CNR-MHYA110015792020

Received On :- 29.08.2020
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Decided On :- 24.07.2026
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	IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS COURT NO.1, UMARKHED. ***Present : SMT. R.A.A.KHATEEB*** **S.C.C.No. 486 / 2020** **Exhibit No.52**
COMPLAINANT	**Nagorao Narayan Rawate,** Age-46, Occu.- Agriculture R.O. Sawaleshwar Tq. Umarkhed Dist. Yavatmal.
REPRESENTED BY	*Advocate Shri. S.C. Wankhede*
ACCUSED	**Jawahar Badusingh Padwale,** Age-50, Occu.- Business, Proprietor Vishal Trading company, Sondabhi R.O. Sondabhi Po. Jevali Tq. Umarkhed Dist. Yavatmal.
REPRESENTED BY	*Advocate Shri. N.B.Dawane*

Date of Offence	01.08.2020
Date of Complaint	29.08.2020
Date of Charge-sheet	---
Date of framing of charge	10.02.2023
Date of commencement of evidence	10.02.2023
Date of which Judgment is reserved	---

Date of the Judgment	24.07.2026
Date of the Sentencing Order, if any	---

Accused Details

Sr. No.	Name of accused	Date of arrest	Date of release on bail	Offence charged with	Whether acquitted or convicted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr.P.C.
1]	Jawahar Badusingh Padwale	--	21.01.2023	Section 138 of N.I. Act.	Convicted	As per final order.	Nil

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:/ complainant

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW-1	Nagorao Narayan Rawate	Complainant

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

B. Defence/ Accused

RANK	NAME	NATURE OF EVIDENCE

		(EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
DW-1	Jawahar Badusingh Padwale	Accused

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Prosecution:

Sr. No.	Exhibit Number	Description
1]	Exh.31	Cheque
2]	Exh.32	Return Memo
3]	Exh.33	Reason of Return
4]	Exh.34	Notice
5]	Exh.35	Receipt
6]	Exh.36	Acknowledgment

B. Defence:

Sr. No.	Exhibit Number	Description
	NIL	---

C. Court Exhibits :

Sr. No.	Exhibit Number	Description
	NIL	---

D. Material Objects :

Sr. No.	Material Object Number	Description
	NIL	---

J U D G M E N T

(Delivered on 24.07.2026)

Accused is facing this prosecution for offence punishable under **section 138 of The Negotiable Instruments Act, 1881** *(hereinafter referred as "N.I.Act")*.

Complainant's Case In Concise

2. Complainant is permanent resident of Sawaleshwar of Tq. Umarkhed. He is farmer. Accused is owner of 'Vishal Trading Company' and is doing business of purchasing soyabin & grams etc. complainant has sold out 50 Quintal grams of Rs. 2,00,000/- in Vishal Trading Company. At that time in payment of 50 Quintal grams accused was given cheque No. 018215 for amount of 2,00,000/- dtd. 03.06.2020 of his account with Yavatmal Arban Co-Operative Bank Ltd. Branch- Dhanaki, Umarkhed towards discharge of said liability. Cheque dated 03.06.2020, complainant deposited this cheque in his account State Bank of India branch Dhanki, Umarkhed. Said cheque was returned dis-honoured to complainant with a memo of banker of accused that, funds insufficient.

3. Complainant has issued demand notice through his advocate on 13.07.2020. Said notice was received to accused on

16.07.2020. Accused neither replied nor complied said notice. Resultantly, cause of action accrued and this complaint was filed.

Progress In Present Case So Far

4. On process being issued, accused appeared. Learned predecessor of mine explained the particulars of offence to accused at **Exh-23** and eventually the trial began.

Trial Commenced

5. At **Exh-23,** particulars of offence were explained to accused. He adjured the same, pleaded his innocence and claimed for the trial.

Material Brought On Record

6. In order to prove guilt of accused, complainant has examined himself at **Exh-25.** Complainant has closed his evidence by filing pursis **Exh-29**. Accused has examined witness himself at **Exh-44** and closed his evidence by filing pursis **Exh-45**. In addition to oral evidence supra, both parties have also produced some documentary evidence.

