


MHWS010009972025 	Presented on : 13/10/2025 Registered on : 13/10/2025 Decided on : 28/04/2026 Duration : 00Y 06M 15D
---	--

IN THE COURT OF
ADDITIONAL SESSIONS JUDGE, WASHIM.
(Presided over by Smt.VD.Ingle)

Criminal Appeal. No. 29/2025
Exh.16

APPLICANT/ APPELLANT	Kavita w/o Maroti Tayade Age – 42 yrs., Occu.- Housewife, R/o. Bhimnagar, Washim, Tq.Dist. Washim.
	...Versus...
RESPONDENT/ ACCUSED	Omkar s/o Tukaram Savant Age – 59 yrs., Occu.- Private Service, R/o. Sant Dnyaneshwar Nagar, Nimjaga, Washim, Tq.Dist. Washim.
APPLICATION FOR GRANT OF LEAVE TO FILE APPEAL UNDER SECTION 378(4) OF THE CODE OF CRIMINAL PROCEDURE, 1973.	
	Advocates :- Shri. A.R.Somani for Appellant. Shri. M.G.Deshmukh for Respondent.

J U D G M E N T

(Delivered on this 28th April, 2026)

Being aggrieved by the judgment and order of acquittal dated 21/01/2023, passed by learned Chief Judicial Magistrate, Washim in Summary Criminal Case No.545/2017, thereby acquitting the Respondent/accused for the offence punishable under section 138 of the Negotiable Instrument Act vide Section 255(1) of the Code of Criminal Procedure, 1973.

2. The appellant is the original complainant whereas respondent is the accused before the trial Court. Parties are referred to as they stood before the trial Court.

3. The facts giving rise to the present case in short can be narrated as under:

There is a cordial relations between complainant and accused. In the month of January 2017, accused was in need of Rs.2 lakh for construction of his house. Therefore, he approached to the applicant and requested to provide finance assistance. Looking to urgent need and cordial relation with the accused, the applicant paid Rs.2 lakh to accused as a hand loan in cash. The accused promised to repay the said amount with two months. In the month of March 2017, accused avoided to pay the said amount and after repeated demand, he issued a cheque bearing No.566628 of Rs. 2 lakh dated 16/03/2017 drawn on Allahabad Bank, Branch

Washim and assured the complainant that the same would be dishonoured. However, the complainant presented said cheque for encashment, the same got dishonoured with the reason overwriting on the cheque and signature is required. The complainant informed about the same to accused hence, accused again issued cheque bearing no. 566629 dated 16/05/2017 of Rs.2 lakh. But said also got dishonoured for the reason 'funds insufficient'. Thereafter on 23/05/2017 the complainant issued demand notice to the accused through her advocate and the same is served to him on 25/05/2017. However, despite service of notice accused neither replied nor made payment within stipulated period. Thus, the complainant filed complaint against the accused under section 138 of Negotiable Instrument Act vide Summary Criminal Case No.545/2017.

4. After appearance of accused, his plea was recorded at Exh.14, he pleaded not guilty and claimed to be tried. In order to prove her case, the complainant examined herself by filing evidence by way of affidavit at Exh.15. She also relied on cheque no. 566628 Exh.18, Memo Exh.20, another cheque no. 566629 Exh.19, return memo Exh.21, office copy of notice Exh.22, postal receipt Exh.23, acknowledgment receipt Exh.24. The accused examined one witness as DW-1 Rohit Parmeshwar Javnik at Exh.39.

5. After hearing the learned Court was pleased to acquit

the accused from the offence punishable under section 138 of Negotiable Instrument Act vide its judgment and order dated 21/01/2023 on the ground that, the complainant has failed to prove her case beyond reasonable doubt and also legally enforceable debt.

6. It is contention of the complainant that learned trial court has not properly appreciated the evidence on record adduced by the complainant. The learned trial Court committed serious error of Law in reaching to the conclusion that, the complainant has failed to prove that there was liability to the extent of amount as stated by the complainant on the ground that the complainant failed to prove that she had the financial capacity to give Rs.2 lakh to the accused as hand loan because there is no such requirement in law and the burden had shifted upon the accused to show that there was no legally enforceable debt on the day of issuance of the cheque. The learned trial Court ought to have seen that the object of introducing section 138 of N.I. Act, 1881 and other provisions of Chapter XVII in the act is to enhance the acceptability of cheques in the settlement of the liabilities. The learned trial Court nowhere considered the cross examination of the DW-1 on behalf of the accused in which he has admitted that the cheque in question was dishonoured due to insufficient funds in the account of the accused and not because of the signature mismatch as was the case being put forth by the accused. Hence, he submitted that the impugned judgment and order is liable to be quashed and set aside.

