MHRT030015092024	Presented on : 24/09/2024 Registered on : 24/09/2024 Decided on : 07/07/2026 Duration : Y M D 01 09 23

"PART-A"

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, COURT NO.2, RATNAGIRI.

(PRESIDED OVER BY SHABNAM YUNUS SHAIKH)

S.C.C. No.1043/2024 **EXH. NO.31.**

COMPLAINANT	:-	**Sameer Krushna Mayekar** Age: 52 years, Occ- Hut business R/o: 3301, Murugwada, Near Bhairi Temple, Tq and Dist: Ratnagiri- 415612.
REPRESENTED BY	:-	**Ld. Advocate Shri. N.G. Shinde.**
		-VERSUS-
ACCUSED		**Vikrant Sunil Mayekar** Age- 36 years, Occ- Business R/o- Fadjiwadi, Near Bus Stop no.1, Kalbadevi, Taluka and Dist- Ratnagiri
REPRESENTED BY	:-	**Ld. Advocate Shri. M.V. Mandavkar.**

“PART-B”

Date of offence	16/08/2024
Date of Notice	22/08/2024
Date of complaint	24/09/2024
Date of recording plea	06/01/2025
Date of commencement of evidence	11/03/2025
The date on which judgment is reserved	07/07/2026
Date of judgment	07/07/2026
Date of the sentencing Order, if any	N.A.

Accused Details

Rank of Accused	Name of accused	Date of arrest	Date of release on bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of set-off
1.	Vikrant Sunil Mayekar	N.A.	06/01/2025	U/s 138 of the N.I. Act.	Acquitted	N.A.	Nil

“PART-C”

I) List of Complainant witnesses:

SR. NO.	**NAME OF THE WITNESS**	**NATURE OF EVIDENCE**
CW-1	Sameer Krushna Mayekar	Oral

II) List of Defence witnesses:

SR. NO.	**NAME OF THE WITNESS**	**NATURE OF EVIDENCE**
1.	NIL	NIL

III) List of Complainant/defence/Court exhibits.

A). Complainant :

SR. NO.	DESCRIPTION OF DOCUMENTS	EXHIBIT NUMBER
1.	Demand Notice/CW.1	16
2.	Acknowledgment Receipt/CW.1	17
3.	Original Cheque/CW.1	18
4.	Cheque Return memo/CW.1	19
5.	R.P.A.D. Postal receipt/CW.1	20
6.	Sealed Postal Envelope/CW.1	21
7.	Notice contained in the sealed Envelope/CW.1	22
8.	Statements of Account of the complainant /CW.1	23

B). Defence :

SR. NO.	DESCRIPTION OF DOCUMENTS	EXHIBIT NUMBER
1.	NIL	NIL

IV) Material Objects.

SR. NO.	MATERIAL OBJECT NUMBER	DESCRIPTION OF OBJECT
1	NIL	NIL

JUDGMENT

(Delivered on 07th, July 2026)

01. The accused is prosecuted for the offence punishable under section 138 of the Negotiable Instruments Act, 1882 (for the sake of brevity hereinafter referred to as the “N. I. Act”.)

The case of the Complainant, in a nutshell, is as under:

02. The complainant is engaged in the fish trading business and was well acquainted with the accused through business transactions. According to the complainant, in August 2023, the accused, who had taken a fishing boat on contract, approached him seeking financial assistance for running the fishing business. Considering the accused's financial difficulties, the complainant allegedly arranged funds through a gold loan and his own resources and advanced a sum of Rs.7,00,000/- to the accused. The accused allegedly agreed to repay Rs.5,00,000/- within two months and the entire amount within six months. However, despite repeated demands, the accused repaid only Rs.1,16,500/- through bank transfers, leaving a balance amount outstanding.

03. The complainant further contends that, despite repeated demands, the accused failed to repay the remaining amount. Ultimately, towards part discharge of the alleged liability, the accused issued a cheque for Rs.4,00,000/-. Upon presentation, the cheque was dishonoured and returned unpaid with a return memo dated 16.08.2024. According to the complainant, thereafter a statutory demand notice dated 22.08.2024 was issued calling upon the accused to make payment of the cheque amount within the prescribed period. The notice was sent by RPAD but was returned with an endorsement indicating refusal/non-acceptance. The complainant has treated the notice as duly served upon the accused. As the accused failed to make payment of the cheque amount within the statutory period despite deemed service of notice, the complainant has filed the present complaint alleging commission of an offence punishable under Section 138 of the N.I. Act.

