

MHST190064332023



Presented on : 18.04.2016  
Registered on : 19.04.2016  
Decided on : 06.03.2026  
Duration : Yrs. Ms. Days.  
: :09: :10: :18:

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE, WAI,  
AT : WAI, DISTRICT SATARA.  
( Presided over by : D.B.Mane. )**

**Criminal Appeal No.93/2023  
Old Criminal Appeal No.33/2016  
Exh. No.66**

**Pravin Prabhakar Ghadge,**  
Age: Adult. Occ: Business,  
R/o. Rajpuri (Khingar)  
Taluka Mahabaleshwar,  
District Satara.



**Appellant**  
(Ori.Accused)

**VERSUS**

- 1. The Panchgani Credit Co-Op. Society**  
Through: Sampat Bhivram Shelar  
Age: Adult, Occ: Service,  
R/o Bhilar, Tal. Mahabaleshwar,  
District Satara.
- 2. The State of Maharashtra**



**Respondents**  
(No.1 Ori.Complt.)

**Appeal under Section 374(3) of the Cr. P. Code**

**Appearance:**

- Shri A.Y.Badave - Ld. Advocate for the appellant-accused.  
Shri. S.B.Bhosale - Ld. Advocate for the respondent No.1.

**JUDGMENT**

( Delivered on 06<sup>th</sup> March 2026 )

Aggrieved and dissatisfied by the judgment and order of conviction and sentence dated 17.03.2016 for the offence punishable under section 138 of the Negotiable Instruments Act in Summary Criminal Case No.30/2014 passed by the Ld. Judicial Magistrate (F.C.) Mahabaleshwar, whereby the appellant-accused has been sentenced to undergo R.I. for 1 year and to pay fine of Rs.1,78,000/-, in default S.I. for 6 months, the appellant/original accused has preferred this appeal. (For the sake of convenience the parties are described by their nomenclature before the Ld. Trial Court as the complainant and accused.)

**2. Brief facts giving rise to the present appeal are as under:**

The respondent No.1/complainant filed the complaint before the Ld. Judicial Magistrate (F.C.) Mahabaleshwar by alleging therein that, the complainant is Credit Co-operative Society and the business of the Society is to accept the deposits and to give loan to its members. On 22.01.2013, the accused filed an application for loan of Rs.1,50,000/-. The complainant sanctioned the said loan and disbursed it to the accused on 22.01.2013. An amount of Rs.1,78,000/- was outstanding against the accused. On 28.04.2014 the accused issued a cheque drawn on I.D.B.I. Bank, Panchgani Branch of an amount of Rs.1,78,000/- for payment of the outstanding loan. On 05.05.2014, the complainant Society presented the said cheque for encashment, however, it is dishonoured and returned on the same day. Thereafter, the

complainant Society issued notice on 17.05.2014 through Advocate and demanded cheque amount. The said notice was served upon the accused on 24.05.2014. However, during the statutory period of 15 days, the accused didn't pay the cheque amount, so the complainant filed complaint under Section 138 of the Negotiable Instruments Act ('N.I.Act' for short).

3. Upon appearance of the accused, the particulars of accusation were explained to the accused. The complainant led evidence (vide Exh.22). The complainant also led documentary evidence i.e. the cheque (Exh.25), cheque return memos (Exhs.26 and 27), Office Copy of the notice (Exh.28) and Registered Post Acknowledgment Due (R.P.A.D.) (Exh.29). The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure (Cr.P.C.) vide Exh.31.

4. After hearing both the sides, the Ld. Trial Court held guilty to the accused for the offence punishable under Section 138 of the N.I.Act and sentenced to undergo R.I. for 1 year and to pay fine of Rs.1,78,000/- in default, S.I. for 6 months. The Ld. Trial Court also ordered about compensation of Rs.1,75,000/- to the complainant under Section 357(1)(b) of the Cr.P.C.

5. Aggrieved by the impugned judgment and order of conviction and sentence the appellant-accused has preferred this appeal on the grounds that, the complainant had obtained five blank cheques from the accused towards the security for repayment

loan amount. The said cheque/s were not issued to discharge any legally enforceable debt. The cheque issued towards the security was misused by the complainant Credit Society and it was presented for encashment. The cheque amount demand notice was not served upon the accused. The signature of the accused on postal acknowledgment is doubtful. The accused has denied the questions put under Section 313 of the Cr.P.C. In such circumstances, the complainant ought to have examined postman to prove the fact of issuance of the demand notice to the accused. The Ld. Trial Court has committed an error in relying upon the testimony of the complainant's witness and committed an error on relying upon the provisions of the Section 101 and 114 of the Evidence Act, so also the fact of burden of proof upon the complainant. It is further contended that the complainant has not discharged the initial burden, so there is no question of rebutting the presumption under Section 139 of the N.I.Act. So, urged to allow the appeal and acquit the accused by setting aside the impugned judgment and order under appeal.

