

MHYA010026282022



Presented on : 31-10-2022

Registered on : 01-11-2022

Decided on : 03-08-2026

Duration : 03Y-09M-02D

Exh.37

IN THE COURT OF SESSIONS JUDGE, YAVATMAL.
(Presided over by Anand L. Yawalkar)

Criminal Appeal No.47/2022

Jaywant Ramdas Raut,
Aged about 49 Years, Occu. : Service,
R/o. Shivani Apartment,
Athawale layout, In front of Kashikar
Maharaj Temple, Waghapur-Chousala
Road, Yavatmal, Tq. & Dist. Yavatmal.

..... Appellant

Versus

Vishwanath Sambhaji Dolas,
Aged about 51 Years, Occu.: Builder,
R/o. Girija Nagar, Dhamangaon Road,
Yavatmal, Tq. and Dist. Yavatmal.

..... Respondent

Claim: Appeal u/s 374 of the Code of Criminal Procedure, 1973.

Appearance :

Mr. S. M. Ali Adv. for the appellant.

Mr. K. D. Parode Adv. Adv for respondent.

J U D G M E N T

(Delivered on 03rd day of August, 2026)

1. Being aggrieved by the judgment and order passed by Ld. J.M.F.C., Yavatmal in S.C.C. No.2834/2013 on 29/09/2022, thereby convicting the appellant/original accused u/s.138 of the Negotiable Instruments Act, 1881, and thereby directing him to suffer Simple Imprisonment of Six months and to pay compensation of Rs.8,00,000/-, the appellant had filed this appeal u/s.374 of Cr.P.C.

2. The parties referred by the common nomenclature before the trial Court.

3. The respondent/original complainant had filed the complaint u/s.138 of Negotiable Instruments Act, 1881 (hereinafter be referred as 'The Act') thereby submitting that he had friendly relationship with accused, who had purchased a flat from him in Shivani Apartment and was staying there with his family. They were helping each other in their difficulties. Due to illness of his wife, the accused was in need of money, and hence, he asked for hand loan of Rs.5,00,000/- from the complainant and assured to return the amount within two months. Accordingly, complainant gave hand loan of Rs.5,00,000/- on 30/07/2012. Thereafter accused did not return the amount till the end of 2013. During this period, complainant demanded the amount to the accused various times. Finally, the accused on 22/07/2013 gave a cheque bearing No.0087043 drawn on Central Bank of India, Yavatmal Branch for

Rs.5,00,000/-. Complainant presented the cheque to his banker Union Bank of India, Yavatmal Branch on 23/07/2013. The cheque was dishonoured for the reason “fund insufficient” and complainant received cheque return memo on 25/07/2013. Complainant issued notice on 09/08/2013, which was sent on 13/08/2013 by R.P.A.D., but the envelope was returned with the endorsement, “Not claimed Return to Sender” on 28/08/2013. As per complainant, accused failed to repay the amount within 15 days i.e. 12/09/2013. Hence, he filed complaint on 05/10/2013.

4. After the complaint was filed, trial Court recorded verification of complainant. As prima facie offence was made out, trial Court issued process against the accused. Thereafter accused appeared, his plea was recorded, accused pleaded not guilty, he was tried. Complainant adduced his evidence alongwith evidence of his wife Varsha Dolas. Statement of the accused recorded u/s.313 of Cr.P.C. As per accused, false case was filed against him. Accused did not examined himself or any other witness and after hearing both the sides, trial Court convicted the accused and directed him to suffer 6 months Simple Imprisonment and pay compensation of Rs.8,00,000/-, in default, he was further directed to suffer simple imprisonment of 1 month.

5. Ld. counsel S. M. Ali for accused submitted that opportunity was not given to cross-examine Varsha Dolas i.e. the wife of the complainant. Order below Exh.96 was not complied by the trial Court and judgment was passed in haste. Opportunity to argue the matter was not given to them. They had taken probable defence before the trial Court, and hence, was prayed to acquit the accused.

6. Ld. counsel Shri K. D. Parode for complainant submitted that Exh.96 was partly allowed and his revision was dismissed. Ld. counsel attracted the contention of the Court towards the conduct of the accused and it was submitted that the trial was delayed by him. Ample opportunity were given to the accused and prayed to dismiss the appeal.

7. Heard Ld. counsel Shri. S. M. Ali for the appellant/original accused and Ld. counsel Shri. K. D. Parode for the respondent/original complainant. Perused the material on record.

