MHRG030004352024	Received on	:	21/02/2024		
	Registered on	:	22/02/2024		
	Decided on	:	21/04/2026		
	Duration	:	Y.	M.	D.
			02	02	00

	IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, RAIGAD, AT ALIBAG (Presided Over by M. B. Attar) **Date : 21/04/2026** **Summary Cri. Case No. 215/2024** **Exh. No. 59/B** **(CNR No. MHRG030004352024)**
	Sec. 138 of the Negotiable Instruments Act.
Complainant	**Datta Patil Urban Co-operative Credit Society Ltd., Alibag** through Manager Sau. Ujjwala Rajendra Patil Age : 40 yrs., Occ : Service R/at Patil Naka, Tal. Alibag, Dist. Raigad
Represented by	Ld. Advocate Shri. Prashant B. Patil
Accused	**Shri. Viki Prabhu Lokhande** Age : 29 yrs., Occ. : Service R/at : Near Sai Temple, Ambepur, Pezari, Post : Poynad, Tal. Alibag, Dist. Raigad
Represented by	Ld. Advocate Shri. Darshan Baikar

PART 'B'

Date of Offence	:	08/02/2024

Date of F.I.R.	:	--
Date of Charge-sheet / complaint	:	21/02/2024
Date of recording of plea	:	04/07/2024
Date of Commencement of evidence	:	04/07/2024
Date on which Judgment is reserved	:	10/09/2025
Date of the Judgment	:	21/04/2026
Date of the Sentencing Order, if any	:	21/04/2026

Accused Details

Rank of the accused	Name of accused	Date of Arrest	Date of Release on bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention Undergone during Trial for purpose of Section 428 Cr.P.C.
1.	**Shri. Viki Prabhu Lokhande**	---	---	Offence p/u/sec. 138 of the Negotiable Instruments Act	Accused is **convicted**.	S.I. for 6 months	---

LIST OF COMPLAINANT / DEFENCE / COURT WITNESSES

A. Complainant:

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
CW-1 (Exh.)	Sau. Ujjwala Rajendra Patil	Complainant

B. Defence Witnesses, If any :

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
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C. Court Witnesses, If any :

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
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LIST OF COMPLAINANT / PROSECUTION / DEFENCE / COURT EXHIBITS

A. Complainant :

Sr. No.	Exhibit Number	Description
1.	Exh. 24 (CW-1)	Bank Resolution
2.	Exh. 25 (CW-1)	Loan application
3.	Exh. 26 (CW-1)	Loan Bond
4.	Exh. 27 (CW-1)	Demand Promissory Note
5.	Exh. 28 (CW-1)	Bank statement of loan account
6.	Exh. 29 (CW-1)	Cheque along with Cheque Return Memo
7.	Exh. 30 (CW-1)	Postal receipt
8.	Exh. 31 (CW-1)	Demand Notice
9.	Exh. 32 (CW-1)	Postal acknowledgment

B. Defence :

Sr.No.	Exhibit Number	Description
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C. Court Exhibits :

Sr.No.	Exhibit Number	Description
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D. Material Objects :

Sr.No.	Exhibit Number	Description
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J U D G M E N T

(Delivered on 21/04/2026)

01. The accused is facing trial for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to, for the sake of brevity, as 'the N.I. Act').

The complainant's case in nutshell is as under :

02. The complaint is filed by the registered Co-operative Society through the authorized person Sau. Ujjwala Rajendra Patil who is authorized as per the resolution dated 07/02/2024. It is the case of the complainant society that the accused took the loan from the complainant society.

03. The loan was disbursed on the condition of repayment in monthly installments. The accused failed to make the payments as agreed. Towards discharge of the outstanding liability, the accused issued a cheque bearing No. 051026 dated 27/12/2023 for an amount of ₹41,857/-, drawn on IDBI Bank, Branch Poynad. The accused assured the complainant that the said cheque would be honoured upon presentation. Relying on this assurance, the

complainant presented the cheque for encashment through his bank. However, the cheque was returned unpaid on 28/12/2023 with the endorsement "Funds Insufficient." Thereafter, the complainant issued a statutory demand notice to the accused on 19/01/2024, which was duly received by the accused on 24/01/2024. Despite receipt of the said notice, the accused failed to make payment of the cheque amount within the stipulated period of 15 days, as required under the provisions of the Negotiable Instruments Act, 1881. Consequently, the complainant has instituted the present complaint under Section 138 of the Negotiable Instruments Act, 1881 for dishonour of cheque due to insufficiency of funds.

04. Upon receipt of the complaint and verification of the complainant on oath, process was issued against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. In due course, the accused entered appearance before the court. The particulars of the offence were duly explained to him in vernacular, to which he pleaded not guilty and claimed to be tried.

