MHRT060003632017	Received on : 28.04.2017 Registered on : 28.04.2017 Decided on : 19.06.2026 **Duration : 09 Y 01 M 21 days**

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS
DAPOLI, DIST. RATNAGIRI
(Presided over by : P. S. Warke)

S.C.C. No.147/2017 **Exh.No.93**

Giridhar Laxman Kulabkar
Age - 26 years, Occu.-Business,
Resident At Post Utambar,
Tal. Dapoli, Dist. Ratnagiri. **... Complainant.**

- V E R S U S -

Rajendra Tanaji Yadav
Age - 42 years, Occu.-Business,
Resident At Post Dapoli,
Tal. Dapoli, Dist. Ratnagiri. **... Accused.**

Charge :- Under Section 138 of the Negotiable Instrument Act.

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Shri. R.J Dabake, Ld. Advocate for the Complainant.
In person- Accused
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J U D G M E N T
(Delivered on 19/06/2026)

The accused is prosecuted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'NI Act')

2. The brief facts of complainant’s case are as under:

The complainant and accused knew each other. There were friendly relations between complainant and the accused. Complainant had taken loan from Chola Mandal Finance for purchasing Bus bearing no. MH-08-E-9290. The complainant has used the said bus for nearly about 3-4 months, further, the wife of complainant got severely ill. Therefore, complainant was in need of money, so he wanted to sale out the said bus. When complainant had taken his wife to the hospital,accused was also present there. At that time accused told the complainant that he came to know that, complainant is going to sale his bus and accused is interested in purchasing the said bus. As there were friendly relations between complainant and accused, complainant agreed to sale his bus to accused. Thereafter, accused visited the house of complainant and after seeing the condition of bus, he agreed to purchase the bus for an amount of Rs. 14,75,000. Complainant had taken loan of amount of Rs. 12,90,000 from Chola Mandal Finance for purchasing the said bus and has put in his savings of Rs. 4,11,000 and the company reduced the price of the bus by Rs.50,000 because there was an ongoing offer. Accordingly, has purchased the said bus for an total amount of Rs.16,51,000. As accused was ready to purchase the said bus immediately, complainant decided to sell the said bus for an total amount of Rs.14,75,000/-only.

3. Further, complainant has paid some installments of the bus. Therefore, it was decided between accused and complainant that, accused shall pay an amount of Rs. 2,10,000 to the

complainant and also shall pay the remaining installments of the bus. For that purpose the loan amount received by the complainant was also given by the complainant to accused. Thereafter accused paid an amount of Rs.1,000/- to the complainant and took the bus in his possession. Thereafter out of the said 2,10,000, accused paid an amount of Rs.75,000/- to the complainant. Further, complainant repeatedly requested the accused to pay the remaining amount of Rs.1,35,000/-but accused failed to pay the said amount. At the same time accused was not even paying the installments of the loan amount.

4. Further, complaint repeatedly asked accused to make the payment but accused started avoiding to pay the remaining amount. Further, on repeated demands from the complainant on 22.03.2017, accused issued cheque bearing no. 000034 of Rs.1,25,000/- drawn on the Bank of India, branch Dapoli (Herein after the said cheque) assuring the complainant of its clearance.

5. Thereafter, on 24.03.2017 the complainant deposited the said cheque in Bank of India for encasement. However, due to insufficient of funds in the accused's account, the said cheque was dishonoured and returned on 24.03.2017, with the remark 'Funds Insufficient'.

6. Thereafter, on 06.04.2017 complainant issued a demand notice through advocate Shri. Rajesh J. Dabke through R.P.A.D. Further, the said notice was duly served on accused on 10.04.2017 . However, the accused failed to repay the cheque amount . Therefore as accused failed to repay the cheque amount

within statutory period the complainant filed the said complaint against the accused under section 138 of N.I Act.

7. After recording the verification of the statement of the complainant, court issued process against the accused on 29.04.2017. Accused appeared before court. The Particulars of the offence recorded at (Exh. 16) were read over and explained to the accused in vernacular language, to which he pleaded not guilty and claimed to be tried. The statement of accused under sec 313 of the Cr.PC is recorded at (Exh.63). The defence of the accused is that he complainant has made false complaint against him the and he is not liable to pay any amount to the complainant.