04. The accused appeared before the Court. Accordingly, the particulars of the offence punishable under Section 138 of the N.I. Act, were read over and explained to the accused in vernacular at Exh.11. The accused pleaded not guilty and claimed to be tried.

05. After completion of his evidence, the complainant closed his side by filing pursis at Exh.24. Thereafter, the statement of the accused under Section 351 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "BNSS") came to be recorded at Exh.25 for the purpose of explaining the incriminating circumstances appearing against him in the evidence of the complainant. The accused denied all the incriminating circumstances put to him and contended that the complaint is false and has been filed with an ulterior motive. The accused further disputed the existence of any legally enforceable liability towards the complainant. However, the accused did not choose to enter the witness box and no defence evidence came to be adduced on his behalf.

06. Heard the Ld. Advocates for both sides at length. The complainant has filed written notes of arguments at Exh.26. The same have been carefully perused and considered. In support of the aforesaid submissions, the Ld. Advocate for the complainant relied upon the following decisions of the Hon'ble Supreme Court and the High Court :

i) **Sanjabij Tari V/s Kishore S. Borcar, cited in LAWS(SC)-2025-9-83, Decided on 25th September, 2025.**

ii) **Sampelly Satanarayana Rao V/s Indian Renewable Energy Development Agency Ltd., cited in LAWS (DLH)-2014-5-24, Decided on 08th May 2014.**

07. On the contrary, the Ld. Advocate for the accused relied upon the following decisions of the Hon'ble High Court :

I) **M. Tamizhselvy V/s R. Baskaran, decided on 02nd September 2020**

ii) **Sri Don Ayengia V/s The State of Assam and Another, cited in 2014 ALL MR (Cri.) Journal**

iii) **Ranbir Singh @ Randhir Singh V/s Navneet Chauhan, cited in 2024 ALL MR (Cri) Journal.**

08. In view of the complaint, defence, evidence on record and the arguments advanced by the Ld. Advocates for both sides, the following points arise for my determination. My findings thereon, along with reasons, are as under:

Sr. No.	POINTS FOR DETERMINATION	FINDINGS
1.	Whether complainant proves that, he issued a statutory demand notice in writing to the accused within the stipulated period, and that the said notice was validly served upon the accused?	**...YES**

Sr. No.	POINTS FOR DETERMINATION	FINDINGS
2.	Whether complainant proves that the accused failed to pay the cheque amount within 15 days from the date of receipt of the notice?	**...YES**
3.	Whether complainant proves that the cheque in question was returned unpaid for a reason attracting Section 138 of the N.I. Act ?	**...NO**
4.	Whether complainant proves that, the accused issued the disputed cheque drawn on his account, bearing his signature, towards repayment of the due amount and in the discharge of a legally enforceable debt or liability?	**...NO**
5.	Whether complainant proves that, the accused has committed an offence punishable under Section 138 of the N. I. Act?	**...NO**
6.	What order?	**THE ACCUSED IS ACQUITTED.**

R E A S O N S

AS TO POINT NO.1 :-

Whether complainant proves that, he issued a statutory demand notice in writing to the accused within the stipulated period, and that the said notice was validly served upon the accused?

09. The Ld. Advocate for the complainant submitted that after receipt of information regarding dishonour of the cheque, the complainant issued a statutory demand notice within the period prescribed under the N.I. Act. It is further submitted that the notice was sent by Registered Post Acknowledgement Due at the correct residential address of the accused. According to the complainant, though the accused avoided acceptance of the notice, refusal to accept a postal article amounts to valid and deemed service in the eye of law. Per contra, the Ld. Advocate for the accused contended that the complainant has failed to establish actual service of notice upon the accused. It is submitted that mere dispatch of notice is not sufficient and that the complainant cannot take advantage of a presumption without proving service. It is therefore argued that the mandatory requirement of Section 138 of the N.I. Act has not been fulfilled.

10. For proper appreciation of the rival submissions, it is necessary to refer to Section 138(b) of the N.I. Act, which reads thus:

> *"138 (b): the payee or the holder in due course of the cheque as the case may be, makes a demand for the payment of the said amount by giving a notice in writing, to the drawer of the cheque, (within thirty days) of the receipt of information by him from the bank regarding the return of the cheque as unpaid".*

11. A plain reading of the provision shows that the statutory obligation cast upon the payee is to make a demand for payment by issuing a written notice within thirty days from the date of receipt of information regarding dishonour of the cheque. The essential requirement is issuance and dispatch of a written demand notice within the prescribed period. The statute does not insist upon proof of actual physical receipt of the notice in every case, particularly where the notice is sent to the correct address of the drawer and the circumstances attract the statutory presumptions regarding service.

