


MHNS210005732019 	Received on : 27/08/2019. Registered on : 27/08/2019. Decided on : 10/04/2026. Duration : 06Y 07M 14D
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IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, MANMAD Presided over by K.R. More (Passed on 10/04/2026) S.C.C. No.354/2019 Exhibit No. 53	
COMPLAINANT	Kailas Uttamrao Birari Age: 51 Yrs, Occ. Advocate. R/at Hanuman Nagar, Chandwad Road, Manmad Tal.Nandgaon, Dist. Nashik R/o. B-24, Nivrutti Prabha Heights Vavre Nagar, Kamatwade, New Nashik 10
REPRESENTED BY	Shri. S.W.More
ACCUSED	Sudhakar Manohar Kale Age: 35 Yrs, Occ. Painting Contractor, R/o. Beside Ambedkar Statue, Punyai Bunglow, Rajwada, Satpur Nashik. shik
REPRESENTED BY	Shri. Ganesh M Dahej
Date of offence	20/06/2019
Date of commencement of evidence	13/09/2019
Date on which judgment is reserved	--
Date of the Judgment	10/04/2026
Date of the Sentencing, Order if any	10/04/2026

ACCUSED DETAILS

Rank of the 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 428, Cr.P.C
1.	Sudhakar Manohar Kale	NA	07.12.2019	Sec.138 of NI Act	Convicted	02 months Simple Imprisonment and fine of Rs.6,00,000/-	--

LIST OF COMPLAINANT/DEFENCE/COURT WITNESSES**A. COMPLAINANT WITNESSES :**

Rank	Name	Nature Of Evidence
C.W.1	Kailas Uttamrao Birari/ Exh.No.5	Complainant

B.DEFENCE WITNESSES:

Rank	Name	Nature Of Evidence
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C.COURT WITNESSES, IF ANY :

Rank	Name	Nature Of Evidence
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LIST OF COMPLAINANT /DEFENCE/ COURT EXHIBIT :**A. COMPLAINANT:**

Sr. No.	Description	Exhibit No.
1	Disputed Cheque dated 15.06.2019	6
2	Cheque returned memo dt.20.06.2019	7

3	Statutory Notice dated 15.07.2019	8
4	Sealed envelop	9

B. DEFENCE:

Sr. No.	Exhibit Number	Description
-	-	-

C. COURT:

Sr. No.	Exhibit Number	Description
-	-	-

JUDGMENT

(Delivered on 10/04/2026)

The accused is prosecuted for the offence punishable under section 138 of Negotiable Instruments Act, 1881 (hereinafter referred as the Act).

BRIEF FACTS OF THE COMPLAINT:-

2. Complainant and accused have friendly and cordial relations. Accused is a painting contractor, due to his financial instability and illness he has taken loan from many people. As a result he was having financial crises. Accused was having property in his name i.e. City Survey no.270 admeasuring 81.25 sq.mtr. old house of Mauze Satpur Dist.Nashik. Complainant decided to purchase said property in Rs.5,00,000/- accordingly till May 2015 he has given Rs.4,50,000/- in cash to the accused and remaining Rs.50,000/- was decided to hand over at the time of registration. Complainant show his willingness to purchase the said property and entered into agreement to sell, inspite of that accused was deliberately avoiding the conclude the contract. One fine day

accused denied to sell the said property and mention to complainant that he will repay the amount of him, he has given cheque of Rs.3,00,000/- to complainant and requested to repay balance amount at the time of cancellation of agreement. Accordingly, to discharge his legal liability accused handed over cheque bearing no.053569 of Rs.3,00,000/- of IDBI Bank, M.G.Road Nashik from his A/c no.0458102000004961 dt.15.06.2019 in the name of M.K.Painters for the repayment. By assuring confirm payment. Complainant deposited said cheque for encashment on 20.06.2019 but said cheque dishonoured and returned with the remark “drawers signature differs” along with memo of the bank. Therefore, On 15.07.2019 the complainant sent legal notice to the accused and demanded the cheque amount. However, accused refused to take notice, accordingly said notice returned with remark of RPAD acknowledgment as ‘not claimed refer to sender’ on 26.07.2019. Therefore, the complainant filed present complaint under sec.138 of the N.I. Act.

3. After issuance of process, accused appeared in the court and furnished his bail bond. My Learned Predecessor has recorded the plea of accused vide **Exhibit No.17** for an offence punishable under Section 138 of the Act. Accused pleaded not guilty and claimed to face trial. It is matter of record that accused remained absent in the proceeding since long with intent to prolong the matter. The NBW were issued against the accused time to time by this court at given address i.e., Punyai Nagar, Besdie Dr.Babasaheb Statue, Rajwada, Satpur, Nashik through police machinery and postal service, however the accused not traced out. On 13.03.2023 no cross order was passed, however he failed to proceed with the case on merit and prefer to

remain absent. After considering facts and conduct of the accused on record, referring the decision of *Hon'ble Karnataka High Court in R.V. Kulkarni Vs. Dakshina Murthy in Cri. Rev. Petition No.437 of 2010 decided on 28.06.2012*, statement of the accused under Section 313 of the Code of Criminal Procedure is dispensed with as per detail order passed below Exh.1 dated 10/03/2026. Thereafter till today accused failed to secure his presence.