8. Heard Ld. Advocate for complainant. Per contra the accused failed to conclude final arguments despite giving sufficient opportunity. Hence the matter proceeded without hearing the accused. On perusal of the record and arguments the following points arise for determination and findings and reasons for them are recorded as follows:

Sr. No.	**Points for Determination**	**Findings**
1	Does the complainant prove that, cheque bearing no. 000034 dated 22.03.2017 was drawn by the accused for legally recoverable debt or discharge of liability?	Yes
2	Does the complainant prove that, the said cheque returned unpaid for the reason 'Insufficient Funds'?	Yes
3	Does the complainant prove that, he sent demand notice to the complainant within 30 days from the date of dishonour of cheque	Yes

	and that, the accused failed to pay the cheque amount within 15 days from the receipt of the notice?	
4	Does the complainant prove that the accused has committed an offence punishable under section 138 of the NI Act?	Yes
5	What Order?	As per final order.

REASONS

9. **Followings are essential ingredients of punishable under section 138 of N.I. Act.**

i) Issuance of the cheque,

ii) Presentation of the cheque to the bank within a period of three months from the date on which it is drawn or within the period of its validity, whichever is earlier,

iii) Returning of the cheque unpaid by the drawee bank,

iv) Giving notice in writing to drawer of cheque demanding payment of cheque amount within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid., and

v) Failure of drawer to make payment within 15 days of the receipt of notice.

vi) If accused fail to make payment within 15 days of receipt of notice the complainant shall file complaint within 1 month.

10. As per settled criminal law, the complainant ought to prove that the accused issued the said cheque in order to discharge of his legally enforceable debt. Further, standard of proof to prove

guilt of the accused is beyond reasonable doubt. However, as per sections 118, 139 and 146 of the Act certain presumptions are laid down in favour of the complainant. These presumptions reduce burden from shoulder of the complainant. Needless to mention that before taking recourse of aforesaid Sections, the complainant is bound to prove some foundational facts. If he succeeds to prove the same, definitely aforesaid section will be helpful to him.

11. Section 118 of N.I.Act provides for seven different kinds of presumptions which includes presumption of consideration, presumption as to date, presumption as to time of acceptance, presumption as to time of transfer, presumption as to order of indorsements, presumption as to stamps and presumption that the holder is a holder in due course.

12. Section 139 of N.I.Act provides for the Court to presume that, holder of cheque received it for discharge, in whole or in part, of any debt or other liability.

13. Presumption under section 146 of N.I.Act provides that, when a bank's slip or memo having thereon official mark denoting that cheque is dishonoured is produced before Court, the Court shall presume the fact of dishonour of such cheque, unless and until such fact is disproved. Further, it is necessary to mention that aforesaid presumptions are not absolute or irebuttable.

<u>As to Point No. 1</u> :-

14. In order to prove the guilt of the accused, the complainant has examined himself vide (Exh.22). Thereafter, the complainant has closed his evidence by filing pursis at (Exh.36).

Further, despite giving sufficient opportunity accused failed to cross examine the complainant, hence no cross order was passed against the accused on 21.02.2019. Further, accused in his 313 statement has stated that he wants to lead evidence in his defense. However,despite giving sufficient opportunity, the accused did not lead any oral or documentary evidence, therefore evidence of accused was closed on 05.07.2023.

The complainant has placed reliance on the following documents-

1. Original Cheque bearing no.000034 dated 22.03.2017 of Bank of India. (Exh.81)
2. Original cheque return memo dated 24.03.2017 (Exh.77)
3. Copy of Demand notice issued to accused dated 06.4.2017 (Exh.78)
4. Postal receipt dated 06.04.17 (Exh.79)
5. Postal Acknowledgment dated 10.04.2017 (Exh.80)

15. Complainant has filed his affidavit in lieu of examination in chief at (Exh. 22). In his evidence affidavit he has reiterated the contents of the complaint. Further, it is pertinent to note that despite having ample opportunities the accused failed to conduct cross examination of the complainant. Therefore on 21.02.2019 no cross order was passed against the accused. Thereafter, accused has filed an application to set aside the no cross order passed against him. However, my Ld. Predecessor has rejected the application on the ground that despite giving sufficient opportunities accused failed to cross examine the complainant and filed the said application for setting aside the order when the matter was posted was recording 313 statement of the accused

person, from the conduct of the accused it was clear that the accused only intended to prolong the matter. Per contra, accused has recorded his statement under sec 313 of the Cr.PC. It is settled law that failure to cross examine witness would lead the court to drawing a presumption in favour of the complainant. Under sec 139 and section 118 of the Negotiable instruments Act, the court presumes the cheque was issued for a legally enforceable debt. On failure to cross examination the complainant, the accused has failed to rebut this presumption. The NI Act contains strong statutory presumptions under Section 118 and Section 139. These legally mandate the court to presume that the cheque was issued for a legally enforceable debt or liability. By failing to cross-examine and rebut these presumptions, the accused fails to discharge their burden of proof.

