

MHPU260005112022 	Presented on : 09.02.2022 Registered on : 09.02.2022 Decided on : 06.06.2026 Duration : 04Y.03M 28D.
---	---

Part 'A'

<u>IN THE COURT OF JUDICIAL MAGISTRATE F. C. AT VADGAON</u> <u>MAVAL, DISTRICT- PUNE</u> [Presided Over by Sharadchandra P. Jadhav] JUDGMENT (Delivered on this 06 June, 2026) S.C.C. No. 221/2022 Exh. No. /B	
	Details of F.I.R. C.R.No. ----- Dist. Pune.
COMPLAINANT / PROSECUTION	Shri. Narayan Genu Gonte, Age: Adult, Occupation : Agriculturist Address: At Morve, Post- Pavananagar, Tal. Maval, Dist. Pune.
REPRESENTED BY	Shri. S. M. More, Advocate for Complainant.
ACCUSED	Shri. Bipin Kumar Roy Age: Adult, Occupation : Agriculturist Address: Plot No. 32, Loksangam vivar, E-Building, Aundh Pune.
REPRESENTED BY	Shri. M. P. Nikam, Advocate for Accused.

Part 'B'

Date of offence	The offence Punishable under section 138 of the Negotiable Instruments Act, 1881.
Date of F.I.R.	N.A.
Date of Charge sheet	N.A.
Date of Framing of Charges / Plea	30.06.2022
Date of Commencement of evidence	30.06.2022
Date on which judgment is reserved	06.06.2026.

Date of the Judgment	06.06.2026.
Date of the Sentencing Order, if any	06.06.2026.

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 428, Cr.P.C.
1	Shri. Bipin Kumar Roy	--	--	U/s. 138 of the Negotiable Instruments Act, 1881.	Acquitted	--	NIL

Part 'C'

LIST OF PROSECUTION / DEFENCE / COURT WITNESSES

A. Prosecution / Complainant :-

RANK	NAME	NATURE OF EVIDENCE
P.W. - 1	Shri. Narayan Genu Gonte,	Complainant
P.W. - 2	Shri. Balu Haribhau Kalekar	Witness
P.W. - 3	Smt. Anajana Singh	Witness

B. Defence Witnesses, if any :-

RANK	NAME	NATURE OF EVIDENCE
--	--	--

C. Court Witnesses, if any :-

RANK	NAME	NATURE OF EVIDENCE
--	--	--

LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS.

A. Prosecution / Complainant :-

SR. NO.	Exhibit Number	Description
1	Exh.No. 43	Disputed cheque bearing No. 755869
2	Exh.No. 44 & 45	Cheque return memo
3	Exh. 46	Notice
4	Exh. 47	Post Receipt
5	Exh. No. 48	Acknowledgement
6	Exh. No. 69	Information
7	Exh. No. 70	Statement of Account

B. Defence :-

SR.NO.	Exhibit Number	Description
--	--	--

C. Court Exhibits :-

SR.NO.	Exhibit Number	Description
1	Exh.No. 18	Plea
2	Exh. No. 82	Statement of Accused u/s. 313 of Cr. P.C.

D. Material Objects :-

SR.NO.	Exhibit Number	Description
1	--	--

JUDGMENT

(Delivered on this 06 June, 2026)

The accused tried for the offence punishable under section 138 of the Negotiable Instruments Act, 1881.

2. In short the complainant's case is as under-

The complainant is residential of village Morve, Pavnanagar, Tal. Maval, Dist. Pune. The accused is residential of village Aundh, Pune. The complainant and accused are well acquainted with each other.

3. The complainant is owner of Gat No. 106 land. Accused agreed to purchase land of complainant. The complainant has executed

Registered Sale Deed in favour of accused in respect of Gat No. 106 for consideration of Rs. 63,00,000/-. According to complainant accused agreed to pay extra 5,50,000/- to the complainant in respect of sale deed on the day of sale deed. Thereafter, accused paid Rs. 1,50,000/- to the complainant. And issued disputed cheque for payment of Rs. 4,00,000/-. Accused has given cheque bearing no. 755869 (In short "disputed cheque") of Rs. 4,00,000/- in favour of complainant dated 18.10.2021. The accused has given assurance of honoring the cheque.

4. The complainant has deposited cheque on 23.11.2021. That cheque was dishonored and returned on 20.12.2021 with the endorsement of '*Funds Insufficient*'. Thereafter, the complainant has issued demand notice to the accused through advocate dated 27.12.2021. That notice was received by accused on 28.12.2021. Thereafter, the accused has not paid the cheque amount. Therefore, the complainant has filed present complaint under provisions of Negotiable Instrument Act. The complainant lastly prayed for compensation of cheque amount and for convicting accused.

5. My predecessor has issued process against accused on 15.02.2022. The plea of accused recorded at Exh. 18 u/sec.138 of the Negotiable Instruments Act, 1881. The accused pleaded not guilty and claimed to tried.

