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Y M D

Part 'A'

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
COURT No.2, RISOD, TQ.- RISOD, DIST. WASHIM.**

(Presided over by D.M. Gaikwad)

J U D G M E N T

(Delivered on 08/04/2026)

S.C.C.No.366/2017

Exh. No.44

Details of F.I.R.

C.R.No.---

COMPLAINANT /
PROSECUTION

Shaikh Khaja Shaikh Farid,

Age : 40 Yrs.

Pro. Proprietor : Shahi Bar and
Restaurant, Risod.

R/o. Gaibipura Risod,

Tq. Risod, Dist. Washim.

Presented by

Adv. Shri. S. P. Pande

Accused

Uttam Kalanu Narwade,

R/o. Dhaba of Hotel Gurudev (Inkar),

Kastkar Chowk Sultanpur Bypass

Mehakar, Tq. Dist. Buldhana.

Represented by

Adv. Shri. S. B. Pawar

Part 'B'

Date of offence	02/09/2017
Date of F.I.R.	Nil
Date of Charge sheet	Nil
Date of Framing of Charges / Plea	18/11/2019
Date of Commencement of evidence	18/11/2019
Date on which judgment is reserved	27/03/2026
Date of the Judgment	08/04/2026
Date of the Sentencing Order, if any	08/04/2026

Accused Details

Rank of accused	Name of 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	Uttam Kalanu Narwade	--	16/02/2018	U/s. 138 of the Negotiable Instrument Act, 1881.	Convicted	One year simple imprisonment	Nil

Part 'C'**LIST OF PROSECUTION / DEFENCE / COURT WITNESSES****A. Prosecution / Complainant :-**

RANK	NAME	NATURE OF
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		EVIDENCE
C.W.-1	Shaikh Khaja Shikh Farid	Complainant

B. Defence Witnesses, if any :-

RANK	NAME	NATURE OF EVIDENCE
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C. Court Witnesses, if any :-

RANK	NAME	NATURE OF EVIDENCE
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LIST OF PROSECUTION / DEFENCE / COURT EXHIBITS.**A. Prosecution / Complainant :-**

Sr. No.	Exhibit Number	Description
1	28	Officer copy of Notice
2	29	Postal receipt
3	30	Notice issued to accused
4	31	Envelope
5	32	Cheque bearing No.006161
6	33	Cheque returned memo
7	34	Exh.1 in S.C.C.No.73/2015
8	35	Pursis in S.C.C.No.73/2015
9	36	Loknyayalay Award in S.C.C.No.73/2015

B. Defence :-

Sr. No.	Exhibit Number	Description
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1	Nil	Nil
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C. Court Exhibits :-

Sr. No.	Exhibit Number	Description
1	Exh.18	Plea

C. Material Objects :-

Sr. No.	Exhibit Number	Description
1	--	--

J U D G M E N T

(Delivered on 08/04/2026)

The accused is facing trial for the offence punishable u/s. 138 of The Negotiable Instruments Act 1881 (in short “the act”).

Facts of the Complainant case in brief are as under -

2] The complainant had filed a complaint against accused for dishonor a cheque before JMFC Court Risod which was registered as case No.73/2015. During pendency of that case on 11/02/2017, a compromised took place between complainant and accused. As per compromise, the accused had paid Rs.26,000/- in cash to the complainant on the same day and agreed to pay the remaining amount of Rs.34,000/- within a period of four month. Towards repayment of said amount the accused issued a cheque No.006161 dated 01/07/2017 for amount of Rs.34,000/- drawn on Allahabad Bank Branch, Risod in favour of complainant and give assurance that the cheque will be clear on it's presentation.

3] The complainant presented the said cheque in his account State Bank of India Branch Risod on 09/08/2017. However, on the said day the cheque was dishonor due to insufficient fund in account of accused. The Allahabad Bank Branch, Risod returned the cheque with the remark insufficient fund/out of range and the complainant received the said cheque returned memo on 09/08/2017. Thereafter the complainant has issued demand notice to the accused for payment of cheque amount on 10/08/2017. On 18/08/2017 accused refused to accept notice and also failed to make payment. Therefore complainant filed present complaint.

