accused is found guilty and liable to be convicted.

31. This Court do not want to extend benefit of the provisions of the Probation of Offenders Act, 1958 to the accused as the present is an economic offence. There is no question of reforming of accused, who is found guilty of the offence. This has very well been observed in the case of **M.V. Nalinakshan V/s. M.Rameshan, 2009 Cr.L.J. 1703.**

Hearing on the point of sentence:

32. In spite of repeatedly called neither accused nor his advocate appeared in this matter. Record shows that accused is avoiding to remain present in the matter without any justifiable reasons. Therefore, I am constrained and compelled to proceed with the Judgment in absence of accused. By his conduct accused has waived off his chance to submit on the point of sentence.

33. The offence punishable U/s. 138 of N.I. Act is required to be tried summarily. For such trials procedure contemplated in Code of Criminal Procedure for the trial of summons case as a specified in Chapter XX of code is to be adopted. This case is also

tried as per the procedure prescribed for the trial of summons case vide Chapter XX of Cr.P.C.

34. This Court has carefully gone through the provisions of Chapter XX and Section 255 of the Code of Criminal Procedure. Unlike warrant trial procedure, it is nowhere expressed under Chapter XX that accused must be heard on the point of sentence before pronouncing it. Hence, as a mandate, it can't be invoked in summons cases. In fact in the present case, in spite of any speaking provisions, accused was given chance to appear and submit on the point of sentence, but it was the accused who waved off his chance to open mouth on the point of sentence. Therefore, this court proceeds further in the absence of the accused. On point of sentence Ld. Advocate for the complainant has submitted that maximum sentence of imprisonment and fine amount be imposed on the accused and also prayed to grant maximum compensation in favour of the complainant as per law.

35. Case record clearly shows that, accused gave cheques in question to the complainant for repayment of the amount. The cheques issued in the case are for discharging of his legal liability. Today, neither accused nor his Advocate is present. Considering the nature of the offence and circumstances under which it is committed, it will be proper to convict accused and sentence him to suffer Simple Imprisonment for six months. The complainant has suffered loss due to illegal act of the accused. Therefore, it will be proper to direct accused to pay the compensation amount to the complainant i.e. an amount of Rs.3,00,000/- (Rupees Three Lakhs only) with simple interest @ 9% p.a. from the date of this order till realization of the entire amount towards the compensation within a period of one month from the date of this order vide section 357(3) of the

Metropolitan
Magistrate.
Dt.09.06.2026.

Code of Criminal Procedure, 1973 and in default sentence him to suffer Simple Imprisonment for one month. Considering all the above aspects, in answer to point No.4, the following order is passed-

ORDER

1) The accused Mukesh Kumar Jain is hereby convicted for the offence punishable under section 138 of the Negotiable Instrument Act, 1881 vide section 255(2) of the Code of Criminal Procedure, 1973.

2) Accused is sentenced to suffer simple imprisonment for period of six months and he shall pay compensation of Rs.3,00,000/- (Rupees Three Lakhs only) with simple interest @ 9% p.a. from the date of this order till realization of the entire amount towards the compensation within a period of one month from the date of this order vide section 357(3) of the Code of Criminal Procedure, 1973 in default of payment of compensation, the accused shall suffer further simple imprisonment for the period of one month.

3) The amount of compensation if realized from the accused, it shall be paid to the complainant, subject to expiry of the appeal period or the orders of Honourable Appellate Court (if any).

4) Accused to surrender his bail bonds.

5) Today i.e. on the date of judgment accused remained absent, hence issue standing Non-bailable warrant against the accused for his arrest through concerned police station for execution of sentence in view of Section 418 (2) of Cr.P.C.

6) The copy of this Judgment shall be provided to the

convicted accused free of cost, in view of section 363(1) of the Code of Criminal Procedure, 1973.

(Dictated and pronounced in open Court)

(S. A. KHALANE)

Metropolitan Magistrate,
43rd Court, Borivali, Mumbai.

Date : 09.06.2026.

kdc

Dictated on : 09.06.2026.

Typed on : 09.06.2026.

Signed on : 09.06.2026.