12. In the present case, the cheque was returned unpaid on 16.08.2024. The complainant thereafter issued a statutory demand notice dated 22.08.2024. The office copy of the notice is produced at Exh.16. The postal receipt evidencing dispatch of the notice by Registered Post Acknowledgement Due is produced at Exh.20. The returned sealed postal envelope is produced at Exh.21 and the notice contained therein is produced at Exh.22.

13. A perusal of Exh.20 establishes that the notice was dispatched within thirty days from the date of dishonour. Thus, the requirement contemplated under Section 138(b) of the N.I. Act stands duly complied with. The evidence further reveals that the notice was sent at the address of the accused mentioned in the complaint. Significantly, during the course of trial, the accused has not disputed the correctness of the said address. Moreover, no evidence has been adduced by the accused to establish that he was not residing at the said address at the relevant time or that the address mentioned on the postal article was incorrect. The endorsement appearing on the returned postal envelope indicates that the article was not accepted by the addressee.

14. It is a settled principle of law that when a notice is properly addressed, prepaid and duly dispatched through registered post, and the addressee refuses to accept the same, such refusal amounts to deemed service. A person cannot be permitted to defeat the statutory provisions by deliberately avoiding acceptance of a notice sent to him.

15. In the present case, the postal endorsement on Exh.21 indicates that intimation was given to the accused. However, he did not meet the postal authorities to receive the article. There is nothing on record to suggest that the notice was returned due to an incorrect address or any fault attributable to the complainant. In such circumstances, the presumption regarding due service remains unrebutted. Moreover, the another significant circumstance is that despite knowledge of the proceedings, the accused has not placed any material before the Court to show that he was unaware of the notice or that he had no opportunity to comply with the demand made therein. The accused has also not offered any plausible explanation regarding the postal endorsement appearing on Exh.21. Therefore having regard to the documentary evidence produced at Exh.16, Exh.20, Exh.21 and Exh.22, coupled with the absence of any rebuttal evidence from the accused, I am satisfied that the complainant issued the statutory demand notice within the prescribed period and that the same was duly served upon the accused by operation of the doctrine of deemed service. Accordingly, I hold that the complainant has successfully proved compliance with the requirements of Section 138(b) of the N.I. Act. Hence, Point No.1 is answered in the Affirmative.

AS TO POINT NO.2:-

Whether complainant proves that the accused failed to pay the cheque amount within 15 days from the date of receipt of

the notice?

16. The Ld. Advocate for the complainant submitted that despite issuance and deemed service of the statutory demand notice, the accused failed to make payment of the cheque amount within the statutory period of fifteen days. It is argued that failure to make payment within the stipulated period constitutes one of the essential ingredients of the offence punishable under Section 138 of the N.I. Act. Per contra, the Ld. Advocate for the accused contended that the accused was not liable to pay the cheque amount as there was no legally enforceable debt or liability. It is submitted that the complaint itself is not maintainable and therefore non payment of the cheque amount cannot automatically result in criminal liability. However, no specific defence has been raised that the cheque amount was in fact paid after receipt of the notice.

17. For proper appreciation, it is necessary to refer to Section 138(c) of the N.I. Act, which provides that:

> *"the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice."*

18. Thus, after service of the statutory notice, the drawer is afforded a final opportunity to make payment of the cheque amount within fifteen days. Failure to do so gives rise to the cause of action for filing a complaint under Section 138 of the N.I. Act. As discussed while deciding Point No.1, I have already held that the complainant duly issued the statutory demand notice within the prescribed period and that the same was validly served upon the accused by way of deemed service. Therefore, the statutory period of fifteen days commenced from the date of deemed service of notice.

19. The complainant has specifically pleaded and deposed that despite service of notice, the accused neither paid the cheque amount nor replied to the notice. The complaint further discloses that even after expiry of the statutory period, no payment was forthcoming from the accused, compelling the complainant to institute the present proceedings. Significantly, the accused has not produced any documentary evidence such as payment receipts, bank statements, transfer details or any other material to show that the cheque amount was paid within fifteen days from the date of receipt or deemed service of notice. During the course of cross examination of the complainant, no suggestion was put that the cheque amount was paid after issuance of the statutory notice. The defence of the accused throughout the trial has been that he was not liable to pay the amount claimed by the complainant and not that he had paid the amount after receipt of notice.