6. Heard the Ld. Advocates appearing for both the sides. The Ld. Advocate for the appellant filed written arguments vide Exh.43. The Ld. Advocate for the respondent No.1 filed written arguments vide Exh.47. Thereafter, again the Ld. Advocate for the appellant filed written reply argument vide Exh.50. Gone through the material on record including the case laws relied upon by the Ld. Advocates for both the sides, oral and documentary evidence on record and the impugned judgment and order under appeal.

7. The following points arise for determination. This Court record its findings on the points for the reasons that follow.

| <b>POINTS</b>   | <b>FINDINGS</b>     |
|---|---------------------|
| 01] Does the complainant prove that on 28.04.2014, the accused issued a cheque drawn on an account maintained with the I.D.B.I. Bank for payment of loan amount i.e. for the discharge, in whole or in part of debt, it was presented with the bank for encashment within its validity, it was returned unpaid due to 'Funds Insufficient' in the account of the accused, and the accused failed to make the payment of the cheque amount within the period of 15 days from the receipt of the demand notice and thereby committed an offence punishable under Section 138 of the N.I.Act ? | In the affirmative  |
| 02] Whether interference is required in the impugned judgment and order ?   | No.                 |
| 03] What order ?  | As per final order. |

## R E A S O N S

### AS TO POINT NO.1 :

8. The accused is facing trial for the offence punishable under Section 138 of the N.I.Act. To prove the guilt of the accused for the said offence, the initial burden is upon the complainant to establish the following essential ingredients of the Section 138 of the Act.

- (a) *A cheque has been drawn by the accused for payment of a sum of money to the complainant;*
- (b) *The cheque was issued for the discharge, either in whole or in part of any debt or other liability though in the absence of proof to the contrary, it is presumed that it was issued for a consideration;*
- (c) *The cheque stands returned by the Bank as dishonoured on having been presented within three months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
- (d) *The payee or the holder-in-due course, as the case may be, has made a demand for payment of the said amount by giving a notice in writing to the drawer of the cheque within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;*
- (e) *The drawer of the cheque has failed to make the payment of the said amount to the payee or to the holder-in-due course, as the case may be within fifteen days of the receipt of such notice;*
- (f) *Filing of the complaint within the period of one month from the date on which the cause of action arose under Clause-c of the proviso to Section 138 of the Act.*

9. The complainant Credit Society come with the case that the accused is borrower, on 28.04.2014 the accused issued cheque

drawn on I.D.B.I. Bank of an amount of Rs.1,78,000/-for the payment of the outstanding loan amount, the said cheque was presented for encashment by the complainant Society in its account maintained with Satara District Central Co-Operative Bank on 05.05.2014, it was dishonoured on the same day and returned to the complainant Society, thereafter the complainant issued notice to the accused on 17.05.2014, the said notice was served upon the accused on 24.05.2014, inspite of service of notice, the accused failed to make payment of cheque amount within the period of one month.

**10.** The complainant Society examined Sampat Bhivram Shelar – a responsible person for the complainant Society. This witness has reiterated all the facts pleaded in the complaint.

**11.** The complainant has produced on record the cheque (vide Exh.25). The accused has not denied the issuance of this cheque. The defence of the accused is only that the said cheque was not issued for discharge of any legal debt, but it was issued for security. (So far as this defence is concerned, this Court has discussed about it below). However, by the instrument i.e. the Cheque (Exh.25), it is proved that it was issued by the accused. It bears date as 28.04.2014. It bears the signature of the accused. On perusal of the cheque return memos of I.D.B.I. Bank and S.D.C.C. Bank Branch Panchgani, it appears that the cheque was presented for encashment on 29.04.2014 i.e. within the period of its validity

and it was returned unpaid on 05.05.2014 by the payee Bank. Further on perusal of notice (Exh.28), it appears that the complainant Credit Society issued cheque amount demand notice through an Advocate. It was issued on 17.05.2014 i.e. within the period of 15 days from the receipt of memo of dishonour from the payee bank. The postal acknowledgment (Exh.29) shows that notice was served upon the accused and it bears the signature of the accused.