4. Perused the complaint and evidence on record.

5. Following points arose for my determination alongwith findings thereon as follow:-

Sr. No.	Points for determination	Findings
1.	Does the complainant prove that the accused has issued disputed cheque in the name of M.K.Painters to discharge his legal liability?	Yes
2.	Does the complainant prove that the cheque was dishonored due to insufficiency of funds ?	Yes
3.	Does the complainant prove that he had issued and served the statutory demand notice to the accused ?	Yes
4	Does the complainant prove that the accused committed an offence punishable under Section 138 of the Negotiable Instrument Act?	Yes
5.	What Order ?	Accused is Convicted.

:: REASONS ::

6. In order to bring home the guilt of accused, complainant has examined himself on affidavit in-lieu of examination-in-chief at

Exhibit 5 as C.W.1, he has closed his evidence vide pursis at **Exh.52** and rest his case by relying upon following documents:-

Sr. No.	Description	Exhibit No.
1	Disputed Cheque dated 15.06.2019	6
2	Cheque returned memo dt.20.06.2019	7
3	Statutory Notice dated 15.07.2019	8
4	Sealed envelop	9

7. To substantiate guilt of the accused under section 138 of Negotiable Instrument Act complainant has to establish ingredients laid down in the section they are as follows:

- i. *Drawing of the cheque.*
- ii. *Presentation of the cheque to the bank within its validity period.*
- iii. *Returning the cheque by drawee bank.*
- iv. *Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount within 30 days of the receipt of information from the bank regarding the return.*
- v. *Failure of the drawer to make payment within 15 days of the receipt of the notice.*

In short, a person who has drawn the cheque is deemed to have committed an offence under section 138 of the Act when all of the above –mentioned ingredients are satisfied then presumption runs against Accused. Thus, the Complainant primarily needs to establish foundational facts to arise the presumption.

8. Complainant has submitted that accused entered with him in agreement of sell to purchase old house of Survey no.270 admeasuring 81.25 Sq.mtr Mauze Satpur Dist.Nashik for Rs.

5,00,000/-. However, after few days accused denied to say said property and assured complainant that he will repay the amount of Rs.5,00,000/-. Accordingly, he issued cheque bearing no.053569 of Rs.3,00,000/- of IDBI Bank, M.G.Road Nashik from his A/c no.0458102000004961 dt.15.06.2019 in the name of M.K.Painters for the repayment. By assuring confirm payment. Complainant deposited said cheque for encashment on 20.06.2019 but said cheque dishonoured and returned with the remark “drawer signature refer” along with memo of the bank. Therefore, On 15.07.2019 the complainant sent legal notice to the accused and demanded the cheque amount. However, accused refused to take notice, accordingly said notice returned with remark of RPAD acknowledgment as ‘not claimed refer to sender’ on 26.07.2019 In spite of deemed service of notice accused failed to repay the cheque amount.

AS TO POINT NO. 1 (Legal Liability) :-

9. Section 118 and 139 of Negotiable Instruments Act, 1881 raises the presumption that the every cheque is given for discharge of legal liability. Therefore, the burden lies upon the shoulder of accused to rebut the presumption of Section 118 and 139 by proving that the cheque has not been given for discharge of legal liability. It is the primary duty of the complainant to prove guilt of the accused beyond all reasonable doubts. In view of the aforesaid discussion, it is held that complainant has proved that on the date of issuance of cheque, there was legal liability in existence against the accused as he is the proprietor of M.K.Painters. Now, it is necessary to see whether accused rebutted the said presumptions or not. The accused has not given reply to the statutory demand notice Exh.8. As discussed earlier

there is nothing adverse brought on record by the defence through cross-examination of complainant to disbelieve the testimony of complainant. Moreover, the accused has not taken any defence in the matter. Thus, accused failed to rebut the presumption lies in favor of complainant under Section 139 of the N.I. Act to the standard of preponderance of probabilities. Thus, it is proved that the accused had issued the cheque Exh.6, towards payment of an amount of Rs.3,00,000/- in discharge of his liability. Accordingly, **I have answered point no. 1 in the affirmative.**

AS TO POINT NO. 2 (Cheque Dishonored):-

10. Complainant has filed on record the cheque Exh.6. He has specifically stated that the cheque was deposited by the complainant was dishonoured on 20.06.2019 and returned with the remark as reason and description 'drawers signature differs' as Memo at Exh.7 issued by the Bank of Maharashtra, Manmad Branch, Moreover, the Section 146 of the Act is very clear that on production of bank's memo having thereon the official mark denoting that the cheque has been dishonored, presumed the fact of dishonor of cheque unless and until disproved. In the case in hand, there is no evidence to disprove the above fact. Moreover, fact that the cheque in question was drawn on the bank account of accused and same has been dishonored due to insufficiency of funds has not been disputed by the accused. The testimony of the complainant remained unchallenged. Therefore, the cheque return memo Exh.7 is sufficient evidence to prove the dishonor of cheque. *Hon'ble Supreme Court has notably held in Laxmi Dyechem v. State of Gujarat, 2012 (13) SCC 375 that signature mismatch is considered a form of dishonour equivalent to*