20. Moreover, the absence of any reply to the statutory notice is also a relevant circumstance. Although mere non reply to a notice is not by itself conclusive, it is a circumstance which can be taken into consideration while appreciating the conduct of the parties. Had the accused made payment within the statutory period, there would ordinarily have been some material brought on record in support thereof. However no such material is forthcoming in the present case. Therefore, from the oral and documentary evidence on record, it stands established that despite receipt/deemed service of the statutory notice, the accused failed to make payment of the cheque amount within the statutory period of fifteen days. Accordingly, I hold that the complainant has successfully proved compliance with the requirement contemplated under Section 138(c) of the N.I. Act. Hence, Point No.2 is answered in the Affirmative.

AS TO POINT NO. 3:-

Whether complainant proves that the cheque in question was returned unpaid for a reason attracting Section 138 of the N.I. Act ?

21. The Ld. Advocate for the complainant submitted that the complainant has successfully established all the essential ingredients of the offence punishable under Section 138 of the N.I. Act through cogent oral and documentary evidence. It is argued that the cheque in question was presented within its validity period and was returned unpaid, as evidenced by the cheque return memo at Exh.19, thereby satisfying the statutory requirement relating to dishonour. It is further submitted that the complainant duly complied with all the mandatory requirements of Section 138 of the N.I. Act by issuing the statutory demand notice within the prescribed period and filing the complaint within limitation. According to the Ld. Advocate, the cheque admittedly bears the signature of the accused and, therefore, the statutory presumptions under Sections 118(a) and 139 of the N.I. Act arise in favour of the complainant, creating a presumption that the cheque was issued for consideration and towards discharge of a legally enforceable debt or liability. It is further contended that the accused has failed to rebut the said presumptions by raising any probable defence. The defence put forth by the accused is stated to be a mere bald denial unsupported by any documentary or oral evidence. The accused neither entered the witness box nor adduced any defence evidence to substantiate his plea that the cheque was issued only as a security cheque or that no legally enforceable liability existed. It is further argued that the admissions elicited during the cross-examination of the complainant do not go to the root of the matter and that minor inconsistencies, if any, are insufficient to dislodge the statutory presumptions operating in favour of the complainant. The Ld. Advocate, therefore, urged that the complainant has duly proved the offence punishable under Section 138 of the N.I. Act and that the accused deserves to be convicted.

22. Per contra, the Ld. Advocate for the accused submitted that the complainant has failed to prove that the cheque was dishonoured for a reason attracting Section 138 of the N.I. Act. It is argued that the cheque return memo at Exh.19 merely bears the endorsement "Kindly Contact Drawer/Drawee Bank and Please Present Again", which neither indicates insufficiency of funds nor any other ground contemplated under Section 138 of the Act. It is further submitted that the complainant has neither examined any official from the concerned bank nor produced any material to explain the true import of the said endorsement. According to the Ld. Advocate, in the absence of such evidence, the complainant has failed to prove that the cheque was dishonoured for a legally recognized reason under Section 138 of the N.I. Act. Therefore, one of the essential ingredients of the offence remains unproved and the accused is entitled to acquittal.

23. I have carefully considered the submissions advanced by both sides on this point. The complainant has relied upon the original cheque at Exh.18 and the cheque return memo at Exh.19. The evidence on record reveals that the cheque bearing No.004416 dated 12.08.2024 was presented by the complainant through his banker within its validity period. The cheque was thereafter returned unpaid and a return memo came to be issued by the bank.
At this juncture, it is necessary to refer to Section 146 of the N.I. Act, which reads as under:

> *"The Court shall, in respect of every proceeding under this Chapter, on the production of bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved."*

24. In view of the aforesaid provision, production of the cheque return memo at Exh.19 enables the Court to presume that the cheque was in fact returned unpaid by the banker. The accused has also not disputed issuance of the return memo. Therefore, by virtue of Section 146 of the N.I. Act, the fact that the cheque was returned by the bank stands duly proved. However, the inquiry does not end there. It is necessary to ascertain whether such return of cheque amounts to dishonour contemplated under Section 138 of the N.I. Act. The Section 138 of the Act creates penal liability when a cheque is returned unpaid because the amount standing to the credit of the account is insufficient to honour the cheque or because it exceeds the arrangement made with the bank. The Judicial pronouncements have expanded the scope of the provision to include situations such as account closure, instructions of stop payment and other analogous circumstances attributable to the drawer. Nevertheless, it remains incumbent upon the complainant to establish that the return of the cheque falls within the ambit of Section 138 of the N.I. Act.

