**MHRG170028
792019**

Presented on	:	18.09.2014
Registered on	:	18.09.2014
Decided on	:	06.02.2026
Duration	:	Y M D
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IN THE COURT OF ADDITIONAL SESSIONS JUDGE
AT-PANVEL, DISTRICT- RAIGAD

(Presided over by Mr. Dinesh E. Kothalikar)

(B. Com. LL.M.)

CRIMINAL APPEAL NO.144 OF 2019

(OLD CRIMINAL APPEAL NO.154 OF 2014)

CNR No. MHRG170028792019

Exh. No. 32

Mr. Bipin Ratilal Mehta)
Age – 57 years,)
R/at-7, Manibhuvan, Mamlatdarwadi,)
Malad(West), Mumbai-400065.) **Appellant**

Versus

01. **Mr. Vaibhar Baliram Patil**)
Age – 30 years, Occupation – Business,)
R/at- Dheku, Post-Sajgaon, Tal-Khalapur,)
Dist-Raigad.)

02. **The State of Maharashtra**) **Respondents.**

Appeal:- **Appeal against the Judgment and order passed by Ld. JMFC, Khalapur, in S.C.C. No.1440 of 2004, dated 02/09/2014.**

Appearance:

Advocate for Appellant	::	Mr. A. R. Bhusari
Advocate for Respondent No.1	::	Smt. Dipali Shinde
APP for State	::	Mr. A. S. Thakur

:: JUDGMENT ::

(Delivered on 6th of February, 2026)

The appellant is aggrieved by an order passed by the learned J.M.F.C. Khalapur in S.C.C. No.1440 of 2004, by which he has been held guilty for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short “the Act”) and sentenced to undergo Simple Imprisonment for two years and to pay fine of Rs.50,000/-. The parties are referred hereinafter as per their ranking before the learned J.M.F.C.

02. Background facts, in nutshell may be stated thus;

The complainant had filed the complaint against the accused with the allegations that he was engaged in the business of building material supplier in the name of Patil Suppliers. According to the complainant, he had supplied material worth Rs.33,600/-. Accordingly, the accused was required to pay Rs.33,600/- to the complainant. The accused in discharge of the aforesaid liability had issued a Cheque bearing No.229949 dated 11.08.2004 drawn on the United Western Bank Limited, Malad Branch.

03. The said Cheque was presented by the complainant to the Kokan Mercantile Co-Operative Bank Limited, Khopoli Branch for encashment on 09.09.2004, but it was returned by the bank on 23.12.2015 with the endorsement “insufficient funds”.

04. The complainant, thereafter served a legal notice on 02.10.2004 under registered cover sent to the accused. But, in spite of receipt of the notice on 09.10.2004, no payment was made which led to filing of a complaint by the complainant.

05. Accordingly, the learned Magistrate was pleased to take cognizance of the offence. Upon appearance of the accused, particulars of the offence were explained to him, to which the accused pleaded not guilty and claimed for trial.

06. In order to establish guilt of the accused complainant has examined himself at Exh.24. He has placed on record Cheque bearing No.22949 at Exh.25, Cheque return memo at Exh.26, copy of notice issued to respondent by RPAD dated 02/10/2004 and acknowledgment receipt at Exh.27.

7. The accused, at the time of his examination under Section 313 of the Code and while cross examining CW-1, has come with the contention that there was transaction of land between the accused and father of the complainant and that the

Cheque in question was issued by him to the father of the complainant and that as per the say of accused, the complainant did not complete the transaction. He would further add that he had replied the notice and called upon the complainant to collect the pay order, but the complainant did not collect it. The accused did not examine defence witness.

8. The accused had placed on record Notice Reply at Exh.33, postal receipt dated 21/10/2004 at Exh.34, Under Postal Certificate at Exh.35, Acknowledgment at Exh.36, Acknowledgment at Exh.37, and acknowledgment at Exh.38.

9. Learned trial court upon hearing the submissions advanced by both the sides did not accept the defence of the accused and he was pleased to hold the accused guilty for an offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo Rigorous Imprisonment for Two Months and to pay fine of Rs.50,000/- within one month from the date of order and in default he was sentenced to undergo simple imprisonment for the period of 15 days.

10. Being aggrieved by the aforesaid order of sentencing the accused, present appeal has been filed.

11. I have heard the submissions advanced by learned advocate Smt. Dipali Shinde for the complainant and Mr. A.R.

Bhusari for the accused. Learned advocate for the complainant has placed on record written submissions at Exh.22.