4] My predecessor has issued process. The plea of accused recorded at Exh.18 u/sec.138 of the Negotiable Instruments Act, 1881. The accused pleaded not guilty and claimed to tried.

5] The complainant has examined himself as C.W.No.1 at Exh.23. Accused remianed absent without any justification therefore no cross order passed against him. Nonailable warrant issued against accused but his presence could not secured. Thereafter, on 16/03/2026 statement of the accused under Section 313(1)(b) of Cr.PC. was dispensed by passing order on Exh.1. The accused has not adduced any oral evidence.

6] The *Hon'ble Supreme Court in (2014) 5 SCC 590, Indian credit society Association and others vs. Union of India* held as under, "18. We have indicated that under section 145 of the Act the complainant can give his evidence by way of an affidavit and such

affidavit shall be read in evidence in any inquiry, trial or other proceeding in the court, which makes it clear that a complainant is not required to examine himself twice i.e. one after filing the complaint and one after summoning of the accused. The affidavit and the documents filed by the complainant along with complaint for taking cognizance of the offence are good enough to be read in evidence at both the stages i.e. pre-summoning stage and the post-summoning stage. In other words, there is no necessity to recall and re-examine the complainant after summoning of the accused, **unless the Magistrate passes a specific order as to why the complainant is to be recalled. Such an order is to be passed on an application made by the accused or under section 145 (2) of the Act suomotu by the court. In summary trial, after the accused is summoned, his plea is to be recorded under section 263 (g) Cr.P.C. and his examination, if any, can be done by a Magistrate and a finding can be given by the court under section 263 (h) Cr.P.C.** and the same procedure can be followed by a Magistrate for offence of dishonor of cheque since offence under section 138 of the Act is a document based offence. We make it clear that if provisos (a), (b) and (c) to section 138 of the Act are shown to have been complied with, technically the commission of the offence stands completed and it is for the accused to show that no offence could have been committed by him for specific reasons and defences."

7] The Hon'ble Supreme Court in above ratio held that, unless the Magistrate passes a specific order as to why the complainant is to be recalled. Such an order is to be passed on an application made by the

accused or under section 145 (2) of the Act suomotu by the court, in summary trial, after the accused is summoned, his plea is to be recorded under section 263 (g) Cr.P.C. and his examination, if any, can be done by a Magistrate and a finding can be given by the court under section 263 (h) Cr.P.C.

8] The Hon'ble Bombay High Court in 2025 SCC OnLine Bombay 145 Navneet Singh Gogia Vs. State of Maharashtra held as

"47. After considering the above observation in all the judgments, I am inclined to take a view, in a case before this Court when it is found out that the accused is not attending the trial, nor sought for dispensing the personal attendance and not represented by the advocate, the trial Magistrate is justified in proceeding in absence of the accused and without recording 313 statement also. However, when such power can be exercised is a question of fact. Trial court can consider -

- (a) for how many occasions accused has remained absent;*
 - (b) steps taken by the complainant to secure presence of the accused;*
 - (c) reason why presence could not be secured;*
 - (d) whether all modes permissible as per law were exhausted;*
- After ascertaining all factors, then only such power can be exercised. Above are few of the factors."*

"56. In nutshell if the proceeding under Section 138 of the Negotiable Instruments Act are quasi-criminal in nature, there is reason to believe that one of attribute of criminal trial about mandatory recording of

statement under Section 313 of the Criminal Procedure Code is not applicable. So in given set of facts narrated here-in-above, the accused cannot make complaint about causing prejudice if evidence is adduced in his absence and he cannot make complaint of non-recording of the statement under Section 313 of the Criminal Procedure Code if they have remained absent without justification. In a given case and after ascertaining certain factors, the Magistrate is justified in proceeding further in absence of accused and even dispense his statement."