25. Thus, while Section 146 of the N.I. Act permits the Court to presume the factum of dishonour, it does not dispense with the complainant's obligation to establish that the dishonour was for a reason attracting Section 138 of the N.I. Act. A careful perusal of Exh.19 reveals that the reason mentioned by the banker is "Kindly Contact Drawer/Drawee Bank and Please Present Again." Significantly, the return memo does not record that the cheque was returned for "Funds Insufficient", "Account Closed", "Payment Stopped by Drawer", "Exceeds Arrangement", "Refer to Drawer" or any other reason ordinarily recognized as attracting penal liability under Section 138 of the Act. The Ld. Advocate for complainant contended during arguments that the cheque was dishonoured due to insufficiency of funds. However, such assertion is not borne out from the documentary evidence produced by the complainant himself. The return memo, being the primary and best evidence regarding the reason for return of the cheque, does not support such contention. It is a settled principle that documentary evidence prevails over oral assertions.

26. What further assumes significance is that the complainant has neither examined any official from the concerned bank nor produced any clarification or certificate from the bank explaining the exact nature and implication of the endorsement appearing on Exh.19. In the absence of such evidence, the Court cannot presume that the cheque was returned for insufficiency of funds or any analogous reason contemplated under Section 138 of the N.I. Act merely because it was returned unpaid. The endorsement "Kindly Contact Drawer/Drawee Bank and Please Present Again" is, by its very nature, ambiguous. Such endorsement may arise due to various technical or procedural reasons, including defects capable of rectification upon re-presentation of the cheque. The endorsement itself suggests re-presentation of the cheque after contacting the concerned bank. Therefore, the said endorsement does not unequivocally indicate that the cheque could not be honoured due to insufficiency of funds or any default attributable to the drawer.

27. The Ld. Advocate for the complainant submitted that once the cheque has been returned unpaid and the return memo has been produced, the requirement of dishonour stands established. While the submission is acceptable to the extent of proving the factum of return of the cheque under Section 146 of the N.I. Act, it cannot be accepted for proving the further requirement that the dishonour was for a reason contemplated under Section 138 of the N.I. Act. On the other hand, the Ld. Advocate for the accused rightly contended that the return memo does not disclose any reason attracting Section 138 of the N.I. Act. The contention derives support from the very document produced by the complainant. Once such ambiguity was brought on record, it was incumbent upon the complainant to remove the same by leading cogent evidence from the concerned bank. However, no such evidence has been adduced. Therefore, though the complainant has successfully established presentation of the cheque and its return by the banker, he has failed to establish that the cheque was returned unpaid for a reason contemplated under Section 138 of the N.I. Act. Since proof of dishonour for a reason recognized under Section 138 of the N.I. Act constitutes one of the essential ingredients of the offence, failure to establish the same strikes at the very root of the complainant's case. The ambiguity appearing in Exh.19 remains unexplained and the benefit thereof must necessarily go to the accused. Accordingly, I hold that the complainant has failed to prove that the cheque in question was returned unpaid for a reason attracting the provisions of Section 138 of the N.I. Act. Hence, Point No.3 is answered in the Negative.

AS TO POINT NO.4:-

Whether complainant proves that, the accused issued the disputed cheque drawn on his account, bearing his signature, towards repayment of the due amount and in the discharge of a legally enforceable debt or liability?

28. The Ld. Advocate for the complainant submitted that the accused has not disputed that the cheque in question pertains to his bank account. It is argued that once the execution of the cheque and signature thereon are admitted, statutory presumptions under Sections 118(a) and 139 of the N.I. Act automatically come into operation in favour of the complainant. It is further submitted that the complainant has consistently deposed that he had advanced a sum of Rs.7,00,000/- to the accused and that the accused had repaid only Rs.1,16,500/-. According to the complainant, the cheque in question was issued towards part repayment of the outstanding liability. It is contended that the accused has neither entered the witness box nor produced any documentary evidence to rebut the statutory presumptions. The Ld. Advocate therefore argued that the existence of a legally enforceable debt stands established.