8. Considering the arguments advanced from both sides, following points arise for my determination and I have recorded my findings on each point with reasons given thereunder-

Sr. No.	Points	Findings
1)	Whether the complainant proves that accused had issued cheque bearing No.0087043 in discharge of legal liability which was dishonoured on presentation and thereafter accused failed to pay the cheque amount within 15 days thereafter?	Yes
2)	Whether accused had committed an offence punishable u/s.138 of N.I. Act, 1881?	Yes.
3)	What Order?	Appeal is dismissed, as per final order.

As to point Nos. 1 and 2:-

9. Upon considering the hearing and material on record, accused had not disputed the cheque and his signature on the cheque, but as per his contention, he had stood guarantor to the loan obtained by the complainant from Washim Co-operative Bank and the cheque was misused by the complainant. As per accused, complainant had obtained this cheque from the Manager of Washim Co-operative Bank. This suggestion

were put to the complainant in his cross-examination, which were denied by him.

10. Admittedly, cheque was presented by the complainant, which is at Exh.48. The counter slip of complainant banker Union Bank is at Exh.49. The cheque return of Central Bank of India is at Exh.50. Notice is at Exh.51. Postal acknowledgment is at Exh.52. Notice was sent to the address of the accused and as per the endorsement on envelop “Not claimed return to Sender”. Thus, the notice was duly served upon the accused, and admittedly, accused thereafter failed to pay the amount within 15 days thereafter.

11. Complainant adduced his evidence and reiterated his contention in his complaint. In his cross-examination the complainant had admitted that accused is the relative of his wife. Question were asked to the complainant in his cross-examination that he was an accused in a cheque bounce case when he was the President of a society. Similar suggestion was given to the wife of the complainant. They both had denied it. Except this, there is nothing is brought on record by accused in his defence. In the opinion of the Court, this question was not relevant to the case in hand.

12. Offence for dishonour of cheque is made punishable by Section 138 of the Act and once the complainant proves

the basic facts like accused drew the cheque with his signature. The cheque was presented within validity period and was dishonoured. Thereafter a statutory notice was issued to the accused within prescribed time and accused thereafter failed to make payment within statutory period, then the mandatory presumption u/s.139 of 'The Act' shall arise.

13. The presumption u/s.139 of 'The Act' is mandatory and the Court is bound to presume that the negotiable instrument was issued or drawn for consideration unless contrary is proved as per Section 118(A) of the Act. The nature of presumption is mandatory and at the same time it is rebuttable and it is not conclusive. Once the basic ingredients are proved by the complainant, then the Court 'shall presume' that the cheque was issued by the accused for discharge of legally enforceable debt.

14. In such circumstances, the accused will have to rebut the presumption and bring probable defence on record. As observed the burden of proof on accused is rebuttable and the standard of proof i.e. required is on the basis of preponderance of probability and the accused is expected to bring on record reasonable defence or a probable defence. If the Court accepts the probable defence, then the burden shifts on the complainant to prove that cheque was issued in discharge

of legally enforceable debt and has to prove his case beyond all reasonable doubts.

15. Considering this preposition of law, the accused in this case had not replied to the notice, it becomes an adverse circumstance against the accused. Regarding how the cheque went in the hands of the complainant, accused had brought his defence by way of cross-examining the complainant, that complainant had obtained loan from Washim Co-operative Bank and accused stood as guarantor and had given 10 blank cheques with the signatures to the Bank Manager. Further complainant had good relations with the Bank Manager and obtained the cheque from Bank Manager at Exh.48 and had misused it. All these suggestions were denied by complainant in his cross-examination. Except these suggestions, accused had not filed any document on record, nor examined any other witness and nor examined himself before the trial Court.

16. To show his financial capacity to give hand loan to the accused, complainant had examined his wife Varsha Dolas who deposed that complainant had withdrawn Rs.5,00,000/- on 30/07/2012 from his account No.31955597952 and had filed photocopies of passbook on record at Exh.76, which was proved by this witness on record. Accused had cross-examined the witness and tried to bring on record that case was

pending against the complainant for dishonour of cheque and also before consumer forum. The suggestion was denied by witness, but no copies of the said complaint were filed on record by the accused nor they were confronted to this witness. No question was asked on the passbook entries at Exh.76 filed by this witness.