05. The statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 was recorded at Exhibit 37, wherein he took the plea of total denial and alleged false implication. He specifically contended that the cheque in question was not issued towards any legally enforceable debt or liability.

06. Heard the learned Advocate for the complainant and the

learned Advocate for the accused. Having considered the rival submissions advanced by both parties, the following points arise for my determination. I have recorded my findings thereon for the reasons discussed hereinbelow.

Sr. No.	Points	Findings
1.	Whether complainant proves that the accused issued cheque bearing No. 051026, dated 27/12/2023 of ₹41,857/- drawn on IDBI Bank, Branch Poynad, for payment of money for discharge, in whole or in part of any debt or other liability?	Yes
2.	Whether the complainant proves that the cheque was presented within the prescribed period and it was dishonored for the reason 'Funds insufficient'?	Yes
3.	Whether the complainant proves that the demand notice was issued to the accused within stipulated period and the notice was duly served on the accused and he failed to make the payment within 15 days from the receipt of the notice?	Yes
4.	What order?	The accused is convicted

:: **R E A S O N S** ::

As to Point No. 01 to 03 :

07. The findings on these points are inter-related to each

other, therefore, I have taken up these points to decide together.

08. Dishonour of cheque in itself is not an offence under Section 138 of Negotiable Instrument Act, 1881. To come within the preview of this Section certain other requirements have to be fulfilled which are as follows -

i) A cheque had been issued by the accused.

ii) The said cheque had been issued towards the payment of an amount of money for the discharge in whole or any part of any debt or any other legal liability of the accused.

iii) The cheque had been returned unpaid by the bank.

iv) The reason for non payment of the cheque was either insufficient funds or that the amount of the cheque exceeded the amount arranged for.

v) The cheque was presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier.

vi) The payee or the holder in due course of the cheque makes a demand for the payment of the amount of money under the cheque by giving notice in writing to the drawer of the cheque within 30 days of receiving regarding its dishonour.

vii) The drawer of the cheque fails to make the payment of the cheque amount within 15 days of the receiving the said notice.

09. The Negotiable Instrument Act raises two presumptions in favour of holder of the cheque. Firstly, in regard to passing of consideration as contained in section 118 and secondly, the presumption that the holder of cheque receives the same in discharge of whole or part or any debt or liability under section 139 of Negotiable Instrument Act.

10. Section 118 of Negotiable Instrument Act provides presumption as to Negotiable Instrument that, every negotiable instrument was made or drawn for consideration and that every such instrument has been accepted, endorsed, negotiated or transferred for consideration.

11. Section 139 of Negotiable Instrument Act further provides presumption in favour of the holder. It shall be presumed unless contrary dispute that the holder of cheque received the cheque of the nature referred in section 138 for discharge in whole or in part or any debt or other liability.

12. For the offence under section 138 of Negotiable Instrument Act presumption under section 118 and 139 have to be compulsorily raised as soon as the execution of the cheque is admitted or proved by the complainant and thereafter, the burden is shifted to

the accused to prove otherwise. The presumption shall end only when the contrary is proved by the accused that the cheque was not issued for consideration or in discharge of liability. The presumption is not itself an evidence, but only make *prima facie* case for the party for whose benefit is exists. The presumption both under section 118 and 139 are rebutable in nature. The accused can rebut the presumption by leading direct evidence or by way of cross-examination. The burden upon the accused is preponderance of probabilities and onus on the accused is not heavy as that of the complainant.

13. Coming to the facts and circumstances of the present case and considering the settled principles of law under the Negotiable Instruments Act, 1881, I proceed to evaluate the evidence adduced by the complainant.

14. On behalf of the complainant society, the authorized representative, namely Mrs. Ujjwala Rajendra Patil (CW-1), examined herself. She deposed that she is duly authorized as per the resolution of the Society dated 07/02/2024 to recover the outstanding amount, to take necessary steps for such recovery, to file a case under Section 138 of the Negotiable Instruments Act, 1881, and to depose on behalf of the Society. She has also produced the said resolution at Exhibit 24.

15. She further deposed that the complainant Society is a Government-registered organization under the Maharashtra Co-operative Societies Act, 1960, bearing Registration No. R.G.D./

A.B.G./R.S.R./C.R./361/2002, and that it provides loan facilities to its members within its area of operation.

16. She further deposed that the accused had availed a loan from the complainant society on the condition of repayment in monthly installments and had executed a promissory note to that effect. The accused also signed the necessary loan documents. However, the accused failed to pay several monthly installments. Therefore, the complainant society issued notices, calling upon him to pay the overdue installments.