16. In view of above discussion, in instant case, the accused has failed to conduct cross examination of the complainant. Therefore, the evidence of complainant has remained intact. There is nothing on record which creates doubt about veracity of the complainant. After perusal of entire evidence of the complainant, it transpires that the accused has not denied issuance of the cheque (Exh.81). Furthermore, the accused has not disputed his signature on the cheque (Exh.81). Moreover, the accused has not disputed his legal liability of amount of Rs.1,25,000/- towards the complainant.

17. On taking into consideration the testimony of Complainant it appears that there was transaction between complainant and accused concerning the bus and the cheque was issued by the accused to the complainant to discharge his legal

liability. On the contrary accused had not brought on record any evidence to rebut the presumption that the cheque was not issued for discharging legal liability. According to sec 139 it shall be presumed, unless contrary is proved, that the holder of a cheque received the cheque for the discharge of debt or other liability. Therefore, as accused failed to rebut the presumption it is presumed that the cheque was issued to discharge legal liability.

18. In these circumstances, the presumption envisaged in Section 118 of the N.I. Act can be legally inferred that, the cheque was made over for consideration, on the date which the cheques bears. Similarly, Section 139 of the N.I. Act enjoins the court to presume that, the holder of the cheque received it for discharge of debt or legal liability. Therefore, the burden to rebut the aforesaid presumptions lies on accused. Hon'ble Apex Court has held in the case of ***Ranggappa ..Vs.. Mohan (AIR 2010 SC 1898)*** that the presumption mandated by Section 139 of the N.I. Act includes the existence of legally enforceable liability in favour of the complainant. It is further observed that, the presumption under Section 139 of the N.I. Act also includes the existence of legally enforceable liability and the burden on accused is to specifically establish that, there was no legally enforceable debt as contended by the complainant. However, the accused has neither cross examined the complainant nor has adduced any evidence to put his defence or rebut the presumption in favour of complainant.

19. The accused can put forth his defence. Firstly, after service of demand notice accused has opportunity to send a reply to demand notice and pose his defence. Secondly, during cross

examination of complainant's witnesses. Thirdly, during examination under section 313(1)(b) of Cr.P.C. and lastly if he opts to lead evidence in defence, then by way of his defence evidence. With the aid of these four opportunities, it is for accused to merely show that his defence is probable and thereby rebut the presumptions. However, in the present case the accused has failed to cross examine the complainant, further, failed to adduce any evidence in his support.

20. Further, the accused not challenged the documentary evidence filed by the complainant. Moreover, the accused has not claimed that he has paid said amount. He has not produced documentary evidence to show that he has paid said amount. It is clear from evidence that on date of presentation of the cheque the accused had liability to repay said amount. Hence, undisputedly, the accused is liable to pay amount of Rs. 1,25,000/- as contemplated in the complaint.

21. The accused was bound to bring on record something which is probable for getting the benefit of shifting the onus of proving the case on the complainant. However, in the light of the above observations the accused has failed to put his defence by conducting cross examination or by leading evidence. Hence, the accused has failed to rebut the presumptions enunciated in sections 118 and 139 of the N.I. Act and thus failed to shift the onus on the complainant. Similarly, there is nothing on record which casts doubt on the case of the complainant. Thus, it is concluded that, the accused has issued the cheque at Exh.81 in favour of the complainant for discharging the legally enforceable debt. Hence, I

answer point No. 1 in the affirmative.

As to Point No. 2 :-

22. As per the contentions of the complainant, the cheque (Exh.81) bearing no.000034 dated 22.03.2017 was deposited by the complainant for encasement on 24.03.2017. But it was dishonored on the same date due to 'Insufficient funds. In order to prove the same, the complainant has brought on record a a return memo dated 24.03.2017 (Exh.77) which shows that the cheque (Exh.81) was dishonored due to 'Insufficient funds. The return memo (Exh.77) bears the seal and signature of the authorized person of the bank. he cheque return memo at Exh.77 has not been disputed by the accused. It is not the defence of the accused that, the cheque at Exh.81 was not dishonored. There is no evidence on record to disprove the fact of the dishonor of the cheque at Exh.81. Hence, the oral and documentary evidence are cogent and sufficient to hold that, the cheque at Exh.81 was dishonored.