"funds insufficient". Such a scenario indicates that the drawer's signature on the cheque does not match the specimen signature in bank records, making it a valid ground for legal action. Hence it can be said that present case fits in the scenario. Therefore, it is held that, complainant succeeded to establish the fact that the disputed cheque was returned unpaid from the bank of accused due to **“drawers signature differs”**. Accordingly, **I have answered point no.2 in the affirmative.**

AS TO POINT NO. 3 (Statutory Demand Notice):-

11. In this regard, complainant deposed that on 15.07.2019 he has sent a notice through R. P. A. D. to the accused. However, notice was returned by the post department with remark of 'not claimed refer to sender', considering it as deemed service of notice. In spite of that accused failed to repay the cheque amount. Therefore, the complainant filed the present complaint. As per section 138 of the Negotiable Instruments Act complainant has proved that accused issued disputed cheque in discharge of his legal liability. It has further proved by documentary evidence that disputed cheque was dishonored for the 'drawers signature differs'. Notice returned envelop at Exh.9 along with notice report reflects that notice was not claimed by the accused hence, it is considered as deemed service of notice as per section 27 of General Clauses Act. On perusal of record it can be seen that initial burden lied upon the complainant has discharged by him. Thereafter, burden was shifted upon accused. Accordingly, **I have answered point no.3 in the affirmative.**

AS TO POINT NO. 4 (Commission of Offence U/s 138):-

12. Admittedly, within the stipulated period complainant had

issued demand notice Exh.8 to the accused, calling him to make the payment of cheque. Complainant has duly complied with Section 138(b) of Negotiable Instrument Act, 1881. The cheque in question is proved to have been issued for legal liability and the same was dishonoured after its presentation to the bank. Even after receipt of notice, the accused failed to pay the amount of cheque within 15 days and thereby committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. In view of the aforesaid discussion, all ingredients of the offence punishable under Section 138 of the Act has established beyond doubt. Thus, in the light of my findings above, I hold the accused guilty for the offence punishable under Section 138 of the N.I. Act. Accordingly, **I answer Point No.4 in affirmative.**

AS TO POINT NO.5 :-

13. Before sentencing the accused, it is considered to hear the accused on the point of sentence. However, as I have mentioned above the accused made every attempt to prolong the matter. The instant matter is of the year 2019 and accused remained absent with intent to prolong the matter since 2022. It is a matter of record that, the repeatedly NBW were issued against the accused. However, the accused has not traced out and he deliberately not appeared in the proceeding. Today also accused remained absent. In this backdrop, if matter kept pending for presence of accused it may cause undue delay to the proceeding.

14. Howsoever, in summons cases as per Section 255(2) of the Cr.P.C., there is no statutory obligation to hear the accused on the point of sentenced. Moreover, Section 353(6) and (7) of the Cr.P.C.

provides that the judgment can be pronounced in the absence of accused. In view of Section 418(2) of the Cr.P.C. warrant has to be issued for the purpose of arrest and forwarding the accused to the jail. In this circumstances I proceed to hear the complainant. Learned counsel for the complainant has submitted that, maximum sentence may kindly be awarded to the accused as complainant suffering since 07 years and compensation also be granted to the complainant.

15. It is necessary to keep in mind that, the offence under the Negotiable Instruments Act relates to the economical offence and it is made punishable for smooth functioning of financial transactions between the parties. Taking into consideration all aspects of the matter and object of Section 138 of *N.I. Act*, *it is necessary to impose sentence coupled with compensation on the accused. Considering all aspects of the matter, in my opinion the following sentence will meet the ends of justice.* Accordingly, I have answered point no. 5 and proceed to pass Following order:

:: ORDER ::

1.	The Accused Sudhakar Manohar Kale , is convicted under section 255(2) of code of criminal procedure 1973, for the offence punishable under section 138 of Negotiable Instrument Act, 1881 and sentenced to suffer simple imprisonment for two months.
2.	The accused shall pay Rs. 6,00,000/- (Rupees Six Lakh only) to the complainant within 30 days from today vide section 357(3) of code of criminal procedure, in default of payment of compensation, accused shall suffer simple imprisonment for two months.

3.	The accused is on bail till today therefore, no question of set-off u/s.428 of the Code of Criminal Procedure, 1973.
4.	Bail bonds of accused stand surrendered.
5.	Issue arrest warrant against the accused under section 418(2) of the Code of Criminal Procedure.
6.	Copy of the judgment be given to free of cost to the accused.

Date: 10/04/2026

Place: Manmad

(K.R.More)

Judicial Magistrate First Class,
Manmad

C E R T I F I C A T E

I affirm that the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of Court	C.J.J.D.&J.M.F.C., Manmad City
Name of the Stenographer	Ku.V.J.More
Date of Dictation.	10/04/2026.
Judgment/order signed by the PO on	10/04/2026.
Judgment/order uploaded on	10/04/2026.