7. Perused evidence on record. Heard learned advocate for the complainant and accused. Following points arise for determination and I have recorded my findings to each of them for the reasons followed thereafter :

Sr.No.	Points	Findings
1.	Whether judgment and order of learned trial court is legal ?	In the negative.
2.	Whether the impugned order warrants interference ?	In the affirmative.
3.	What order ?	As per final order.

REASONS

As to point No.1 and 2:-

8. The learned advocate for appellant and learned advocate for respondent have filed their written notes of argument vide Exh.11 and 12 respectively.

9. The learned advocate for appellant placed reliance from the following citations:

1) P. Rasiya v. Abdul Nazer and Another, (2023) ALLMR (Cri) 399.

A. Negotiable Instrument Act, 1881 – Dishonour of cheque – Acquittal by High Court reversing concurrent findings – High Court erred by acquitting accused on

ground that complaint failed to state nature of transaction and source of funds – Presumption under Section 139 of the Act must be considered – Section 139 presumes cheque is for debt or liability unless contrary is proven – Once issuance and signature are undisputed, burden shifts to accused – High Court failed to consider this statutory presumption and its limited revisional jurisdiction against concurrent findings – High Court judgment set aside, trial court conviction restored as modified by first appellate court.

2) Kishan Rao v. Shankargouda, (2018) AIR (SC) 3173.

B. Negotiable Instruments Act, 1881 – Section 138, 139 – Dishonour of cheque – Presumption in favour of holder – Burden of proof – Once execution of a negotiable instrument is proved or admitted, Section 139 presumes that the holder received the cheque for discharge of a debt or liability – This is a “shall presume” rebuttable presumption under the Evidence Act – The burden of proving the contrary (that the cheque was not for consideration or debt) shifts to the accused – Presumption continues unless the contrary is proved – Mere denial of debt or liability is not sufficient to rebut the presumption; something probable must be brought on record to shift the burden

back to the complainant – Accused can adduce evidence, but leading direct negative evidence is not always possible or required – Accused can adduce evidence, but leading direct negative evidence is not always possible or required – Accused failed to lead any evidence or enter the witness box to support his defence (cheque was stolen) – This defence was rejected by lower courts – High Court erred in concluding that accused raised a doubt about debt/ liability based on complainant's evidence without explaining how.

3) K.M.Jacob v. State of Kerala represented by Public Prosecutor, (2020) ALLMR(Cri) 232.

Accused's plea: complainant, his former employee, stole signed blank cheques upon termination of service – Courts below rejected accused's plea due to lack of documentary evidence of employment relationship, non-production of salary vouchers, failure to notify bank of cheque theft, delayed and fabricated police complaint, and absence of an explanation for keeping signed blank cheques.

4) Sumeti Vij v. M/s Paramount Tech Fab Industries, (2021) ALLMr(Cri) 2697.

Bare denial by the accused is not sufficient to rebut the

presumption; the accused must bring probable facts and circumstances on record – Accused's statement under Section 313 CrPC is not substantive defence evidence.

5) Everisto Remedio Sequeira v. Shaik Hasina, (2023) ALLMr(Cri)1.

A. Negotiable Instruments Act, 1881 – Section 138 – Dishonour of cheque for insufficiency, etc., offends to honour cheque – Presumption under Sections 118 and 139 of N.I. Act – Court erroneously placed burden of proof on complainant to show legally enforceable debt – Signatures on cheques not disputed – Presumption mandates that cheques were issued for discharge of debt or liability – Rebuttal of presumption requires probable defence on preponderance of probabilities – Trial Court failed to consider these presumptions, leading to perverse findings.

6) Rohitbhai Jivanlal Patel v. State of Gujarat and Another, (2019) ALLSCR(Crl) 753.