6. The complainant has examined himself as p.w.1 at Exh. 38, the complainant has examined p.w.2 Shri. Balu Haribhau Kalekar at Exh. 59 and p.w. 3 Anjana Singh at Exh. 68.

7. The statement of accused u/s. 351 of BNSS 2023 (u/sec. 313 of Code of Criminal Procedure) is recorded at Exh. 82.

8. The defence of accused is the disputed cheque is issued by Vaibhav Electrical and he has not issued disputed cheque. He is not proprietor or concern with Vaibhav Electrical. He is not account holder of disputed cheque. He has purchased land from complainant and paid all

consideration amount. He has denied that, he is agreed to pay extra Rs. 5,50,000/-. There is no due towards complainant by him. The false case filed for collecting extra money from him. He has not given any cheque to the complainant. He is no legally debt due towards the complainant. The complainant has misused that cheque and filed present case.

9. Heard learned advocate Shri. S. M. More for complainant and Shri. M. P. Nikam for accused. Both advocates have filed written argument in support of their oral argument.

10. The following points are arises for my determination and I have given my findings thereon with reasons-

Sr. No.	Points for determination	Findings
1.	Does the complainant prove that the accused had drawn cheque (Exh. 43) bearing No. 755869 for Rs. 4,00,000/- dated 18.10.2021 in his favour for discharge of his legally enforceable debt or liability?	No.
2.	Does the complainant prove that the cheque (Exh. 43) is dishonored and thereby the accused has committed an offence punishable under section 138 of the Negotiable Instruments Act, 1881?	No.
3.	What order?	The accused is acquitted as per final order.

REASONS

11. The P.W.1 deposed that, the accused has purchased land from him, the accused agreed to pay extra Rs. 5,50,000/- to him. The accused paid Rs. 1,50,000/-, the accused issued disputed cheque for payment of Rs. 4,00,000/-. On 18.10.2021, the accused has given disputed cheque in his favour. He has deposited that disputed cheque which is at Exh. 43. The cheque was returned with memo of "Insufficient Funds" which is at Exh. 44 and 45. He has issued legal demand notice to the accused which is at Exh. 46. The receipt of post office in respect of demand

notice at Exh 47, The notice was served to the accused. The acknowledgment of notice is at Exh. 48. According to him, the cheque was dishonored and accused has not paid that amount. He lastly prayed for compensation and convicting the accused.

12. In cross-examination P.W.1 stated that, he has received Rs. 63,00,000/- which is consideration amount of sale deed. The disputed cheque is not maintained in sale deed. He not knew whether disputed cheque is of Vaibhav Electrical. The accused has no dues in respect of sale deed. He has not having any documentary evidence in respect that is accused agreed to pay Rs. 5,50,000/-

13. The P.W.2 deposed that, he is friend of complainant. He along with complainant visited to the office of accused and before him accused has paid Rs. 1,00,000 and given cheque to the complainant. In cross-examination he stated that, he has no knowledge about the disputed cheque.

14. The P.W.3 deposed that, the disputed cheque is issued by her bank in respect of account of Vaibhav Electrical Proprietor Arunesh Rajbahadur Narayan Roy. The account number is 4508002100008110. The account statement is produced by her which is at Exh. 70 and 43. In cross-examination she stated that, the account is not partnership firm account and accused is not co-account holder.

As to Points No. 1 and 2 :

15. The case of complainant is that, the accused agreed to pay Rs. 5,50,000/- to him as extra amount in respect of sale deed. Admitted fact is the complainant has executed registered sale deed in favour of accused. The P.W. 1 in cross-examination stated that, he has received Rs. 63,00,000/- as consideration amount. In cross-examination P.W. 1 stated that, "हे म्हणणे खरे आहे की, आरोपी व आमच्यात जो ६३ लाखाचा व्यवहार झाला, त्याव्यतीरीक्त आरोपी मला देणे लागत नाही. हे म्हणणे खरे आहे की, आरोपी हे फिर्यादीस ज्यादा मोबदला म्हणुन रक्कम रुपये ५,५०,०००/- खरेदी खताच्या दिवशी

देतील असे आरोपीने जमीन मिळकतीचा खरेदी व्यवहार ठरवताना माझ्याकडे कबुल व मान्य केले होते याबाबत माझ्याकडे लेखी दस्तावेज नाहीत." By this evidence it is clear that, the accused has no due amount towards the complainant and complainant has not having any evidence which shows that, the accused is agreed to pay extra Rs. 5,50,000/- to him.

16. The evidence of P.W. 1 and P.W. 2 is not supported by documentary evidence as to accused has agreed to pay Rs. 5,50,000/- as extra amount to the complainant. After execution of sale deed and after receiving the Rs. 63,00,000/- as consideration amount, there is no question to pay extra amount to the complainant. The complainant stated that, the accused has paid Rs. 1,50,000/- from Rs. 5,50,000/-. But, there is no evidence produced on record which shows that, the accused has paid Rs. 1,50,000/- to the complainant. Considering the cross-examination of P.W.1 and above discussion, I conclude that, the complainant fails to establish that, the accused agreed to pay extra Rs. 5,50,000/- to him. Therefore, the evidence of P.W. 1 and P.W. 2 is not reliable and trustworthy in respect of accused agreed to pay extra Rs. 5,50,000/- to the complainant. Hence, the fact that, the accused agreed to pay extra Rs. 5,50,000/- is not proved.