29. The Ld. Advocate for the complainant has further relied upon the decision of **the Hon'ble Supreme Court in Sanjabij Tari Vs. Kishore S. Borcar** and the decision of **the Hon'ble High Court in Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Ltd.** to contend that once issuance of cheque is admitted, the presumption regarding existence of debt and liability operates in favour of the holder of the cheque and the burden shifts upon the accused to rebut the same.

30. Per contra, the Ld. Advocate for the accused submitted that the complainant has failed to establish the existence of a legally enforceable debt or liability and that the evidence on record itself creates serious doubt regarding the alleged transaction. It is argued that there are material contradictions in the complainant's evidence regarding the date and manner of advancement of the alleged loan amount of Rs.7,00,000/-. It is further submitted that the complainant has failed to establish his financial capacity and has not produced any reliable documentary evidence to prove actual advancement of the alleged amount to the accused. The Ld. Advocate further contended that the cheque was not issued towards discharge of any legally enforceable debt and that the statutory presumptions under Sections 118 and 139 of the N.I. Act stand effectively rebutted from the admissions elicited during the cross examination of the complainant himself. It is further argued that the cheque return memo does not disclose dishonour on account of insufficiency of funds or any other reason contemplated under Section 138 of the N.I. Act. According to the accused, the endorsement "Kindly Contact Drawer/Drawee Bank and Please Present Again" by itself does not attract the penal provisions of Section 138, and the complainant has failed to examine any bank official or produce any evidence explaining the said endorsement. The reliance has been placed upon the authorities (cited supra) on behalf of the accused to contend that where the complainant's own evidence creates serious doubt regarding the alleged transaction, the statutory presumptions stand rebutted, the burden shifts back upon the complainant to independently prove the transaction, and the accused is not required to establish his defence beyond reasonable doubt but only on the touchstone of preponderance of probabilities.

31. For proper appreciation, it is necessary to refer to Sections 118(a) and 139 of the N.I. Act.

> *"Section 118(a) provides that until the contrary is proved, it shall be presumed that every negotiable instrument was made or drawn for consideration.*
>
> *Section 139 further provides that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque for discharge, in whole or in part, of a debt or other liability."*

32. It is important to note that once execution of the cheque is admitted or proved, the Court is bound to raise a statutory presumption that the cheque was issued for consideration and towards discharge of a legally enforceable debt or liability. However, these presumptions are rebuttable in nature. The accused is not required to disprove the complainant's case beyond reasonable doubt. The burden upon the accused is only to raise a probable defence on the touchstone of preponderance of probabilities. Such rebuttal can be achieved either by leading independent evidence or by relying upon the materials brought on record through the complainant's own evidence.

33. In the present case, the accused has not disputed that the cheque pertains to his account. Consequently, the statutory presumptions under Sections 118(a) and 139 initially operate in favour of the complainant. However, a careful scrutiny of the evidence reveals material inconsistencies in the complainant's case. The specific case pleaded in the complaint, reiterated in the statutory notice and affirmed in the evidence affidavit at Exh.13, is that in August 2023 the complainant obtained a gold loan and arranged funds from his own resources and thereafter advanced a total sum of Rs.7,00,000/- to the accused. The entire foundation of the complaint proceeds on the footing that the amount of Rs.7,00,000/- was advanced in August 2023. However, during cross examination, the complainant admitted that he had not paid the entire amount in August 2023. On the contrary, he voluntarily stated that he paid Rs.2,50,000/- in August 2023 and that the remaining amount of Rs.4,50,000/- was paid between December 2023 and

January 2024. Thus, a materially different version emerges from his cross-examination.

34. More importantly, when specifically questioned as to why these facts were not mentioned in his complaint, statutory notice and evidence affidavit, the complainant admitted that he was unable to assign any reason. Moreover, despite such admission, he simultaneously maintained that the statement in his affidavit that the entire amount of Rs.7,00,000/- was advanced in August 2023 was correct. Thus, the complainant has placed before the Court two mutually inconsistent versions regarding the very transaction on which the alleged liability is founded. Such contradiction is not a minor discrepancy arising from lapse of memory. Rather, it goes to the root of the transaction and directly affects the credibility of the complainant's version regarding advancement of the alleged loan amount.

35. The complainant further deposed that he had paid Rs.4,50,000/- in cash to the accused. However, when confronted with the account statement at Exh.23, he admitted that the statement does not reflect withdrawal of Rs.4,50,000/- in a single transaction. Moreover, no receipt, acknowledgment, promissory note, account entry or independent witness has been produced to substantiate such cash payment. The complainant has further admitted that he does not possess any licence for carrying on the alleged fish trading business. He also admitted that he does not maintain any register, account books or records showing purchase and sale transactions in his business. He further admitted that except Exh.23, he possesses no documentary evidence to show availability of funds or actual advancement of Rs.7,00,000/- to the accused.

