

MHST070014662014



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 Duration : 12Y 00M 30D

Summary Criminal Case No. 698/2014**Exh. No.46.**

	<u>IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS (COURT NO. 4), KARAD</u> (Presiding Officer Shri. Prashant P. Kulkarni) [Date of Judgment :04/06/2026] Offence Punishable Under Section 138 of the Negotiable Instrument Act, 1881.	
COMPLAINANT	Amir Dilawar Mulla Age: 30 yrs., Occu: Agri, R/o. : Malkapur, Tal. Karad, Dist. Satara.	
REPRESENTED BY	Learned advocate Shri. M. S. Yadav.	
ACCUSED	Santosh Jaywant Jagtap Age: 35, Occu: Service, R/o. : Kole, Narsingpur, Tal- Walwa, Dist. Sangli.	
REPRESENTED BY	Learned advocate Shri. S. J. Karande, Shri. R. S. Pawar, Shri. A. B. Mali, Shri. A. Y. Patel (Absent).	
Date of offence		20/04/2014.
Date of Complaint		05/05/2014.
Date of charge-sheet		Not Applicable.
Date of Framing of Charges		04/03/2016.
Date of commencement of evidence		06/08/2014.
Date on which Judgment is reserved		04/06/2026
Date of the Judgment		04/06/2026
Date of the Sentencing Order, if any		04/06/2026

Accused Details

Number of the Accused	Name of the Accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of Section 428, Cr.P.C.
1.	Santosh Jaywant Jagtap	Nil	Nil	Offence Punishable Under Sections 138 of the NI Act, 1881.	Convicted	Six months Simple Imprisonment	Nil

J U D G M E N T

(Delivered on 04 June, 2026)

1. The accused is facing trial for offence punishable under Section 138 of the Negotiable Instruments Act (herein after called as "the NI Act" for short).

The brief facts of the complainant's case are as under :-

2. The complainant was running 'Hotel Aaswad' near Bharati Vidyapith, Malkapur. The accused was working as Lab Assistant in Bharati Vidyapith. Therefore, the accused was having friendly relationship with the complainant. The accused was in need of money. Therefore, on 09/05/2013 the complainant advanced Rs.50,000/- without interest to the accused for his personal needs in presence of Rafik Inamdar.

Thereafter mother of the accused was hospitalized. Hence, another Rs.50,000/- were given by the complainant to the accused on 05/08/2013.

3. It is further case of the complainant that, the accused agreed to repay the amount to the complainant after selling his agricultural land. When the complainant shown his willingness to purchase said agricultural land, the accused shown his inability to sale said land to the complainant and repaid Rs.5,000/- by cash and issued disputed cheque bearing No.195794 dated 11/02/2014 of Rs.95,000/- of Bharathi Sahakari Bank Ltd. Pune, Branch- Malkapur (Karad) and assured the complainant that, said cheque will be honoured.

4. It is further case of the complainant that, the complainant deposited the disputed cheque for encashment in The Karad Urban Co-op, Bank, Karad branch. However, it was returned unpaid on 26/03/2014 with a remark of refer to drawer. Thus, while the accused was legally liable to pay the complainant an amount of Rs. 95,000/- (Ninety Five Thousand Only), the accused deliberately cheated the complainant by issuing a disputed cheque to the complainant when there was not enough amount in the account to cash the cheque and the complainant could not get the legally due amount of Rs. 95,000/- (Ninety Five Thousand Only) from the accused.

5. It is further case of the complainant that, the complainant

had demanded the amount on the above-mentioned cheque by giving a notice through a lawyer on 02/04/2014. The said notice was received by the accused on 05/04/2014. Despite receiving the notice sent by the complainant to the accused, the accused did not pay the amount of the complaint or did not reply to the notice. Thus, the accused has committed an offence under Section 138 of the Negotiable Instruments Act by not paying the amount legally due to the complainant and by knowingly giving the above-mentioned dishonoured cheque. Therefore, the complainant filed this complaint.

FRAMING OF PLEA AND TRIAL :-

6. On receipt of the complaint, as prima-facie case for the offence punishable under Section 138 of the NI Act was made out against the accused, process was issued against accused. My learned predecessor has recorded plea of the accused vide Exh. 20. Record shows that, the accused has not pleaded guilty and claimed for trial.