**12.** To establish the fact of legal liability/debt of the accused, the complainant's witness has deposed in para No.1 that the accused has taken loan of Rs.1,50,000/- on 22.01.2013 and for repayment of the outstanding amount Rs.1,78,000/-, the cheque in dispute was issued on 28.04.2014. In the statement of the accused recorded under Section 313 of the Cr.P.C., vide Exh.31, the question No.2 was put to the accused about taking loan of Rs.1,50,000/- from the complainant on 22.01.2013 and about outstanding amount of Rs.1,78,000/- against him. The accused has admitted the said fact by giving answer that, 'it is true'.

**13.** By this evidence on record, the complainant has proved the facts that the cheque was drawn by the accused for the discharge of legal debt, the said cheque was presented for encashment by the complainant within the statutory period, it was returned by the bank due to 'Funds Insufficient' in the account of the accused, the complainant issued demand notice within the

period of 15 days and demanded the cheque amount, the said notice was served upon the accused on 24.05.2014, however, the accused failed to make the payment of cheque amount. So the complainant filed complaint on 11.06.2014 i.e. within a month from the date of cause of action. The complainant has established the essential ingredients of Section 138 of the N.I.Act and discharged the initial burden upon it.

**14.** Now the presumption under Section 139 of the N.I. Act is in favour of the complainant and onus shifts upon the accused to rebut the statutory presumption.

**15.** In the written arguments, the accused has taken the defences that, the five blank cheques were issued for security, the loan amount was not sanctioned and disbursed on 22.01.2013 but in some other documents the said date was mentioned as 22.01.2012, the cheque amount demand notice (Exh.28) was not served upon him, the postal acknowledgment (Exh.29) and the signature of the accused on it is doubtful, the complainant has not examined the postman to prove the fact of service of notice upon the accused.

**16.** In the written arguments, though such type of defences have been taken in the appeal, however, it is necessary to see whether such type of case has been made out or such type of defences have been put by the accused to the complainant's witness

in cross-examination.

**17.** Here, it is pertinent to note that the address of the accused in the complaint is Rajpuri, Taluka Mahabaleshwar, District Satara. The address on postal acknowledgment is the same. The notice (Exh.28) is addressed on the same address. This shows that the notice was addressed at the correct address of the accused. Under such circumstances, the presumption under Section 27 of the General Clauses Act is available to the complainant.

**18.** Though the accused has disputed the postal acknowledgment by contending that his signature on postal acknowledgment is doubtful, however, here it is pertinent to note that the accused is not specifically denying the signature on the postal acknowledgment. He is making only the vague contentions that it is doubtful. The accused has not asked for taking the help of the expert opinion during the trial so as to establish the fact that the signature on postal acknowledgment is not of him. In such circumstances, there is no merit in this contention.

**19.** The accused has not replied to the cheque amount demand notice (Exh.28). This is initial circumstance against the accused. If the cheque was not issued by the accused to discharge any legal debt or liability, then he ought to have replied and denied the fact of issuance of the cheque and fact of his liability.

**20.** Now, so far as the cross-examination of the complainant is concerned, here it is pertinent to note that, the complainant's witness has deposed all the facts about the sanction and disbursement of the loan amount to the accused, issuance of the cheque by the accused for repayment of loan amount, presentation of the said cheque for encashment, return of the cheque unpaid, issuance of the notice through an Advocate demanding cheque amount, service of the notice upon the accused and non-payment of the cheque amount by the accused within statutory period of 15 days. The complainant has proved the cheque, dishonour memos, notice, postal acknowledgment of the signature of the accused produced vide Exhs.26 to 29. Upon such evidence led by the complainant's witness, the accused has cross-examined the said witness.

**21.** In the cross-examination, there was not a single suggestion about not receiving the notice demanding the cheque amount. There is no denial about the signature of the accused on the R.P.A.D. There are only two suggestions to the witness that the cheque was obtained at the time of giving loan and the cheque was obtained forcibly. Except these two inconsistent suggestions, there is no cross-examination on other points raised in the appeal.

**22.** Now, so far as the suggestion about obtaining cheque at the time of disbursing the loan is concerned, it was not suggested that the cheque was obtained for **security**. Further, there are

inconsistent suggestions about obtaining the cheque and/or obtaining it forcibly.

In such circumstances, there is no merit in the defence taken by the accused about obtaining the cheque from him either forcibly or for security. In the statement under Section 313 of Cr.P.C., the accused has specifically admitted to the question No.2 that he had taken loan amount Rs.1,50,000/- on 22.01.2013 and outstanding amount was Rs.1,78,000/-. In such circumstances, it cannot be said that the cheque was issued either for security or it was obtained forcibly.