A. Negotiable Instrument Act, 1881 – Section 138, 118, 139 – Dishonour of cheque – Presumption that cheque issued for legally enforceable debt arises under Sections 118 and 139 upon proof of signature on cheque and other basic ingredients of Section 138

(drawing cheque on account, presentation within validity, dishonour due to insufficiency of funds or account closed, and failure to pay after demand notice) – Onus shifts to accused to rebut presumption by showing probable defence based on preponderance of probabilities.

7) Uttam Ram v. Devinder Singh Hudan and Another, (2019) 10 SC 287.

Bare denial is not sufficient; the accused must bring probable facts or circumstances on record – proof beyond reasonable doubt is not required for the accused to rebut the presumption – Discrepancies in the calculation of the underlying debt amount do not automatically rebut the statutory presumption when the cheque is issued for a settled amount, especially when the accused fails to adduce evidence contradicting the issuance or consideration of the cheque.

10. It is the case of appellant that since she has a cordial relations with accused, in the month of January 2017, she had given Rs.2 lakh to the accused as a hand loan in cash and accused had issued a cheque bearing No.566628 of Rs. 2 lakh dated 16/03/2017 drawn on Allahabad Bank, Branch Washim against the security. However, said cheque got dishonoured. Therefore,

accused again issued cheque bearing no. 566629 dated 16/05/2017 of Rs.2 lakh. But said also got dishonoured for the reason 'funds insufficient'. Therefore, appellant filed complaint against the accused under section 138 of Negotiable Instrument Act vide Summary Criminal Case No.545/2017.

11. On perusal of record it appears that the defence of respondent is that :

- i) Complainant himself signed on cheque and deposited in the bank,
- ii) Accused has made the complaint to the police station regarding his pan card, cheque book, pass book, ATM card, ration card were stolen by the complainant,
- iii) Accused's cheque book was missing in front of the hospital of Dr.Sarda,
- iv) Complainant found the cheque book of accused and misused it,

12. Therefore, the trial Court came to the conclusion that applicant is working as a labour and her source of income is only labour. The accused has brought material on record to show that complainant has no capacity on 16/01/2017 to pay the amount of Rs.2 lakh. So also, the Court came to the conclusion that the complainant failed to prove that she arranged such amount from any other source of income.

13. After going through the statement of accused recorded under section 313 of Cr.P.C. at Exh.27 it appears that in question no.9, it is mentioned that,

Q.9) तुम्हास खटल्याबाबत काही सांगावयाचे आहे काय ?.

Ans.- काही नाही.

In this statement, the accused not stated anything more.

14. After going through the evidence of complainant it appears that in cross-examination of complainant it is brought on record that the cheque was given by the accused in his hand writing, name of the complainant was written on it and therefore, accused has signed on it. It is also brought on record that accused himself written the said cheque and given to the complainant. So also, suggestion was given to the complainant that accused has given another cheque. It is also brought on record that Exh.19 was given by the accused on 16/05/2017.

15. From the record it appears that it is not the accused's defence that plaintiff is financially incapable and therefore, unable to pay the amount of Rs.2 lakh.

16. During cross-examination of complainant it is also brought on record that she was working in Santosh Sarda's hospital and that hospital is situated at Risod naka. It shows that the source of income of complainant is already brought on record.

Hence, the observation of the trial Court that complainant failed to prove that she arranged Rs.2 lakh paid by her to accused is wrong.

17. *In VJegadeesan vs. R. Raju, Hon'ble Madras High Court held that involving Negotiable Instruments Act Section 138 proceedings, establishing that an accused is not required to provide upfront proof of the complainant's financial capacity unless they challenge it via notice or evidence. The ruling focuses on the accused's right to disprove the debt through cross-examination or evidence.*

18. The evidence of DW-1 Rohit Parmeshwar Javnik shows that he is the bank manager of Alahabad Bank, branch Washim. The accused has an account in his bank. The accused has opened an account in his bank on 14/10/2014 and they take the specimen signature of the account holder while opening a bank account. The signature on cheque Exh.18 is different from the specimen signature of account. The signature on cheque Exh.19 is different from specimen signature of account. He further deposed that the signature at Exh.18 and 19 are different. Since he is not an handwriting expert, he is unable to say whether the handwriting of complainant's name on the cheque and the handwriting written in numbers are different.