12. On the basis of the submissions advanced before me following points arise for consideration and I have recorded my findings for the reasons stated hereinafter;

Sr. No.	POINTS	FINDINGS
01.	Whether the complainant proves that the accused issued a Cheque bearing No.229949 of Rs.33,600/- dated 11/08/2004, drawn on The United Western Bank Ltd, Branch Malad-Mumbai, in favour of the complainant to discharge his legal enforceable debt or liability and the said Cheque was dishonored for reason “Funds Insufficient” from the account of accused and despite service of notice he did not make the payment of the Cheque amount?	… In the affirmative.
02.	Whether the impugned judgment and order passed by the Trial Court warrants interference in the appeal?	Partly in the affirmative.
03.	What order?	As per final order.

<u>:: REASONS ::</u>

<u>AS TO POINT NO. 1</u>:

13. A Negotiable Instrument including a Cheque carries presumption of consideration in terms of Section 118 (a) and under Section 139 of the Act. Sections 118 (a) and 139 read as under:

> "118. Presumptions as to negotiable instruments.— Until the contrary is proved, the following presumptions shall be made:
> (a) of consideration: that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;
> ***
> 139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, that the holder of a Cheque received the Cheque, of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability."

14. There is mandate of presumption of consideration in terms of the provisions of the Act. The onus shifts to the accused on proof of issuance of Cheque to rebut the presumption that the Cheque was issued not for discharge of any debt or liability in terms of Section 138 of the Act which reads as under:

> "138. Dishonour of Cheque for insufficiency, etc. of funds in the account: Where any Cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the Cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, ..."

15. Learned advocate for the accused has relied upon following judgments to submit that the presumption incorporated under Section 139 of the Negotiable Instruments Act is rebuttable in nature and that the same can be rebutted from the cross-examination of the complainant, the documents placed on record by the complainant and that for that purpose the accused need not to enter into the witness box.

16. In support of the submissions learned advocate for the accused has relied upon following judgments;

a. **Narinder Kumar Vs Harman Singh 2000 Cri.L.J. 257.**
b. **Virender Singh Vs Laxmi Narain 2007 ALL MR (Cri.) 193.**
c. **Krishna Janardhan Bhat Bs Dattatraya G. Hegde, 2008 ALL MR (Cri) 1164 (SC).**
d. **Baslingppa Vs Mudibasappa Cri. Appeal No.636 of 2019 decided on April 09, 2019.**

17. Out of the above judgments, the judgment of Hon'ble Supreme Court in the case of **Basalingappa** (cited supra) is the most recent judgment, wherein reliance has been placed upon the judgment of three judges Bench of Hon'ble Supreme Court in the case of **Rangappa v. Sri Mohan (2010) 11 SCC 441.** Since it is the judgment of the larger bench, in order to avoid repetition, it would be apt to make the reference to said judgment.

18. In the case of **Rangappa v. Sri Mohan (cited supra)** the Hon'ble Apex Court had occasion to examine the presumption under Section 139 of the 1881 Act. In the aforesaid case the Hon'ble Supreme Court has held that in the event the accused is able to raise a probable defence which creates doubt with regard to the existence of a debt or liability, the presumption may fail. Following was laid down in paras 26 and 27:

> "26. In light of these extracts, we are in agreement with the accused claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat (2008) 4 SCC 54 may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant.
>
> 27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of Cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a Cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the

> construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard of proof."

19. The complainant in his affidavit reiterated his assertions as were given in the complaint. In his evidence the Cheque Exh.25, Cheque Return Memo Exh.26, Demand Notice and acknowledgment receipt Exh.27. The fact that the accused has executed the Cheque and that the Cheque bears signature of the accused. In view of the above admission and in the light of Section 139 of the Act, it can be said that the presumption that the Cheque was issued in discharge of legally enforceable debt is available in favour of the complainant. Therefore, I am required to find out whether the accused has succeeded to rebut the presumption.

20. Admittedly, the accused did not enter into the witness box. Therefore, I am required to find out whether the accused has succeeded to rebut the presumption, on the basis of the materila brought on record in the cross-examination of the complainant or on the basis of the documents placed on record by the complainant.

21. The defence has tried to make capital of some of the admissions given by the complainant in the cross-examination. In the cross-examination it has been brought on record that he had supplied sand twice only and that he has no knowledge of the business to supply building material and that he has no documentary evidence to show that he was engaged in the business of supply of building material.