36. Another important circumstance emerging from the evidence is that the complainant admitted receipt of Rs.1,16,500/- from the accused through transfers made to his daughter's account. The defence of the accused has been that he had borrowed only a limited amount and that the cheques were given as security. Though the accused has not entered the witness box, the law is well settled that a probable defence can be established even from admissions elicited from the complainant during cross-examination. The cumulative effect of the above admissions and contradictions creates serious doubt regarding the complainant's version of advancement of Rs.7,00,000/- and the alleged outstanding liability. The defence has successfully demonstrated circumstances which render the complainant's case doubtful and improbable. Consequently, the statutory presumptions available under Sections 118(a) and 139 stand effectively rebutted.

37. Once the presumptions stand rebutted, the burden shifts back upon the complainant to establish the existence of a legally enforceable debt by independent and reliable evidence. In the present case, apart from his oral testimony, the complainant has not produced any convincing documentary evidence establishing advancement of Rs.7,00,000/- to the accused. The material contradictions in his own evidence further weaken the probative value of his testimony.

38. The Ld. Advocate for the complainant relied upon the judgments of the Hon'ble Supreme Court in **Sanjabij Tari V/S**

Kishore S. Borcar and Sampelly Satyanarayana Rao V/S Indian Renewable Energy Development Agency Ltd. There can be no dispute regarding the legal principles laid down in the aforesaid decisions. The said judgments reiterate that once the execution of the cheque is admitted or proved, the statutory presumptions under Sections 118(a) and 139 of the N.I. Act arise in favour of the holder of the cheque and the burden shifts upon the accused to rebut the same. However, with due respect, I am of the considered opinion that the said authorities do not advance the case of the complainant in the peculiar facts of the present case. The presumptions under Sections 118(a) and 139 of the N.I. Act are rebuttable in nature and not conclusive. In the present case, the accused has succeeded in raising a probable defence through the material admissions and contradictions elicited during the cross- examination of the complainant. Once the statutory presumptions stood rebutted, the burden shifted back upon the complainant to independently establish the existence of a legally enforceable debt or liability by cogent and reliable evidence. The complainant has failed to discharge that burden. Consequently, in my humble view the principles laid down in the aforesaid decisions are distinguishable on facts and do not render any assistance to the complainant.

39. On the other hand, the principles laid down by the Hon'ble High Courts in **M. Tamizhselvy V/S R. Baskaran, Sri Don Ayengia V/S State of Assam and Another and Ranbir Singh @ Randhir Singh V/S Navneet Chauhan**, relied upon by the Ld. Advocate for the accused, are more aptly applicable to the facts of the present case. These decisions recognize that where the complainant's own evidence suffers from material contradictions, omissions or inherent improbabilities and raises a probable defence, the statutory presumptions under Sections 118 and 139 of the N.I. Act stand rebutted and the burden shifts back upon the complainant to independently prove the legally enforceable debt or liability. In the present case, the complainant's own admissions and contradictions regarding the advancement of the alleged loan, coupled with the absence of reliable documentary evidence and failure to establish dishonour for a reason contemplated under Section 138 of the N.I. Act, create substantial doubt regarding the existence and quantum of the alleged liability. Therefore, I find that the aforesaid authorities relied upon by the accused squarely support the defence and are applicable to the facts and circumstances of the present case.

40. Therefore, upon an overall appreciation of the evidence, I am of the considered opinion that the complainant has failed to establish that the cheque in question was issued by the accused towards discharge of a legally enforceable debt or liability. Hence, Point No.4 is answered in the Negative.

AS TO POINT NO.5:-

Whether complainant proves that, the accused has committed an offence punishable under Section 138 of the N. I. Act?

41. For constituting an offence under Section 138 of the N.I. Act, the complainant is required to prove the following essential ingredients:

(i) The accused must have drawn a cheque on an account maintained by him for payment of a certain amount to another person in discharge of a debt or other legally enforceable liability;

(ii) The cheque must have been presented to the bank within the prescribed period of validity;

(iii) The cheque must have been returned unpaid by the bank for any of the reasons contemplated under Section 138 of the Act;

(iv) The payee or holder in due course must issue a demand notice in writing within the statutory period from receipt of information regarding dishonour;

(v) The drawer must fail to make payment of the cheque amount within fifteen days from receipt of the said notice.