9] The Hon'ble Bombay High Court held that, in a case when it is found out that the accused is not attending the trial, nor sought for dispensing the personal attendance and not represented by the advocate, the trial Magistrate is justified in proceeding in absence of the accused and without recording 313 statement.

10] In case in hand, the accused appeared. His plea was recorded under section 263 (g). It is found out that the accused is not attending the trial, nor sought for dispensing the personal attendance. Non bailable warrant issued against accused but his presence could not secured. The record shows that accused is well aware about this case and trial. The accused has not examined himself under section 263 (g) of Cr.P.C. Further, the accused has not shown that, no offence could have been committed by him for specific reasons and defences. In this circumstances, it is necessary to give finding as per section 263 (h) of Cr.P.C.

11] Heard the Ld. Advocate Shri. S. P. Pande for complainant.

The accused and his advocate called repeatedly. But they fails present.

12] Following points arise for my determination and I have recorded my findings thereon for the reasons stated below.

<i>Sr. No.</i>	<i>Points for determination</i>	<i>Findings</i>
1.	Does the complainant prove that the accused had drawn cheque (Exh.32) bearing No.006161 for Rs.34,000/- in his favour for discharge of legally enforceable debt or liability?	Yes.
2.	Does the complainant prove that the cheque (Exh.32) is dishonored and thereby the accused has committed an offence punishable under section 138 of the Negotiable Instruments Act, 1881?	Yes.
3.	What order ?	Accused is convicted as per final order.

REASONS

13] The complainant examined himself at Exh.23 and relied on documentary evidence i.e. officer copy of Notice at Exh.28, postal notice at Exh.29, notice issued to accused at Exh.30, envelope at Exh.31, cheque bearing No.006161 at Exh.32, cheque return memo at Exh.33, copy of Exh.1 in S.C.C.No.73/2015, pursis in S.C.C.No.73/2015 at Exh.35, Loknyayalay award in S.C.C.No.73/2015 at Exh.36 and filed

evidence closed pursis at Exh.37. On the contrary accused has not examined himself and not file documentary evidence on record.

AS TO POINT NO.1 AND 2 :-

14] The case of complainant is that, during pendency of earlier proceeding on 11/02/2017, a compromised took place between complainant and accused, as per compromise, the accused had paid Rs.26,000/- in cash to the complainant on the same day and agreed to pay the remaining amount of Rs.34,000/- within a period of four month. Towards repayment of said amount the accused issued a cheque No.006161 dated 01/07/2017 for amount of Rs.34,000/- drawn on Allahabad Bank Branch, Risod in favour of complainant and give assurance that the cheque will be clear on it's presentation. But said cheque was dishounered

15] On perusing Exh.32 it appears that, the accused has issued cheque in favour of complainant of Rs.34,000/-. The memo at Exh.33 shows that, the cheque was dishonored. The notice at Exh.30 shows that, the complainant has issued notice to the accused for demanding the cheque amount. Documents at Exh.34 to 36 shows that, compromise took place between complainant and accused in S.C.C.No.73/2015 and accused gave assurance of amount of Rs.34,000/- and issue cheque in favour of complainant. These documents shows that, the accused has issued disputed cheque in favour of complainant. The cheque was dishonored. The complainant has issued legal demand notice. The accused fails to pay the cheque

amount within stipulated period. The evidence is reliable and trustworthy. There is no reason to disbelieve the evidence.

16] As per Sec. 118 of the N. I. Act, until the contrary is proved, the Court has to presume that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration. The presumption is also there with regard to its date and time of acceptance. Sec. 139 provides that it shall be presumed, unless the contrary is proved, that the holder of a cheque received that cheque for the discharge, in whole or in part, of any debt or other liability.

17] In my view, the evidence on record is sufficient to prove the basic ingredients of Sec. 138 of the N. I. Act. The complainant has established the foundational facts to invoke the presumption under Sec. 118 and 139 of the N. I. Act against the accused. The complainant has proved that the cheque was issued in discharge of legal liability of the accused.