23. When the cheque issued by the accused was presented, it was dishonoured and returned for 'funds insufficient'. The return memo at (Exh.77). It is duly proved through evidence of complainant. The return memo shows that cheque number for amount of Rs.1,25,000/- was returned unpaid because of 'funds insufficient' on account. Section 146 of the NI Act says that, "The court shall, in respect of every proceeding under this chapter, on production of bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of such dishonour of such cheque, unless and until such fact is disproved." In the present matter accused has not brought on

record any evidence to rebut the presumption under sec 146 of NI Act. Therefore, complainant has proved that the cheque issued by the accused when presented was dishonoured.

24. The cheque return memo at Exh.77 has not been disputed by the accused. It is not the defence of the accused that, the cheque at Exh.81 was not dishonored. There is no evidence on record to disprove the fact of the dishonour of the cheque at Exh.81. Hence, the oral and documentary evidence are cogent and sufficient to hold that, the cheque at Exh.81 was dishonored. Hence, I answer point No.2 is answered in the affirmative.

As to Point No. 3 :-

25. As per settled provision of the N.I. Act, it is not only sufficed to prove that the cheque was issued for legally enforceable debt and same was dishonoured. However, it is incumbent upon the complainant to prove that he had issued notice and despite receipt of the notice the accused failed to pay the amount mentioned therein. Complainant issued demand notice to accused on 06.04.2017 for payment of the cheque amount. The notice was sent by R.P.A.D. and has been received by the accused on 10.04.2017. Despite of receipt of the notice, the accused has not paid the amount within the statutory period of 15 days from the date of receipt of the notice.

26. In **K. Bhaskaran vs Shankar Vaidhyan Balan AIR 1999 SUPREME COURT 3762.** Hon'ble Apex court has summarised the constituent elements of the offence they are:- 1) drawing of the cheque, 2) presentation of the cheque to the bank,3) returning the

cheque unpaid by the drawee bank, 4) giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, 5)failure of the drawer to make payment within 15 days of the receipt of the notice. In the present case. It is the contention of the complainant that after receiving the return memo (Exb.77) dated.24.03.2017 he issued a demand notice (Exb.78) dated 06.04.2017 to the accused. The receipt (Exb.79) of the same is on record. So the demand notice was sent to the accused within 30 days from date of dishour. Accused accepted the notice. acknowledgment vide (Exh.80). It bears the address signature of accused. It also bears the seal of Post Office and date of service that is 10.04.2017. it appears that the notice was served upon the accused but he neither paid cheque amount nor gave any reply to the said noticed. There is nothing on record to show that accused paid cheque amount within stipulated period. Therefore, it is proved by the complainant that the Cheque bearing No. 000034 is dishonored, its demand notice for payment of cheque amount is served on accused. It is an undisputed fact that the accused has not repaid the cheque amount within 15 days of notice to the complainant. Hence, points Nos. 3 is answered in the affirmative.

As to Point No. 4 :-

27. In view of the above discussion, it appears that the essential ingredients of the offence punishable under Section 138 of the NI Act are proved by the complainant. The findings to the point Nos. 1 to 3 show that, the accused had issued cheque (Exh.81) for discharge of his legally enforceable amount. The same was dishonored and therefore, the complainant issued demand

notice (Exh.78). However, despite the receipt of said demand notice (Exh.80), the accused failed to pay the cheque amount within stipulated time as provided in the N.I. Act i.e. 15 days to the complainant. The complainant fully satisfied mandates of Section 138 of the N.I. Act. Thus, the complainant has proved his case beyond reasonable doubt. Hence, I hold the accused guilty of the offence punishable under Section 138 of N.I. Act and resultantly point no.4 is answered in the affirmative.

28. So at this stage it is necessary to hear accused on point of quantum of sentence. The accused is absent when called out repeatedly. Further, his Ld. Advocate Shri. Prafull. S. Kelkar has withdrawn his vakalatnama on the previous date, on which the matter was posted for pronouncing of judgment. Further, by passing order below Exh.01 in the in the interest of justice, an opportunity for appearing on next date, that is today along with his Ld. Advocate if any was granted. However, today also when called out repeatedly accused found absent.

29. Record indicates that the accused has remained absent on several occasions. In this backdrop, there is no immediate prospect that the accused would remain present in near future. Accused has already dragged the matter for a period of more than 9 years. It is evident that the accused has deliberately remained absent. Therefore, he himself has failed to avail the opportunity of being heard on the point of sentence. Per contra, Advocate, on behalf of complainant, submitted that the accused has deliberately cheated the complainant by giving the said cheque and maximum sentence may be awarded to the accused. Further, he submitted

that maximum sum of compensation may be awarded to the complainant.