17. The accused thereafter issued a cheque bearing No. 051026 for an amount of ₹41,857/-, drawn on IDBI Bank, Poynad Branch, towards repayment of the outstanding loan amount. The complainant society deposited the said cheque on 27/12/2023 with Saraswat Co-operative Bank Ltd., Alibag Branch, for encashment. However, the cheque was returned unpaid due to “insufficient funds” in the account of the accused. Consequently, a legal notice dated 19/01/2024 was issued to the accused, which was duly served upon him. However, the accused failed to make payment within the statutory period of 15 days.

18. The complainant has relied upon the following documents: Exhibit 25 – Loan Application; Exhibit 26 – Bond; Exhibit 27 – Promissory Note; Exhibit 28 – Account Extract; Exhibit 29 – Cheque along with Cheque Return Memo; Exhibit 30 – Postal Receipt;

Exhibit 31– Demand Notice; and Exhibit 32 – Postal Acknowledgment.

19. In her cross-examination, CW-1 stated that the accused maintained four accounts with the complainant society, namely a loan account, savings account, recurring deposit (RD) account, and share account. All these accounts were opened on different dates. She further stated that after opening the savings account, the accused had applied for the loan.

20. It was suggested to her that a security cheque had been obtained from the accused at the time of execution of the promissory note and that the complainant had filled in a blank cheque. The accused also denied having received the statutory notice. She further deposed that an amount exceeding ₹41,857/- was due from the accused.

21. Upon perusal of the cross-examination, it appears that the accused has denied liability for repayment of ₹41,857/-. It was suggested on behalf of the accused that a higher amount was due and that the cheque in question was issued merely as a security cheque. It further appears that the accused has disputed the procedure adopted for disbursement of the loan and has also denied service of the statutory notice.

22. I have heard the learned advocate for the complainant and the learned advocate for the accused at length. The learned advocate for the accused submitted that the prosecution has failed to establish

that an amount of ₹41,857/- was due and payable by the accused. He contended that, during cross-examination, the complainant's witness admitted that a higher amount was due, and therefore the present complaint is not maintainable. He further argued that the statutory notice was not served upon the accused, and hence the mandatory requirements under Section 138 of the Negotiable Instruments Act, 1881 have not been complied with.

23. Per contra, the learned advocate for the complainant submitted that the complainant has produced the statement of the loan account (Exh. 28), which clearly reflects that as on 17/12/2023, an amount of ₹41,857/- was due from the accused. He argued that merely because interest accrued thereafter and a higher amount became due on the date of filing of the complaint, it does not render the complaint non-maintainable. He further invited attention to the statutory demand notice (Exh. 31), postal receipt (Exh. 30), and acknowledgment (Exh. 32), and submitted that the notice was duly sent to the correct address of the accused and was served upon him. It was argued that a vague denial of service by the accused is not sufficient to rebut the presumption of due service.

24. I have carefully perused the evidence led by the complainant, as well as the cross-examination of CW-1. It is evident that the accused has not disputed the issuance of the cheque in question. The defence taken is that the cheque was issued as a security cheque. Such a plea necessarily implies admission of

signature on the cheque and that the cheque pertains to the account of the accused. In view thereof, the statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act, 1881 are attracted. Accordingly, it can be presumed that the cheque was issued towards discharge of a legally enforceable debt or liability, unless rebutted by the accused.

25. I have also perused the statement of account (Exh. 28). The said statement clearly indicates that an amount of ₹41,857/- was due and payable by the accused. Therefore, on the date of issuance of the cheque, the accused was under a legal obligation to pay the said amount to the complainant. In such circumstances, the contention that the cheque was issued merely as a security cheque does not inspire confidence and cannot be accepted.

26. Further, I have examined the documents relating to service of notice, namely the demand notice (Exh. 31), postal receipt (Exh. 30), and acknowledgment (Exh. 32). These documents demonstrate that the notice was issued within the prescribed period and was sent to the correct address of the accused. In the absence of cogent evidence to the contrary, the presumption of due service arises. The bare denial by the accused is insufficient to rebut such presumption.

27. Upon overall appreciation of the evidence on record, it is clear that the accused issued the cheque in question in discharge of a legally enforceable debt. The said cheque, upon presentation, was

dishonoured with the endorsement "Funds Insufficient." Despite receipt of the statutory notice, the accused failed to make payment within the stipulated period.

28. The accused has failed to rebut the statutory presumption under Section 139 of the Negotiable Instruments Act, 1881. No probable or plausible defence has been brought on record to displace the presumption in favour of the complainant. Consequently, the existence of a legally enforceable debt or liability stands proved.

29. From the perusal of the entire evidence on record, it stands established that the complainant had advanced a legally enforceable debt to the accused, and in discharge of the said liability, the accused issued the cheque in question. The dishonour of the cheque due to "Funds Insufficient" squarely attracts the provisions of Section 138 of the Negotiable Instruments Act, 1881.