22. Upon perusal of the statement of the accused under Section 313 of the Criminal Procedure Code and the cross-examination of CW-1, it is revealed that the accused has come with the inconsistent defence. At the time of his examination under Section 313 of the Code, the accused has come with the defence that there was transaction between him and the complainant and that in the said transaction the Cheque in question was issued, but the complainant did not complete the transaction, but at the time of cross-examination, in the first breath it was suggested that the complainant was witness to the transaction between the accused and father of the complainant and that the complainant had made demand of excess amount and that at that time he had issued the Cheque in question and that it was agreed that after completion of the transaction, the complainant would deposit the Cheque for encashment.

23. The complainant has placed on record the notice reply Exh.33 issued by the accused to the notice issued by the complainant. In the notice Exh.27 the complainant has categorically stated about the transaction that has taken place between the complainant and the accused. However, when the accused had got an opportunity to refute the contention, he did not avail it, but admitted the liability stating that he had agreed to repay the amount of Rs.33,600/- by a pay order. The accused had informed the complainant to collect the pay order and hand over the Cheque. The contents of the notice reply clearly state that the accused had accepted liability of Rs.33,600/-.

24. Had it been the case that the accused did not owe any amount to the complainant, in that case he had no reason to ask the complainant to collect the pay order from him. Even the notice reply is silent on the point of nature of transaction between the complainant and the accused. In one breath he claims that the transaction in respect of the land had taken place between him and the complainant and in the other breath he claims that the transaction was with the father of the complainant. This makes the contention of the accused improbable and therefore, no much weight can be attached to the material brought on record by the accused in the cross-examination of the complainant.

25. In such circumstances the defence of the accused appears to be inconsistent, which creates a doubt thereby making the entire defence highly improbable and unbelievable. Interestingly in the present case, the Accused has utterly failed to rebut the presumption since he has come up one defence in statement under Section 313 of the Code, while a total inconsistent defence while cross-examining the Complainant. In view of the same, the defence can be said to be improbable. Therefore, I hold that there is no evidence to rebut the presumption that the Cheque was issued for consideration.

26. Once the Cheque is proved to be issued, it carries statutory presumption of consideration. Then, the onus is on the accused to disprove the presumption at which the accused has miserably failed. The accused has failed to lead any evidence to rebut the statutory presumption. Therefore, it is presumed that the Cheque in question was drawn for consideration and the holder of the Cheque i.e. the complainant received the same in discharge of an existing debt. Accordingly, I have no hesitation to conclude that the aforesaid presumption has not been rebutted by the accused.

27. It is not disputed that when the Cheque was presented for encashment, it was dishonoured for want of sufficient funds in the account of the accused. Further, dishonour of the Cheque has also been proved through Cheque return memo. Further, the legal demand notice was also issued within a period of 30 days from the date of dishonour. Thereafter, the present complaint has been filled within the period of limitation. Therefore, I conclude that the complainant has proved beyond reasonable doubt that the accused has issued the Cheque in question in discharge of legally enforceable debt and that when the Cheque was presented for encashment, it was dishonoured for want of sufficient funds and that despite service of notice the accused has failed to make the payment good. Thus, I conclude that the accused has committed the offence punishable under Section 138 of the Negotiable Instruments Act. Resultantly, point No.1 is answered in the affirmative.

AS TO POINT No.2:

28. In the light of the above discussion, I have gone through the judgment of the learned J.M.F.C. I am satisfied that the learned magistrate has considered the law and facts properly. The conclusion drawn by the learned trial court holding the accused guilty cannot be said to be illegal. It cannot be said to be perverse or unsustainable in law.

29. On the point of sentence, Learned Advocate for the accused has submitted an application Exh.29 and prayed for granting permission to compound the offence. In support of the submission he has relied upon following judgments;

a. Damodhar S. Prabhu Vs. Sayed Babalal in Cri.Appeal No. 963/2010 decided on 03/05/2010

b. M/s Meters and Instruments Private Ltd. Vs. Kanchan Meheta in Cri. Appeal No. 1731/2017 decided on 05/10/2017.

C. Sanjabij Tari Vs. Kishore S. Borcar in Cri.Appeal No. 1755/2010 decided on 25/09/2025.

30. Learned Advocate for the complainant Mr Rajesh Meher has submitted that the matter relates to the cheque which was issued in the year 2004 and that the accused had avoided to make the payment good for the period of more than 21 years and therefore, the complainant is not interested to go for compromise. Thus, it is prayed for rejection of the application and imposition of sentence of imprisonment and fine as per the provisions of law.