17. Considering the defence of accused, it was imperative for him to examine the concerned Bank Manager of Washim Co-operative Bank before the Court. The mere suggestion given by the accused, in the opinion of this Court had not created a probable defence, and hence, in the opinion of this court accused had failed to discharge the presumption from his shoulder.

18. Accused had stress much at Exh.96, which was an application given by accused u/s.311 of Cr.P.C. for recalling complainant and his witnesses for cross-examination. Ld. trial Court partly allowed this application and by its order dated 30/11/2017 had re-called Mrs. Varsha Dolas, the wife of complainant for her cross-examination. Being aggrieved by the order, accused filed Criminal Revision No.03/2018 before the Sessions Court. Cross-objection was filed by original complainant. Both revision and cross-examination were

dismissed on 22/01/2019 and the order of the trial Court passed below Exh.97 was confirmed.

19. Accused had earlier cross-examined the witness Mrs. Varsha Dolas on 08/09/2016 and further cross-examination was adjourned. As per order passed below Exh.1 on 18/02/2022, trial Court has observed that application of accused for re-calling the witness for cross-examination was allowed. Ample opportunity was given to examine the witness. Accused failed to comply with the order. Statement of the accused was also recorded u/s.313 of Cr.PC. Accused moved application for re-calling the witnesses thereafter, the application was allowed. Accused did not comply with the order and was neither made himself ready for cross-examination and did not take any step. It was observed that accused was unnecessarily prolonging the matter and his evidence was closed. Accused was directed to lead his evidence.

20. Another order was passed below Exh.1 by the Ld. trial Court on 29/03/2022, wherein it is observed that the order passed below Exh.1 on 18/02/2022 was not complied, as accused failed to lead his evidence and did not take any step. Accused and his counsel were absent. Hence, the evidence of accused was closed and the matter was fixed for argument. It was also observed that the matter was 10 years old.

21. Considering the case in hand and the orders of trial Court, the trial was to be conducted as a summary trial, and which is expected to be conducted expeditiously by-passing lengthy procedure and by giving fair opportunity to both the parties. But considering the conduct of the accused before the trial Court, the order passed by the trial Court below Exh.1, in the opinion of the Court, accused by his conduct had prolonged the trial. Accused was given sufficient opportunities and his contention regarding Order passed below Exh.96 was not complied with thus in view of orders of Ld. Trial court Dt. 18/02/2022 and 29/03/2022 cannot be considered.

22. Accused had cross-examined the complainant at length and the evidence of Varsha Dolas was adduced on 30/07/2012 by her husband i.e. complainant to demonstrate his financial capacity and that he had withdrawn Rs.5,00,000/- from State Bank of India, Main Branch Dhamangaon Road, Yavatmal and had filed the photocopies of passbook on record at Exh.76. Complainant had shown his financial capacity to lend money to the accused and the accused had partly cross-examined the witness and thereafter continuously delayed the matter.

23. Hence, considering the discussion, the Court is of the opinion that complainant had proved that the

cheque was given by the accused in discharge of legally enforceable debt. It was dishonoured and accused failed to pay the amount within the statutory period. Further accused had failed to discharge the burden from his shoulder and had failed to bring probable defence on record. Hence, considering this, I answer point Nos.1 and 2 in affirmative.

As to point Nos. 3:-

24. The judgment and order passed by the Ld. trial Court is legal and proper. No ground are made to interfere with it. Hence, accordingly, I proceed to pass the following order.

ORDER

- (1) The appeal is dismissed.
- (2) The impugned judgment and order dated 29/09/2022 convicting the appellant/original accused passed by the learned Judicial Magistrate, First Class, Yavatmal in Summary Criminal Case No. 2834/2013 is hereby confirmed.
- (3) The accused to surrender his bail bonds to serve the sentence. He be taken in custody forthwith.
- (4) The copy of the judgment be supplied to accused free of costs.

- (5) Inform the Ld. Trial Court accordingly.
- (6) The record and proceeding returned to the concern court with copy of this Judgment.

(Dictated and pronounced in open Court.)

Dated :03/08/2026.

(Anand L. Yawalkar)
Sessions Judge,
Yavatmal.

Certificate

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

Name of Stenographer :- M. A. Bomble,
Stenographer Grade I.
Court name :- Principal District & Sessions Court,
Yavatmal.
Date :- 03/08/2026
Judgment signed by
Presiding officer on :- 03/08/2026
Judgment uploaded on :- 03/08/2026

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