**23.** The Ld. Advocate for the appellant-accused tried to submit that, the date of sanction and disbursement of the loan amount was 22.01.2012, however, the complainant has mentioned it as 22.01.2013 and it shows that the complainant Society has prepared the fraudulent record.

So far as the said date is concerned, it is true that loan extract produced by the appellant with Exh.33, the date of disbursement of loan amount was mentioned as 22.01.2012, however, in the loan account extract along with Exh.46 the said date is mentioned as 22.01.2013. The complainant Society has clarified that it was typing mistake and there appears substance in this contention as that the accused has specifically admitted in his statement under Section 313 of Cr.P.C. about the date of disbursement of loan as 22.01.2013. In such circumstances, there is no substance in this point.

The accused has not examined any independent witness. Further, nothing is come on record in the cross-examination of complainant's witness so as to rebut the presumption under Section 139 of N.I.Act. The accused has failed to rebut the statutory presumption under Section 139 of the N.I.Act.

**24.** The Ld. Advocate for the accused relied upon the following judgments.

(1) **The Sada Urban Co-Operative Credit Society Ltd. Vs. Sachin Patkar and another** [LAWS (BOM)-2020-1-321]. In the said matter, no loan application was in existence on the date of issuance of the cheque. So, it was held that the accused had not obtained any loan from the complainant.

(2) **Shankar Jagannath Mane Vs. Sikkandar Mohammed Bidiwala** [LAWS (BOM)-2020-3-31]. In this case the cheque was bearing date 19<sup>th</sup> April, 1997. There was reference of said cheque number in the document which was executed almost 20 months before the date of cheque.

(3) **M. Shantilal and Co. Vs. Abbaji Maruti Jadhav** [LAWS (BOM)-2019-11-221]. In this case the alleged cheque was issued for time-barred debt.

(4) **Chandrabhan Chunilal Agarwal Vs. Sharad** [LAWS (BOM)-2014-5-6]. This case is regarding fraud committed upon the Court.

(5) **S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs.** [1994(2)Civil LJ 114]. This case is also on the point

of fraud on Court and its effect.

(6) **Gopal Krishnaji Ketkar Vs. Mohamed Haji Latif** [LAWS (SC)-1968-4-14]. This case is also on the point of fraud upon the Court.

The facts in the above cited case laws and in the case on hand are distinguishable. In the case on hand, the accused has admitted the fact that on 22.01.2013, loan amount of Rs.1,50,000/- was disbursed by the complainant Society and an amount of Rs.1,78,000/- was due from him. Further, the said loan was not time-barred debt and there was no reply from the accused to the cheque amount demand notice.

25. The Ld. Advocate for the complainant relied upon the judgment of the Hon'ble Apex Court in Criminal Appeal Nos. 230-231 of 2019 dated 6<sup>th</sup> February 2019 in case of **Bir Singh Vs. Mukesh Kumar**, wherein it is held in para No. 37 that,

*'A person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.'*

It is further held in para No.38 that,

*'If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the*

*accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.'*

In para No.40 of the judgment, it is further held that,

*'Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.'*

**26.** In such circumstances, there is no merit in the defence taken by the accused that the said cheque in dispute was issued for security and not for discharge of any legal debt. The accused neither replied demand notice, no specific defence is put in the cross-examination of the complainant's witness, nor led any evidence to discharge onus upon him. The complainant has established the essential ingredients of Section 138 of the N.I.Act and the presumption under Section 139 of the Act is in favour of the complainant. Hence, this Court answer point No.1 in the affirmative.

**AS TO POINT NO.2:**

**27.** The Ld. Trial Court has rightly appreciated the oral and documentary evidence on record and held the accused guilty for the offence punishable under Section 138 of the N.I.Act. No interference is required in the judgment of conviction and order of sentence under appeal. In the result, appeal fails. Hence, the

following order.

**ORDER**

- 1.. The appeal is hereby dismissed.
- 2.. The accused is present before the Court. He be taken in custody.
- 3.. Accused to surrender his bail bonds.
- 4.. Inform the Ld. Trial Court accordingly.
- 5.. Copy of this judgment be given to the accused free of cost.
- 6.. R & P be sent to the Ld. Trial Court.

Dictated and Pronounced in open Court.

Wai  
Date : 06.03.2026.

( D.B.Mane)  
Additional Sessions Judge, Wai

CERTIFICATE

“ I certify that this Judgment uploaded is a true and correct copy of original signed Judgment”

Judgment dictated on : 06.03.2026

Judgment checked  
and signed on : 06.03.2026

Uploaded by : J.R.Bartakke Stenographer (Grade-I)

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