30. Accordingly, I hold that the complainant has successfully proved that the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Hence, Point Nos. 01 to 03 are answered in the Affirmative.

As to point No. 04 :

31. At this stage, it is necessary to hear both the parties on the point of sentence but it appears from the record that the accused is not remaining present. It also appears that his advocate is not remaining present. Today the complainant and his advocate are

present.

32. It appears from the record that when the matter was fixed for judgment on 25/09/2025, the accused remained absent. His exemption was, however, granted on 25/09/2025 and 01/10/2025. Thereafter, on 06/10/2025, a non-bailable warrant came to be issued against the accused. The said warrant could not be executed as the accused was not residing at the given address. Subsequently, notice was issued to the surety, and an attachment warrant was also issued against the surety.

33. The surety thereafter appeared before the Court and deposited an amount of ₹15,000/- towards forfeiture of the bond. A proclamation was also issued against the accused. However, till date, the accused has failed to appear before the Court. Even the learned advocate for the accused has remained absent.

34. The learned advocate for the complainant submitted that the judgment can be pronounced in the absence of the accused and relied upon the judgment of the Hon'ble Bombay High Court in **Navneet Singh Gogia and Anr. vs. State of Maharashtra, 2025 ALL MR (Cri.) 3051**, wherein it has been held that when the accused deliberately remains absent without any justifiable cause, the Magistrate is empowered to proceed with the matter in his absence and may even dispense with his statement under Section 313 of the Code of Criminal Procedure.

35. In the present case, it is evident that after the recording of evidence and conclusion of final arguments, the accused failed to appear and has remained untraceable despite sufficient opportunities being granted. Even the surety has reported that the accused is not traceable and has deposited the bond amount, which clearly indicates that the accused is intentionally evading the process of law and has deliberately absconded to delay the proceedings. Therefore, the submission advanced on behalf of the complainant that the judgment can be delivered in the absence of the accused deserves to be accepted.

36. The learned advocate for the complainant further submitted that maximum punishment be imposed upon the accused, as he has not only delayed the trial but has also failed to repay the loan amount and has avoided appearance before the Court at the stage of judgment. Such conduct, according to him, reflects an intention to harass the complainant and evade lawful liability. He further submitted that the complainant society is a co-operative society working for the benefit of the public at large, and therefore such conduct on the part of the accused warrants a stringent punishment under Section 138 of the Negotiable Instruments Act, 1881.

37. Upon perusal of the entire record, it appears that the accused has absconded at the stage when the matter was fixed for judgment. Without any justification, he has failed to discharge his

liability and has deliberately avoided the Court proceedings. Such conduct of the accused cannot be condoned and calls for a strict approach. At the same time, while imposing punishment under Section 138 of the Negotiable Instruments Act, 1881, it is well settled that though a sentence of imprisonment can be imposed, the primary object of the provision is compensatory in nature. The offence essentially arises out of failure to discharge a monetary liability, and therefore, undue harshness in awarding a long term of imprisonment is not warranted.

38. In this regard, it is appropriate to adopt a balanced approach by imposing a reasonable substantive sentence of imprisonment coupled with adequate compensation under Section 357 of the Code of Criminal Procedure. In default of payment of compensation, a further sentence can be imposed, as held by the Hon'ble Supreme Court in **Suganthi Suresh Kumar vs. Jagdeeshan, 2002 Cri. L.J. 1003**. Considering the facts and circumstances of the present case, awarding a sentence of imprisonment along with compensation, preferably up to twice the cheque amount, would meet the ends of justice. In the result, as to point No. 04, I pass the following order :

:: **O R D E R** ::

1. Accused **Viki Prabhu Lokhande** is hereby convicted under Section 255(2) of the Code of Criminal Procedure for committing offence punishable under Section 138 of the

Negotiable Instruments Act and is hereby sentenced to suffer simple imprisonment of **06 months** (six months).

2. He shall pay compensation of ₹ 83,000/- (Rupees Eighty Three Thousand only) to the complainant, in default shall suffer S.I. for two months.

3. The amount of compensation if recovered, be paid to the complainant after appeal period is over.

4. The accused shall be entitled to the benefit of set off under Section 428 of the Code of Criminal Procedure, 1973.

5. He shall surrender his bail bonds.

6. Issue conviction warrant along with non-bailable warrant to the accused.

ATTAR MOUSAMA BADSHAH
Digitally signed by ATTAR MOUSAMA BADSHAH
Date: 2026.04.21 15:36:14 +0530

Alibag. (**M. B. Attar**)
Date : **21/04/2026**. Chief Judicial Magistrate,
Raigad-Alibag.