31. In the case of Sanjabij Tari (Cited Supra) the Hon'ble Supreme Court has given certain guidelines for compounding of the offence punishable under Section 138 of the Negotiable Instrument Act. In the said case, Hon'ble Supreme Court has directed that if the payment of cheque amount is made before the sessions court or a High Court in revision or appeal, such court may compound the offence on the condition that the accused pays 7.5% of the cheque amount by way of costs. It has been further observed that in for any reason the financial institutions/ complainant asked for payment other than be cheque amount for settlement of earlier loan or other outstanding dues, in that case the magistrate may suggest to the accused to plead-guilty and exercise the power under Sections 255(2) and/or 255(3) of the C.R.P.C or 278 of the B.N.S.S, 2023 and/or give the benefit under the probation of offenders Act, 1958 to the accused.

32. Thus, it can be said that the option available to the accused to compound the offence is depend upon the consent given by the complainant for compounding and if the complainant is reluctant to go for compromise, in that case option is given to the accused, to plead guilty before the Learned Magistrate. In the light of this the option tried to be availed by the accused to go for compromise that too after the period of more than 21 years cannot be said to be a bonafide attempt. It appears that when the accused had found that there was no option than to settle the dispute, has woke up and come with such proposal. In this view of the matter the application Exh.29 for the permission to compound the offence, deserves to be rejected.

33. In this regard Learned Advocate Mr Bhusari for the accused has submitted that the accused was not guilty for protracting the trial and that other civil litigation was also going on between the accused and father of the complainant and therefore, despite the matter was referred for mediation, it could not be worked out.

34. It is to be noted that the trial is pending for more than 21 years, but the complainant is required to run from pillar to post due to the adamant behavior of the accused, to receive his lawful claim. Such attitude needs to be curbed out, by imposing heavy sentence.

35. Although, punishment for the offence punishable under Section 138 of India's Negotiable Instruments Act for a bounced Cheque includes imprisonment up to two years, or a fine up to twice the Cheque amount, or both, aiming to compensate the payee for the dishonoured payment, though courts prioritize recovering the debt before imposing severe penalties.

36. Be that as it may, the fact remains that as on today the accused is ready to compensate the complainant. Considering the fact that cheque of Rs. 33,600/- and that the Learned Magistrate, in addition to the substantive sentence was pleased to impose fine of Rs. 50,000/- upon the accused, in my view if the amount of fine is converted to the amount of compensation and if the accused is directed to deposit compensation of Rs. 1,50,000/-, which shall be payable to the complainant and if the substantive sentence is said aside that would meet the ends of justice. As a sequitur to the above discussion, point No.2 is answered partly in the affirmative.

AS TO POINT No.3:

37. Upon cumulative consideration of all the aforesaid circumstances as well as law on the subject and corollary to the afore stated deliberation is that the finding recorded by the Learned J.M.F.C holding the accused guilty for the offence punishable under section 138 of the negotiable instrument Act is required to be maintain by reducing the substantive sentence and enhancing amount of compensation and thus the appeal is liable to be partly allowed. Consequently, I proceed to pass following order;

:: ORDER ::

1. Appeal is hereby partly allowed.
2. The findings of guilt recorded by the learned J.M.F.C. in SC No.1440 of 2004 is hereby confirmed.
3. The sentence imposed upon the accused is hereby modified as under;

   i. The accused is hereby convicted for the offence punishable under section 138 of the Negotiable Instrument Act and sentenced to under go simple imprisonment till rising of the court and to pay compensation of Rs. 1,50,000/- (including the amount of fine imposed upon him by the Learned J.M.F.C.) which shall be payable to the complainant, after expiry of appeal period.

ii. If the accused fails to deposit the amount of compensation, he shall under go simple imprisonment for three months.

4. The accused shall surrender to his bail bonds.

5. The accused is apprised about the right to get free legal aid facilities from the Legal Aid **Committee, High Court Legal Services, Bombay at High Court Bench at Mumbai**, for pursuing higher remedies before the Hon'ble High Court.

(Dictated and pronounced in open court.)

DINESH EKNATH KOTHALIKAR

Digitally signed by DINESH EKNATH KOTHALIKAR
Date: 2026.02.12 11:33:33 +0530

Panvel,
Date: 06/02/2026.

(Dinesh E. Kothalikar)
Additional Sessions Judge, court No.2
Panvel, District Raigad.