17. The defence of accused is the disputed cheque is not issued from his account and he is not account holder of disputed cheque. The P.W. 3 is bank officer. She has produced account statement of disputed cheque. From the evidence of P.W. 3 it appears that, the account holder of disputed cheque is Vaibhav Electricals. Further, the evidence of P.W. 3 shows that, the proprietor of Vaibhav Electricals is Arunesh Rajbahadur Narayan Rai. The evidence of Exh. 69 and 70 shows that, the disputed cheque account is having by Vaibhav Electricals and Arunesh Rajbahadur Narayan Rai. The evidence of Exh. 69 and 70 corroborated with the evidence of P.W. 3. Considering these evidence I conclude that, the disputed cheque is not issued from the account of accused. The disputed cheque not issued by accused and not from his account. Hence, the fact that, the disputed cheque issued by accused is not proved.

18. The *Hon'ble Supreme Court in Rangappa vs. Sri Mohan Criminal Appel No. 1020/2010.* held that, the presumption is in respect of cheque on legally enforceable debt. In that case law, the Hon'ble Supreme Court held that, it is settled position that an accused has to remain the presumption under section 139. The standard of proof for doing so is that of preponderance of probabilities. Therefore, the accused is able to raise probable defence which creates doubts about the existence of the legal enforceable debt of liability. In the case of hand, I found that, by evidence the accused is successfully succeed to creates doubts. Further, I found that, the complainant fails to establish that, accused agreed to pay Rs. 5,50,000/- as extra amount to him. The complainant fails to prove that, the accused has having account of disputed cheque and issued cheque from his account. The complainant failed to prove the legal enforceable debt and disputed cheque was drawn by accused in his favour for discharging legal enforceable debt.

19. The advocate for complainant relied on ratio of *Hon'ble Supreme Court decided in Criminal Appeal No. 478 of 2024, Ajitsing Rathod Vs. State of Gujrat .* And submitted that, the presumption under section 138 of N.I. Act not rebutted by accused. In above discussion I found that, complainant fails to prove that, accused agreed to pay Rs. 5,50,000/- to him and accused issued cheque from his account. Therefore, the ratio of Hon'ble Supreme Court is not helpful to the complainant.

20. The advocate for complainant further relied on order of *Hon'ble Bombay High Court decided in Criminal Application No. 355 of 2023 which is passed in respect of Writ Petition filed by Accused in respect of this case.* And submitted that, the Hon'ble High Court has not quashed proceedings and find out that, the complaint make out case of cheating. On perusing record it appears that, the process was not issued in respect of cheating. Further, in above discussion, I found that, complainant fails to prove that, accused agreed to pay Rs. 5,50,000/- to him and accused issued cheque from his account. Therefore, I am not found any substance in the argument of advocate for complainant.

21. Considering all above discussion, I am coming to conclusion that, the complainant failed to prove and to establish that, accused agreed to pay Rs. 5,50,000/- to him and accused issued cheque from his account. The complainant failed to prove the legal enforceable debt and disputed cheque was drawn by the accused in his favour for discharging legal enforceable debt. The complainant fails to prove the guilt of the accused. Hence, I answer point No. 1 and 2 in the negative. The accused has deposited 10% amount of cheque as per sec. 143 A of the Negotiable Instrument Act and as per order passed below Exh. 26 that is Rs. 40,000/- and which is withdrawn by complainant. The amount needs to be refunded to the accused. Hence, in answer to point No. 3, I pass the following order,

ORDER

1. The accused is hereby acquitted for the offence Punishable under section 138 of the Negotiable Instruments Act, 1881 vide section 278 (1) of BNSS 2023 (vide section 255 (1) of the Code of Criminal Procedure).
2. His bail bonds stands cancelled.
3. The accused is hereby directed to furnish P.B. and S.B. of Rs. 50,000/- for appear before Hon'ble Appellate court as and when called out as per section 481 of BNSS 2023 (section 437-A of Cr. P. C.)
4. The complainant is directed to refund that 10% amount that is Rs. 40,000/- to the accused within thirty days after completion of the appeal period.
(Dictated and declared in the Open Court.)

Date :- 06.06.2026.

(S. P. Jadhav)
Judicial Magistrate, F.C.,
Vadgaon Maval .

Certificate

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 the Stenographer	Mr. M. S. Yerole
Name of Court	J.M.F.C. Vadgaon Maval
Judgment / Order dictated on	06.06.2026
Judgment / Order typed on	06.06.2026
Judgment / Order signed by the P. O. on	06.06.2026
Judgment / Order uploaded on	06.06.2026