7. Heard **Shri S.C. Wankhede** and **Shri. N.B. Dawane**, learned advocates for both parties at considerable length.

Defence Of Accused

8. From course of cross-examination and examination of accused under section 313 of Code of Criminal Procedure, the defence of accused transpires to be of denial and false implication.

Accused has specifically contended that, there is no transaction between them.

Points For Determination & Findings

9. Considering the material on record, following points arise for my determination. Findings thereon are recorded for the reasons discussed herein under:

Sr. No.	**POINTS FOR DETERMINATION**	**FINDINGS**
1.	Whether complainant prove that, on 03.06.2020 accused had, in discharge of his legal liability, issued a cheque bearing No.018215 of Rs.2,00,000/- drawn on the Yavatmal Arban Co-operative Bank Ltd. Umarkhed Branch Dhanki, to the complainant which was dishonoured on account of funds insufficient **?**	In Affirmative.
2.	Whether complainant prove that, he had issued a notice dated 13.07.2020 by R.P.A.D. to the accused which was received by him, inspite of which accused did not make the payment of the cheque amount within stipulated period **?**	In Affirmative.
3.	What order ?	Accused is convicted as per final order.

R E A S O N S

Ingredients Of Offence

10. Before entering into the marshaling of evidence, it will be appropriate to sort out the ingredients of offence punishable under section 138 of N.I. Act. In order to prove such charge, complainant must establish that,

(i) *Cheque had been issued by accused.*

(ii) *Said cheque had been issued towards payment of an amount of money for discharge, in whole or any part, of any debt or any other legal liability of accused.*

(iii) *Cheque was presented to Bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier.*

(iv) *Cheque had been returned unpaid by the bank.*

(v) *Reason for non-payment of cheque was due to default on the part of accused.*

(vi) *Payee or the holder in due course of the cheque makes a demand for payment of the amount of money under the cheque by giving a notice in writing to the drawer of the cheque within 30 days of receiving the information from the Bank regarding its dishonour.*

(vii) *Drawer of cheque fails to make the payment of cheque amount within 15 days of receiving the said notice.*

AS TO POINTS No. 01 & 02

11. In his evidence, complainant has reiterated the transaction with accused, issuance of cheque by accused, its dishonor and issuance of notice. He has duly proved the cheque in question at **Exh.31**, the memo of Yawatmal Arban Co-operative Bank, Branch-Dhanki at **Exh.32**, acknowledgment receipt at **Exh.36**. During the course of cross-examination of complainant entire emphasis laid by accused was on the fact that and he has not given disputed cheque to the complainant transaction between the parties was not happened. These points are the primary aspects of hammering by accused and are discussed under.

12. It is case of complainant that, he has sold grams to the accused who was doing business of purchasing soyabins and grams and he is owner of the Vishal Trading company. At that time accused had given disputed cheque of Rs. 2,00,000/- in payment of grams. During course of cross-examination of complainant, no much hammering was made on payment of Rs.2,00,000/- by accused. Learned advocate for accused argued that, complainant could not tell the date of such payment or he could not bring any receipt in regard to said payment. However, in cross-examination accused has not given any suggestion about receipt of purchasing grams in his trading company. During cross-examination complainant has admitted that, accused has given disputed cheque on 03.06.2020 that he denied that, accused has given disputed cheque as a security.

13. Admittedly, in a criminal prosecution it is the complainant who must prove his case beyond reasonable doubt.

However, in prosecution under section 138 of N.I. Act, the legislature has incorporated some plus points to complainant by imposing presumptions under section 118 and 139 of the N.I. Act. Obviously, such presumptions are rebuttable and to rebut the same, accused has to show that, his case is reasonable and probable. Accused is not required to disprove the case of complainant by adducing the evidence beyond reasonable doubt.

14. For the purpose of drawing the presumptions, some platforms are required. If such platforms are established, presumptions can be drawn. Section 118 of the N.I.Act provides seven presumptions in regard to negotiable instruments, whereas section 139 of N.I. Act provides that, the Court shall presume that holder of cheque received the cheque of the nature referred to in section 138 for discharge, in whole or in part, of any debt or other liability. In light of such presumptions and special rules of evidence, it has become convenient for complainant to preclude certain pleas being raised by accused.