30. It may be noted with emphasis that the accused has neither examined himself nor any other witnesses in defence, nor has produced any documentary evidence in support of his case. However, he was present on the date of recording of his statement u/s 313 of the Cr.P.C. which was recorded on 25.02.2020. The case has been posted today for judgment. The accused was aware about instant matter. However, his today's absence appears deliberate.

31. In these circumstances, when the accused has voluntarily failed to remain present after availing opportunity, the trial cannot be permitted to remain stalled indefinitely. The administration of criminal justice does not permit an accused to frustrate the proceedings by his own deliberate absence. Therefore, this Court is justified in proceeding further with the trial on merits in the absence of the accused as his absence is clearly deliberate, intentional and without just cause.

32. For the sake of completeness, it is to be taken into consideration that the accused has already been given sufficient opportunity to defend himself, his statement under 313 of the Cr.P.C has been recorded and no prejudice can now be said to have caused to him when he himself has chosen not to participate in the proceedings. Hence, the matter is required to be decided on the basis of available evidence and in accordance with law.

33. The case is more than 9 years old and undue delay in disposing the case needs to be avoided. Section 353(6) of the

Cr.P.C. requires presence of accused at the time of pronouncement of judgment. However, the object behind insisting the presence of the accused at the time of pronouncement of the judgment is that in the event of his being convicted, he has to be heard on the sentence to be imposed. However, if, an opportunity to such hearing is afforded to the accused by making him aware of the date of judgment, even if, the accused is avoiding to appear at the time of pronouncement of judgment, his such conduct appears more deliberate and, in such circumstances, he can be said to have not utilized the opportunity of hearing on the point of quantum of sentence. Therefore, in such circumstances, a judgment of conviction may be pronounced in absence of accused. This view is fortified by ratio of ***Hon'ble Gujarat High Court in Shared Jethalal Savla Vs. State of Gujarat 2016 SCC OnLine Guj 10218.***

34. While holding the accused guilty it is necessary to consider that financial hardship and family dependency are common circumstances in many prosecutions and such grounds by themselves cannot be treated as sufficient to dilute the seriousness of the offence. The present matter arises out of the transaction between private individuals and the cheque was issued in discharge of liability. The object of section 138 of the Negotiable Instruments Act is to enhance the credibility of commercial transactions and to ensure faith in banking operations.

35. Section 138 of Negotiable Instruments Act conferes discretion upon the Court in relation to punishment. The provisions contemplates sentence of imprisonment or fine or both. It is evident from the record that the accused failed to honour his cmmitment

and thereby complainant was constrained to file the present complaint. Due to which he had to undergo mental harassment and financial expenditure. As per provisions of S.138 NI Act, punishment of imprisonment up to two years and fine up to twice the amount of the cheque may be awarded to the accused. In the given set of facts and circumstances on record imposition of imprisonment alone would not suffice award of compensation under section 357(3) of Criminal Procedure Code, 1973 is necessary to meet the ends of justice. Hence, in answer to point no. 5, the following order is passed:

ORDER

1. Accused **Rajendra Tanaji Yadav** is convicted vide Section 255(2) of Code of Criminal Procedure, 1973 for the offence punishable under section 138 of the Negotiable Instruments Act, 1881 and sentenced to suffer simple imprisonment for a period of three months.
2. Accused to pay compensation of Rs. 1,30,000/-(Rs. One Lakh Thirty Thousand) to the complainant under Section 357(3) of Code of Criminal Procedure,1973 and in default to suffer Simple Imprisonment for one months. The accused to pay the compensation amount within one month from today.
3. His Bail bonds are forfeited.
4. Issue conviction warrant vide s. 418(2) of the Cr.P.C. against accused.

5. A copy of this Judgment be provided to the accused free of cost vide s. 363(1) of the Cr.P.C. whenever he appears or is produced before the Court.

(Dictated and pronounced in open Court.)

Sd/-***

Date : 19/06/2026 **(P. S. Warke)**

Judicial Magistrate First Class,
Dapoli, Tal. Dapoli Dist.Ratnagiri

CERTIFICATE

I affirm that the contents of this PDF file order are same words as per original order.

Name of Stenographer	:	Shri. V. V. Bamane
Court Name	:	Jt. C.J.J.D. & J.M.F.C., Dapoli
Date of Judgment	:	19.06.2026
Order signed by P.O. on	:	19.06.2026
Order uploaded on	:	19.06.2026