


MHNS230004952017 	Received on : 24.07.2017 Registered on : 24.07.2017 Decided on : 10.03.2026 Duration : 08Y:07M:17Ds
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**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
IGATPURI, DIST. NASHIK**

(Presided over by Smt. A. C. Rokade)

S.C.C. No. 236/2017

Exh. No. 41/B

COMPLAINANT	Janseva Gramin Co-Op. Society., Ghoti Bk., Tal. Igatpuri, Dist. Nashik
REPRESENTED BY	Mr. Y. V. Kadu
ACCUSED	Jeevan Nandu Kale Age: 38 Yrs., Occ.: Business, R/o: Pimpalgaon Mor, Ghoti Bk, Tal. Igatpuri, Dist. Nashik
REPRESENTED BY	Mr. K. N. Shirsath
Date of Offence	25.03.2017
Date of Complaint	24.04.2017
Date of Framing of Charges	08.11.2019
Date of commencement of evidence	05.08.2025
Date of Judgment is reserved	10.03.2026
Date of the Judgment	10.03.2026

ACCUSED DETAILS

Rank of Accused	Name of Accused	Date of Bail	Offence charged	Acquitted/ convicted	Sentence imposed
1.	Jeevan Nandu Kale	17/03/2020	Sec.138 of NI Act	Convicted	3 months SI and Compensation of Rs.58,000/-

LIST OF COMPLAINANT WITNESSES

Rank	Name	Nature of Witness
PW 1 (Exh.28)	Sandip Ramesh Ambekar	Complainant

LIST OF COMPLAINANT EXHIBITS

Sr. No.	Exhibit Number	Description
1	Exh.31	Disputed Cheque
2	Exh.32	Counter Slip
3	Exh.33	Bank Memo
4	Exh.34	Cheque Returned Slip
5	Exh.35	Demand Notice
6	Exh.36	Postal Receipt
7	Exh.37	RPAD
8	Exh.38	Loan Account Statement
9	Exh.39	Promissory Note
10	Exh.39A	Resolution of complainant Society

JUDGMENT**(Delivered on 10/03/2026)**

This is a complaint filed under section 138 of Negotiable Instruments Act (Hereinafter referred as 'the Act').

The complainant's case, in brief, is as under:

2) The complainant is registered co-operative society and it provides loan to its member for the purpose of business. The complainant by it's resolution has authorized Shri. Sandip Ramesh Ambekar, it's employee to file the complaint and adduce evidence therein.

3) It is submitted by the complainant that in the year 2016, the accused demanded loan for business. On 19/01/2016 loan of Rs.40,000/- was disbursed to the of accused through cheque. But he failed to repay the loan amount as agreed. When the complainant demanded him the loan amount, the accused issued cheque No. 000005 dated 04/02/2017 for the amount of Rs.29,917/- in favor of the complainant society drawn on the Bank of India Ltd, Branch- Ghoti Bk. When the cheque was deposited by the complainant, on 13/02/2017 in the ICICI Bank, Branch Ghoti bk., same was dishonored with reason for dishonor as "Funds insufficient" on 14/02/2017. Thereafter, on 27/02/2017, complainant issued legal notice to accused through it's advocate (*hereinafter referred to as the "demand notice" for brevity*). Said notice was served upon accused on 10/03/2017. But, he failed to repay the amount. Hence, this complainant.

4) The accused appeared before my Ld. predecessor and the particulars were recorded at Exh.15. Contents of the plea were read over and explained to accused. He pleaded not guilty and claimed to be tried.

5) The accused remained absent despite repeated issuance of non-bailable warrants. Therefore, as per the authorities of the Hon'ble Bombay High Court in ***Prakash Chamanlal Sheth vs. T. Ramlingam Nadar***, [2022 SCC Online Bom. 10161] and ***Navneet Singh Gogia & Anr. vs. State of Maharashtra & Anr.*** (2025:BHC-AS:3054) the statement of the accused u/sec. 313(1)(b) of the Cr.P.C. has been dispensed with by passing the order below Exh.1 on 13/01/2026.

6) Following points arise for my determination. I have recorded my findings thereon for the reasons stated below:

Sr. No.	Points	Findings
1.	Whether it is proved that the accused has issued the disputed cheque for discharge of legally enforceable debt and liability and same is returned by the bank unpaid for the reason "funds insufficient"?	In Affirmative
2.	Whether the accused succeeded in rebutting presumption u/Sec. 139 of the N.I. Act?	In Negative.
3.	Whether it is proved that the demand notice has been served upon the accused and he failed to make payment of the amount mentioned in the cheque within 15 days even after receiving the demand notice?	In Affirmative.
4.	What order and relief?	As per final order.