42. While deciding Point Nos.1 to 4, I have already recorded my findings on each of the aforesaid ingredients. I have held that the complainant has proved presentation of the cheque within its validity period, issuance of the statutory demand notice within the prescribed period and failure of the accused to make payment within fifteen days from deemed service of the notice. Thus, the requirements contemplated under clauses (ii), (iv) and (v) stand established. However, I have also held that the complainant has failed to establish that the cheque was dishonoured for a reason contemplated under Section 138 of the N.I. Act, as the return memo merely bears the endorsement "Kindly Contact Drawer/Drawee Bank and Please Present Again", and no evidence has been adduced to explain the nature or legal effect of the said endorsement. Further, I have held that the complainant has failed to prove that the cheque in question was issued towards discharge of a legally enforceable debt or liability. The complainant's own evidence suffers from material contradictions regarding the date and manner of advancement of the alleged loan, and there is no convincing documentary evidence establishing payment of the alleged amount to the accused.

43. Thus, the complainant has failed to establish two essential ingredients of the offence under Section 138 of the N.I. Act, namely, that the cheque was dishonoured for a reason contemplated under the Act and that it was issued in discharge of a legally enforceable debt or liability. However, it is a settled principle of criminal law that all the essential ingredients of the offence must be established before recording a guilt of accused. Failure to prove even one essential ingredient is sufficient to entitle the accused to an acquittal. In the present case, the complainant has failed to prove the aforesaid essential ingredients beyond reasonable doubt. Consequently, I hold that the complainant has failed to prove that the accused has committed an offence punishable under Section 138 of the N.I. Act. Hence, Point No.5 is answered in the Negative.

AS TO POINT NO.6:

What order ?

44. In view of my negative findings recorded on Point Nos.3, 4 and 5, I hold that the complainant has failed to establish all the essential ingredients constituting an offence punishable under

Section 138 of the N.I. Act. Although the complainant has succeeded in proving that the cheque was presented within its validity period, that the statutory demand notice was issued within the prescribed period, and that the accused failed to make payment of the cheque amount within the stipulated period, he has failed to prove that the cheque was dishonoured for a reason contemplated under Section 138 of the N.I. Act. Further, the complainant has also failed to establish that the cheque in question was issued towards discharge of a legally enforceable debt or liability.

45. The evidence on record further discloses material inconsistencies regarding the alleged loan transaction. The statutory presumptions available under Sections 118(a) and 139 of the N.I. Act stood effectively rebutted, and the complainant failed to establish the existence of a legally enforceable debt or liability by cogent and reliable evidence. It is a settled principle of criminal jurisprudence that every accused is entitled to the benefit of reasonable doubt arising from the evidence on record. Since the complainant has failed to prove the essential ingredients of the offence under Section 138 of the N.I. Act beyond reasonable doubt, the accused is liable to be acquitted. Hence, I proceed to pass the following order.

: ORDER :

1.	The accused **Vikrant Sunil Mayekar** is hereby acquitted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1882 vide Section 278 (1) of the Bhartiya Nagarik Suraksha Sanhita, 2023.

2.	The Bail bonds of the accused stands cancelled.
3.	The accused to execute bail bonds with surety of Rs.25,000/- to appear before the Higher Court as and when that Court issues notice in respect of any appeal or petition against the Judgment, and the bail bonds shall be in force for 6 months vide Section 481 (1) of the Bhartiya Nagarik Suraksha Sanhita, 2023.
	(Judgment typed and declared in the open Court.)

SHABNAM YUNUS SHAIKH

Digitally signed by SHABNAM YUNUS SHAIKH
Date: 2026.07.07 16:10:30 +0530

Date : 07/07/2026 **(Shabnam Yunus Shaikh)**
Place: Ratnagiri **Judicial Magistrate First Class**
Court No.02, Ratnagiri.

CERTIFICATE

I hereby affirm and state that the contents of this PDF file are true, correct, and word-for-word in accordance with the original judgment.

SHABNAM YUNUS SHAIKH

Digitally signed by SHABNAM YUNUS SHAIKH
Date: 2026.07.07 16:10:38 +0530

(Shabnam Yunus Shaikh)

Date : 07/07/2026 **Judicial Magistrate, F.C.**

Place : Ratnagiri. **Court no.2, Ratnagiri.**