18] The evidence of C.W.No.1, and documentary evidence specifically proved the case of complainant. Considering all above discussion and evidence, I am coming to conclusion that, the complainant has established that, the cheque which is at Exh.32 drawn by accused for discharge of debt and legally enforceable liability towards the complainant. The cheque was dishonored. From these circumstances, I answer point no. 1 and 2 affirmative.

AS TO POINT NO. 3 :-

19] In answer to point no. 1 and 2 I found that, the complainant has established that, the accused has issued disputed cheque for the discharge of debt and legally enforceable liability. The complainant has also established that, the cheque was dishonored. The liability of accused was not discharged by accused. Therefore, I am coming to conclusion that, the accused has committed offence punishable under section 138 of N. I. Act. At this stage, it is necessary to heard accused on the point of quantum of sentence. But, various time the accused is called out, but he is absent

20] At this stage, it is necessary to decide whether judgment can be delivered in the absence of accused. The ***Hon'ble Gujrat High Court in Cri.Misc.Application No. 19862/2015, Sharad Jethalal Savala vs. State of Gujarat dated 14.11.2016.*** held that, the Magistrate may pronounce judgment in the absence of accused by itself will not vitiate the judgment. Sub- section (7) of section 353 of the Cr.P.C. clearly lays down that, no judgment delivered by any criminal court shall be deemed to be invalid by reason only of the absence of any party.

21] In above ratio Hon'ble Gujrat High Court held that, the magistrate may pronounce judgment in absence of party and it is valid judgment. Therefore, I conclude that, it is necessary to give judgment in absence of accused. The record shows that, the matter was pending since from many years. The accused and advocate repeatedly called, but they fails to appear. Therefore, it is necessary to deliver judgment in

absence of accused.

22] Heard learned advocate Shri. S. P. Pande for complainant. The advocate for complainant prayed for convicting accused and to repay the cheque amount as compensation. Perused record.

23] On perusing record it appears that, the present case was filed in the year 2017. The accused has given disputed cheque in compromise in S.C.C. No.73/2015. The accused has not paid the cheque amount to the complainant and used that amount without any reason. Considering the period of dispute and consequence in my view one year simple imprisonment and fine of Rs.5,000/- is sufficient for the commission of offence. The cheque amount is Rs.34,000/-. Therefore, the accused is necessary to direct to pay compensation of Rs.34,000/- along with 18% interest per annum till realization of actual amount payable to complainant. In this circumstances, in answer to point No.3, I pass the following order:

ORDER

- 1) The accused Uttam Kalanu Narwade is convicted for the offence punishable under section 138 of the Negotiable Instruments Act vide section 278(2) of the Bhartiya Nagrik Suraksha Sanhita, 2023.
- 2) The accused is sentenced to suffer simple imprisonment for one year and pay fine of Rs.5,000/- (Rs. Five Thousand only) in default of fine to suffer simple imprisonment for three months.

- 3) The accused is directed to pay compensation of Rs.34,000/- (Rs. Thirty Four Thousand only) along with 18% interest per annum till realization of actual amount payable to the complainant vide section 395 of BNSS, 2023 and in default to suffer simple imprisonment of six months.
- 4) The accused to pay compensation amount within 30 days from today.
- 5) The accused shall surrender his bail bonds.
- 6) The accused absent when called out, hence issue conviction warrant along with the true copy of the judgment for execution of sentence.
- 7) One copy of the judgment be supply to the accused free of cost forthwith after his arrest.
(Dictated and pronounced in open court.)

Date : 08/04/2026
Risod

(D. M. Gaikwad)
Judicial Magistrate F.C.,
Court No.2 Risod.

CERTIFICATE

I affirm that the contents of this P.D.F. File Order/Judgment are same word to word, as per the original **Order**.

Name of the Stenographer : B. V. Bhisade, (Grade III)

Name of court : Jt. C.J.J.D. & J.M.F.C., Risod.

Date : 08.04.2026

Order signed by the
Presiding Officer : 08.04.2026

Order uploaded on : 08.04.2026