REASONS

7) To substantiate the guilt of accused, the complainant herein has examined himself as CW No.1 at Exh.17. In addition to oral evidence, he has filed copy of resolution (Exh.39A), Loan Account statement (Exh.38), disputed cheque (Exh.31), counter slip (Exh.32), cheque returned Slip (Exh.34), demand notice (Exh.35), postal receipt and acknowledgement (Exh.36 and 37), Promissory Note (Exh.39). In rebuttal, the accused did not adduce any oral or documentary evidence.

8) Heard Ld. Counsel Shri. Y. V. Kadu for complainant. The accused and his Ld. Advocate failed to argue on the case.

AS TO POINT Nos.1 AND 2:

9) Before embark upon the factual matrix of the case, it is indeed necessary to look into the presumptions provided u/Sec. 118 and 139 of the Negotiable Instrument Act.

10) Sec.118 of the Act deals with the presumptions relating to a) consideration, b) debt, c) time of acceptance, d) time of transfer, e) order of endorsement, f) stamp, g) holder in due course, until contrary is proved. Thus, to establish the aforesaid things, there is no burden on the complainant. The negotiable instrument is itself proof of the aforesaid things.

11) Whereas, as per Section 139 of the Act, the Court has to presume, unless contrary is proved that the holder of cheque received the cheque for discharge, in whole, or in part of debt or liability. Thus, in complaint under Section 138 of the Act, the Court has to presume that the cheque has been issued for discharge of debt or liability. The Act imposes onus on the accused to prove that, the cheque has not been issued for debt or liability.

12) Thus, in view of the above presumptions, it appears that, the presumption provided u/Sec. 139 of the Act, includes the presumption of existence of legally enforceable debt or liability. The said presumption is rebuttable and accused has to rebut the said presumption by raising probable defence of creating doubt about existence of legally enforceable debt and liability. If the accused succeeded to raise the probable defence which creates doubt about the existence of the legally enforceable debt and liability, the prosecution u/Sec. 138 of the Act can be failed. The standard of proof to prove the defence is preponderance of probabilities and to prove the same, he need not adduce evidence, he may rely on evidence of complainant.

13) Thus, in view of the presumption provided u/Sec. 139 of the Act, I have to scrutinize available evidence on record and see that whether the accused is able to create doubt about existence of legally enforceable debt on issuance of disputed cheque.

14) Keeping in mind the above legal position, I have perused the evidence adduced by the complainant (CW-1). He has reiterated all the averments of the complaint in his affidavit in lieu of examination-in-chief (Exh.28). He deposed that, in the year 2016, the accused demanded loan for business. On 19/01/2016 loan of Rs. 40,000/- was disbursed to the accused through cheque. But he failed to repay the loan amount as agreed. When the complainant demanded him the loan amount, the accused issued cheque No. 000005 dated 04/02/2017 for the amount of Rs. 29,917/- in favor of the complainant society drawn on the Bank of India, Branch- Ghoti Bk. When the cheque was deposited by complainant, on 13/02/2017 in the ICICI Bank, Branch Ghoti bk., said cheque was dishonoured with reason as "Funds insufficient" on 14/02/2017. To support of his contention the complainant relied upon disputed cheque (Exh.31), counter slip (Exh.32), Bank memo(Exh.33), cheque returned Slip (Exh.34) and Loan Account Statement (Exh.38).

15) Accused has not cross-examined the complainant. Oral and documentary evidence presented by the complainant remained unchallenged. Hence, there is no defense raised through cross-examination of the complainant, the statement u/sec. 313 (1) (b) of the Cr.P.C. or any documentary evidence by the accused.

16) Therefore, the complainant has proved that the accused had obtained loan of Rs.40,000/- for business and the disputed cheque (Exh.31) was given towards the due payment of loan. The

cheque was returned with endorsement "Funds Insufficient". Therefore, it is proved by the complainant that there was a legally recoverable debt from the accused. Therefore, in view of the above discussion, I am of the opinion that the complainant has succeeded in showing that the disputed cheque (Exh.31) issued by the accused was towards the discharge of a debt or legally enforceable liability. The accused has failed to rebut the presumption in favour of the complainant. Hence, I answer Point No. 1 in the Affirmative and point no.2 in Negative.