LIST OF COMPLAINANT /DEFENSE/COURT WITNESSES

A. Complainant :-

No.	Name	Exhibit No.	NATURE OF EVIDENCE
CW-1	Amir Dilawar Mulla	21	Complainant

B. Defense Witnesses, if any :-

No.	Name	Exhibit No.	NATURE OF EVIDENCE
	Nil	----	----

C. Court Witnesses, if any :-

No.	Name	NATURE OF EVIDENCE
	Nil	----

LIST OF COMPLAINANT/DEFENCE/COURT EXHIBITS

A. COMPLAINANT :-

Sr. No.	Description	Exhibit Number
1.	Original Copy of the disputed cheque.	Exh. 26
2.	Copy of cheque dishonor memo.	Exh.22
3.	Original Copy of legal notice dated 02/04/2014 sent by the Complainant to the accused.	Exh. 23
4.	Original copy of postal receipt and acknowledge,	Exh. 24 and 25

B. Defense :-

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.	Material objects Number	Description
	Nil	--

7. Record also shows that, the complainant adduced evidence by filing affidavit of examination-in-chief (Exh.21). However, on 28/01/2016, 22/04/2016, 18/06/2016, 06/09/2016, 22/12/2016, 27/01/2017, 20/02/2018, 12/11/2018, 22/04/2019, 11/07/2019, 17/01/2020 the accused remained absent. In absence of accused the

defence advocates has not shown willingness to proceed the matter in pursuance of the defence of the accused and also remained absent. Therefore, there is no defence of the accused as the accused has not cross examined the complainant.

8. Record also shows that, the accused remained absent and from time to time the complainant has taken steps for securing the presence of the accused including issuance of non-bailable warrant. However, presence of the accused could not be secured. Therefore, in view of the law laid down by the Honorable Bombay High Court vide its order dated 21/01/2025 in the case of *Navneet Singh Gogia and Ors Vs. State of Maharashtra and Ors while deciding Criminal Revision Application No. 70/2023*, recording of the statement of the accused as provided under Section 313 of Code of Criminal Procedure hereby was dispensed with and the proceeding was fixed for final arguments.

9. Following points arises for my determination along with my findings thereon are as under :-

SR. NO.	POINTS	FINDINGS
1.	Does the complainant prove that accused has issued a cheque bearing No.195794 dated 11/02/2014 of Rs.95,000/- for the discharge, in whole or in part of any debt or other liability ?	Yes.
2.	Does the complainant prove that, the said cheque was presented by her in his bank for encashment within a stipulated period and same is dishonored due to insufficient funds	Yes.

	in the account maintained by the accused?	
3.	Does the complainant prove that he has issued a legal demand notice to the accused within a stipulated period as required ?	Yes.
4.	Does the complainant prove that despite receipt of notice, the accused failed to make the payment of the said amount within a stipulated period ?	Yes.
5.	Whether the accused has rebutted the presumption under the NI Act ?	No.
6.	What order?	As per final order.

10. Heard learned counsel for the complainant. Other side is absent.

11. Perused the record.

:: REASONS ::

AS TO POINT NO. 1 to 5 :-

12. All these points are interlinked with each other. Evidence is also same. Hence, in order to avoid repetition, I am deciding these points commonly. The essential ingredients of the offence punishable under Section 138 of the NI Act are as under :

a. Drawing of the cheque by accused for the discharge, in whole or in part of any legally enforceable debt or liability.

b. Presentation of the cheque to the Bank for encashment.

c. Return of the cheque unpaid by the drawing Bank.

d. Issuance of demand notice in writing to the drawer of the cheque and demanding payment of cheque amount within stipulated period.

e. Failure of the drawer to make payment within 15 days from the date of the receipt of demand notice.

Considering the ingredients constituting the offence under Section 138 of the NI Act as stated above, I scrutinize the evidence produced by the complainant.

13. The complainant (CW-1) filed affidavit of examination-in-chief (Exh.21) in consonance with his complaint and states that, he is having friendly relations with the accused and paid total Rs.1,00,000/- to the accused for his needs. The accused repaid Rs.5,000/- by cash and for repayment of remaining amount of Rs.95,000/- has issued disputed cheque which was dishonored. Therefore, the complainant has issued mandatory legal notice which was served upon the accused. In spite of service of notice, the accused failed to repay the amount under the cheque to the complainant. Oral evidence adduced by the complainant remained unchallenged. Therefore, there is no reason to disbelieve the oral evidence adduced by the complainant.

14. The complainant has also adduced documentary evidence and brought on record original disputed cheque (Exh. 26) issued by the

accused which shows that it was issued in favour of the complainant. Cheque dishonor memo (Exh.22) shows that, said cheque was returned unpaid with remark 'refer to drawer'. Copies of legal notice dated 02/04/2014 sent by the complainant to the accused (Exh.23) and postal receipt and acknowledge (Exh.24 and 25) shows that, the complainant has complied with all mandatory requirements.