15. In case at hand, a very strange defence is raised by accused while being under examination under section 313 of Cr.P.C. Accused has stated that, there is no transaction between them. In his chief examination accused has stated that, accused has given a blank cheque without date and amount to the brother of complainant. Absolutely no such suggestion was ever made to the of complainant before giving such reason in the examination of accused. It is not brought on record as to when such blank cheque was given by accused to the brother of complainant and why he has given blank cheque to the brother of complainant. Giving a blank cheque to any person requires huge faith on such person and for that purpose extreme close relation is required by the persons. There does not appear any such strong bonding of good relations between complainant and accused which will make the accused to give such blank cheque and have blind faith on complainant. In his examination accused has stated that, he does not know the complainant but he has given disputed cheque to brother of complainant namely Gajanan Rawate but during cross-examination of the complainant accused has not given any single suggestion that, he has given disputed cheque to the brother of complainant on the contrary accused has given suggestion that, he has given disputed cheque to the complainant. This is absolutely not digestible to a prudent mind.

16. Learned advocate for accused argued that, accused had given disputed cheque to the brother of complainant as a security. Therefore, there does not arise any question of making such payment to complainant. In this regard it must be noted that in defence accused has given suggestion that, he has given disputed cheque to the complainant as a security but, in his chief examination he has taken defence that, he has given disputed cheque to the brother of complainant which is blank but he has not put any evidence on record why he has given disputed cheque to the brother of complainant and why he has not file any complaint against the brother of complainant for misuse of the cheque.

17. It must be noted that, in defence he has admitted that, he is owner of the Vishal Trading company. Since 2019 he has purchasing soyabin and grams from the farmers. He was unable to state how disputed cheque was in possession of the complainant. It is strange as to why he has not taken any action against the brother of complainant. Even no such reply was given to the mandatory notice, which the accused received, under proviso (b) of section 138 of N.I. Act. Even accused has nowhere stated so during his examination under section 313 of Cr.P.C. This inaction on the part of accused makes me to draw the inference against him.

18. He has voluntarily deposed that, said disputed cheque given as a security. He admitted that, he has not reply to the notice at **Exh. 34.**

19. Complainant deposed that, original notice at Exh. 34 was sent by R.P.A.D. to accused whereas accused has not given any reply to the notice. Ld. Advocate for accused argued that, complainant has not issued demand notice and it is not original one. Learned advocate for complainant argued that, this is actually the procedure which is followed while issuing the notice. In this regard it must be seen that, there would be only one original notice and such original notice was obviously sent to accused. Complainant or his learned advocate are not expected to have original copy of such notice. It is strange to imagine as to what more is required to prove the issuance and the copy of the notice.

20. Absolutely strange to see that, even after raising so much of the controversy in regard to copy of notice, accused has not denied that, he has not received notice at **Exh. 34**. Accused has not taken any objection regarding authentic of the demand notice. Therefore, notice which was produced by complainant on record is original one. and it does not create any suspicion of such notice. Therefore, I am not inclined to rely on arguments advanced by learned advocate for accused that, the notice **Exh.34** is not the authentic one.

21. In regard to the second controversy, provisos (b) & (c) of section 138 of N.I.Act are material and therefore, they are reproduced under ;

> "Provided that nothing contained in this section shall apply unless ;
>
> **(a)**..
>
> **(b)**the payee or the holder in due course of the cheque, as the case may be, make a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque within thirty days of the receipt of the information by him from the bank regarding the return of the cheque as unpaid ; and
>
> **(c)** the drawer of such cheque fails to make the payment of the said amount of money of the payee or as the case may be, to the holder in due course of the cheque, within 15 days of the receipt of the said notice".

These two different provisos supra have different roles to play. Proviso (b) prescribes the duty on complainant to issue a demand notice within 30 days of the receipt of information from bank regarding return of the cheque as unpaid. Said proviso does not prescribe that, while giving the notice, the period of 15 days should be mentioned in it. Then there is proviso (c). Said proviso prescribe that, if accused fails to make payment within 15 days of receipt of notice, then section 138 of N.I. Act will apply.