19. During cross-examination he admitted that he was working as a branch manager in the present bank since

27/08/2021. The work of signature verification also falls under his jurisdiction as well as that of another employee of the bank. He was not working at the time when the cheque i.e. Exh.18 and 19 were presented in his bank for encashment. He also admitted that if the cheque is not encashed, written memo is given by the bank indicating the reason for not encashing. If the signature on the cheque does not match the specimen signature, the cheque is not encashed indicating the reason as 'signature does not match'. Exh.21 i.e. written memo has the signature of their bank employees and the seal of their bank. Exh.21 the reason for non encashing the cheque is shown as 'insufficient amount' and the reason for not encashing the cheque that the signature does not match with the specimen signature is not given in it. He also admitted that he has not brought a copy of specimen signature with him, hence, he cannot clearly say whether the signature on cheque i.e. Exh.18 and 19 match the specimen signature or not.

20. He also admitted that the cheque no.18 and 19 were received in their bank for encashment, the bank employee verify the signature on the cheque with the specimen signature and did not return the said cheque on the ground that the signature did not match and gave the reason for non cashment of the cheque as insufficient funds in the accused's account. He further admitted that as per the Reserve Bank Rules, it is mandatory to get KYC done for every account holder every two years. Similarly, the same procedure has to be followed for opening the new account while

doing KYC every two years. He further admits that he does not know whether the said procedure was completed every two years in respect of the accused's account.

21. It is evident that the accused has issued the cheque (Exh.18 and 19) in favour of the complainant to discharge the legally enforceable debt. Hence, I answer point no.1 in affirmative. In view of my finding recorded against point no.1, I hold that the complainant has established that the accused has committed an offence punishable under section 138 of the N.I. Act. Therefore, I answer point no.2 in the affirmative.

22. I have gone through the citations filed by learned advocate for the applicant. They are applicable to the case in hand.

23. Heard the accused on the point of sentence. He has submitted that the submissions of his advocate be considered as his submissions. Learned advocate representing the accused has prayed for showing lenient view while awarding the sentence. Learned advocate for the complainant has prayed for imposing maximum punishment and for granting compensation twice the amount of the cheque.

24. The accused has obtained hand loan of Rs.2,00,000/- from the complainant in the year 2017. He has not paid the amount even after the receipt of the statutory notice or during

trial. The object of Section 138 of the N.I. Act is to punish unscrupulous drawers of cheques. In this view of the matter, in my considered view rigorous imprisonment for three months and compensation of Rs.2,30,000/- (Rs. Two Lakh Thirty Thousands only) to the complainant will be just and proper and would meet the ends of justice. Hence, in answer to point no.3, following order is passed.

ORDER

1.	Criminal Appeal is hereby allowed.
2.	Judgment and order passed by learned Chief Judicial Magistrate, Washim in SCC No.545/2017 on 21/01/2023 thereby acquitting the accused for the offence punishable under section 138 of the Negotiable Instrument Act is hereby set aside.
3.	Accused is sentenced to suffer rigorous imprisonment for three months.
4.	Accused is directed to pay compensation of Rs.2,30,000/- (Rs.Two Lakh Thirty Thousands only) as per Section 357(3) of the Code of Criminal Procedure, to the complainant within one month from today. In default of payment of compensation, the accused shall suffer further simple imprisonment for one month.

5.	The amount of compensation, if recovered, be paid to the complainant after the period of appeal is over and on due verification.
6.	The accused to surrender his bail bonds.
7.	Copy of the Judgment be given to the accused free of costs.
8.	Inform Trial Court accordingly.
9.	R. P. be sent to Trial Court.
10.	(Dictated and pronounced in open Court)

(V.D.Ingle)

Date : 28/04/2026

Additional Sessions Judge, Washim.

CERTIFICATE

I affirm that the contents of this PD.F file Judgment/Order are same word to word, as per the original judgment/order.

Name of Stenographer :- R.R.Bharad, Stenographer (Grade-I)
Name of Court :- Smt.V.D.Ingle
District Judge-2 and Additional
Sessions Judge, Washim.
Date of Judgment/ Order :- 28/04/2026
Judgment/Order signed by :- 28/04/2026
the Presiding Officer on
Judgment/Order uploaded on :- 28/04/2026