15. The Hon'ble Supreme Court in case of ***Rangappa Vs Sri Mohan reported in AIR 2010 SC 1898***, has held that Section 118 of the NI Act provides presumption that every negotiable instrument was made or drawn for consideration and Section 139 of the NI Act provides presumption in favour of the holder that unless contrary is proved, the holder of the cheque received the cheque for the discharge, in whole or in part of any debt or other liability. However, such presumption is rebuttable and the accused can prove the non-existence of legally recoverable liability by raising probable defence. Therefore, it was necessary for the accused to rebut the presumption with probable evidence.

16. Record shows that, plea in this case is recorded on 04/03/2016 and thereafter, the complainant adduced evidence by filing of affidavit of examination-in-chief. After the evidence of complainant, the accused failed to cross examine the complainant. Therefore, there is no defence of the accused. Therefore, record shows that, the accused failed to rebut the presumption under Section 138 of the NI Act.

17. Therefore, as the accused has failed to cross-examine the complainant and has not contested the case of the complainant, it is proved that the accused has accepted Rs.1,00,000/- from the complainant and for repayment of part of said amount the accused has issued disputed cheque bearing No.195794 dated 11/02/2014 of Rs.95,000/- for the discharge of said liability. It is also proved that the disputed cheque was presented by the complainant in his bank for encashment within a stipulated period and same is dishonored. It is also proved that the complainant has issued a legal demand notice to the accused within a stipulated period as required and accused failed to make the payment of the cheque amount within a stipulated period. There is no defence of the accused. Therefore, the accused failed to rebut the presumptions under Sections 118, 138 and 139 the NI Act. Hence, I hold that the complainant has proved his case beyond reasonable doubt. Therefore, I record my affirmative findings to the point Nos. 1 to 4 and negative findings to the point Nos. 5.

AS TO POINT NO. 6 :-

18. In view of my affirmative findings to point Nos. 1 to 4, the complainant established beyond reasonable doubt that the accused has committed the offence punishable under Section 138 the Negotiable Instruments Act. At this stage, it is necessary hear the accused on point of sentence. However, the accused and his advocate are absent.

19. Learned counsel for the complainant prayed to impose maximum punishment as prescribed for the said offence along with fine and double compensation.

20. The accused has committed offence which affects commercial transactions. Object of Section 138 is to keep faith in the efficacy of banking operation and credibility in transactions in business on Negotiable Instruments. Therefore the accused cannot be given benefit of Probation of Offenders Act.

21. The accused has issued disputed cheque on 11/02/2014. If it would have cashed as agreed then the complainant would have received the amount under cheque in 2014 itself. That amount is admittedly lying with accused since 2014. Therefore, it is necessary to grant compensation to the complainant.

22. The Hon'ble Supreme Court in the of ***Sugandhi Sureshkumar Vs. Jagdishan, reported in AIR 2002 SC 681***, has held that in case of offences under section 138 of Negotiable Instrument Act a Magistrate can alleviate the grievance of the complainant by making resort to Section 357(3) of Criminal Procedure Code and the Court may enforce order of compensation by imposing sentence in default. Considering the nature of the transaction, interest of justice will be served by imposing six months simple imprisonment punishment on the accused. Record also shows that, during the pendency of the case the accused has repaid amount of

Rs.15,000/- to the complainant and filed pursis (Exh.39). Therefore, said amount needs to be adjusted in the compensation amount. Hence, in result, in answer to the point No.7, I pass following order,

ORDER

1. The accused Santosh Jaywant Jagtap is hereby convicted for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 vide Section 255(2) of the Code of Criminal Procedure, 1973 and he is sentenced to suffer simple imprisonment for Six months.
2. The accused Santosh Jaywant Jagtap is hereby directed to pay compensation of Rs. 1,90,000/- (Rupees One Lakh Ninety Thousand Only) to the complainant within two months from today in default to further suffer simple imprisonment for One month.
3. Bail bonds of the accused stands cancelled.
4. Original cheque, bank slip, notice and original documents be returned to the complainant after appeal period is over.
5. The accused is absent. Hence, his right to free copy of this judgment and providing information for preparing appeal against this judgment of conviction is dispensed with.
6. The amount paid by the accused to the complainant during the pendency of this complaint shall be adjusted in the compensation amount.
7. Issue conviction warrant against the accused accordingly.

(Dictated and pronounced in open Court)

Date :04/06/2026.

(Prashant P. Kulkarni)
Judicial Magistrate First Class,
(Court No.4), Karad.