AS TO POINT No.3:

17) Upon dishonour of the said cheque, prior to the filing of the complaint under Sec. 138 of the N.I. Act, the complainant is required to issue a legal demand notice to the accused, calling upon him to make the payment of the cheque amount within 15 days from the receipt of the notice. The complainant issued the demand notice on 27/02/2017. The complainant has filed the office copy of the said notice on record at Exh.35. He has also filed the postal receipt (Exh.36) to prove that the notice was sent to the accused. The postal Acknowledgment Due (A.D.) at Exh.37 shows that the accused has received the demand notice on 10/03/2017. Hence, it is proved that, the complainant has issued notice to the accused which is served upon the accused.

18) From the above discussion, it is concluded that the complainant issued a written demand notice within the stipulated period but the accused failed to make the payment within 15 days from the receipt of the notice. Therefore, in view of the above discussion, I answer Point no.3 in affirmative.

AS TO POINT No.4:

19) To recapitulate the above discussion, the complainant has been successful in establishing that the disputed cheque was given for legal liability of accused. The disputed cheque was presented in bank for realization within limitation. The complainant has issued demand notice within stipulated period. The complainant has brought cogent evidence and proved its case beyond reasonable doubt. The accused failed to establish any probable defence. Therefore, I hold that, complainant has proved that accused committed offence u/s.138 of N.I. Act.

20) Heard the learned Advocate for the complainant. He submitted that the accused has delayed the trial for more than 8 years. The complainant has remained present on each date and has been pursuing the matter. Considering the conduct of the accused, 2-years imprisonment and a fine of double the amount of the cheque should be imposed on the accused. The court should not show leniency to the accused.

21) Accused and his ld. Advocate did not appear. I would like to state that an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, is an economic offence. The legislative purpose of this Act is to promote the efficacy of banking through negotiable instruments. No drawer of a cheque can be allowed to take the dishonor of a cheque issued by him lightly. In this case, it appears that the accused is aware of the sanctity of a negotiable instrument. The cheque in question is for Rs. 29,917/-. The complaint was filed in the year 2017. The complainant has been following the matter and taking steps to secure the attendance of the accused on each date. He hopes that

his loan will eventually be recovered; however, his efforts have been in vain.

22) In light of the foregoing discussion and with due regard to the legislative intent, I am of the opinion that awarding simple imprisonment for a period of three months would serve the ends of justice appropriately. At the same time, the complainant deserves to be fairly compensated for the harm caused. The cheque amount in question is Rs. 29,917/-. As per the provisions of the Negotiable Instruments Act, the fine imposed may be extended to an amount up to twice the value of the cheque. Considering that more than 8 years have passed since the filing of the complaint, the complainant may have had the opportunity to earn interest on the amount if it had been deposited in nationalized bank. Therefore, I find it appropriate to grant a sum of Rs. 58,000/- as compensation to the complainant, which I believe would sufficiently address the financial loss suffered. Hence, the complainant is entitled to compensation under section 357(3) of the Criminal Procedure Code. With the above discussion, I pass the following order:

ORDER

- 1) The accused Jeevan Nandu Kale is convicted for the offence punishable under Sec. 138 of the Negotiable Instruments Act vide Sec.255 (ii) of the Code of Criminal Procedure.
- 2) The accused is sentenced to suffer three months simple imprisonment.
- 3) The accused is further sentenced to pay the compensation of Rs. 58,000/- (Fifty Eight Thousand Only) vide Sec.357 (3) of the Code of Criminal Procedure to the complainant within two months from the date of judgment, in default shall suffer

two Months rigorous imprisonment.

- 4) If the amount of compensation is deposited by the accused, the same be given to the complainant, after appeal period is over.
- 5) Accused to surrender his bail bonds.
- 6) Accused is entitled to set off under Sec. 428 of the Code of Criminal Procedure, for the period undergone by him in jail, if any.
- 7) Issue conviction warrant against accused.
- 8) The copy of the Judgment and order be given to the accused free of cost.

Date: 10/03/2026

(A.C. Rokade)

Place: Igatpuri

JMFC, Igatpuri, Dist. Nashik

CERTIFICATE

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

Name of Stenographer	:	S. G. Sonawane
Court	:	J. M. F. C. & C.J.J.D.at Igatpuri.
Date	:	10-03-2026
Order signed by the Presiding Officer on	:	10-03-2026
Order uploaded on	:	13-03-2026