22. Learned advocate for accused argued that, as the period is not mentioned in the notice, period of limitation will start on the very next day of receipt of notice by accused and accordingly present complaint is barred by limitation. As already discussed, proviso (c) of section 138 of N.I.Act is incorporated for the purpose of giving time to the drawer to make the payment. Even if the notice does not specify such 15 days, it is a statutory period which cannot be curtailed merely because it was not pleaded. Therefore, even without pleadings such 15 days period, it cannot be said that, the limitation will start from the date of receipt of notice by accused.

23. Cheque is dated 03.06.2020, it was deposited with the banker on 03.12.2020 i.e. within 06 months. Information of dishonour of cheque was received to complainant on 04.07.2020 and within statutory period of 30 days, he has duly issued demand notice on 13.07.2020. Said notice appears to have been received by accused on 16.07.2020. Thereafter, 15 days were available with accused for making payment and on the 16th day the cause of action accrued with complainant. Date of cause of action therefore, appears to be 01.08.2020. Within 30 days from the accrual of cause of action, present complaint appears to have been filed on 29.08.2020. Therefore, the complaint appears to be well within limitation.

24. Reason for dishonour of cheque as mentioned in Memo **Exh-33** is due to funds insufficient. Accused was having knowledge that, he had given cheque in question to complainant and therefore, he should not have to issue cheque of that account in which funds are insufficient. Such act of accused itself shows that, guilty mind or *mens rea* behind dishonour of cheque in question. It is now the settled law that, reason of funds insufficient is also included within the ambit of section 138 of N.I.Act.

25. Defence of accused does not appear to be probable in any means as he has kept on changing the defence during the trial. Initially, during cross-examination of complainant it was case of accused that, on 03.06.2026 he has given cheque to the complainant as a security but during his chief examination he has taken defence that, he has given disputed cheque to the brother of complainant as a security which is blank. Therefore, the payment was not made or making the payment is not legal liability. However, during his examination under section 313 of Cr.P.C. accused has nowhere stated such line of defence. He has changed the line of defence and contended that, he has given blank cheque without date & amount to brother of complainant, as he does not know to the complainant. No such suggestions was ever made during cross-examination of complainant.

26. From the entire discussion supra, the platforms for drawing the presumptions under section 118 and 139 of N.I.Act are sufficiently established by complainant and accused has not succeeded in bringing anything on record to enable him to rebut the presumptions. Therefore, I have no hesitation to conclude that, complainant has proved it beyond reasonable doubt that, accused has given him the cheque in question for discharge of legally enforcible debt, said cheque was dishonoured, notice was issued within statutory period, it was received by accused and even then accused has not made payment within 15 days resulting into accrual of cause of action. Resultantly, I answer points No.01 and 02 in the affirmative.

AS TO POINT No. 03

27. In pursuance to findings of points No.01 & 02, I hold accused guilty for having committed offence punishable under section 138 of N.I.Act. Considering the fact that, it is an economic offence, I am not inclined to grant benefit of **The Probation of Offenders Act, 1958** to accused. In order to pass a sentence on accused, it is imperative to hear the parties and their learned advocates on the point of quantum of sentence. Therefore, I take pause for hearing.

DISTRICT COURTS MAHARASHTRA
सत्यमेव जयते

Digitally signed by RUBINA ANJUM AMJADUDDIN KHATEEB
Date: 2026.07.24 16:15:28 +0530

Dt. 24.07.2026

(R.A.A.Khateeb)
Judicial Magistrate First Class,
Court No.01, Umarkhed

28. The complainant and his Ld. Advocate submitted that, the maximum punishment provided under the law be imposed. Accused absent and Ld. Advocate for accused present. Ld. Advocate for accused submitted that, there are no criminal anticidents of accused and considering the responsibilities on his shoulder minimum sentence be imposed. Hence, to avoid any further delay, I proceed for judgment as though the accused absent, I found no hurdle to pass the sentence of the conviction in absence of accused by taking recourse of the section 418(2) of the Code of Criminal Procedure.

29. It must be noted that, he would certainly be having knowledge about the act and the offence alleged against him. Just after receipt of the notice, there would be the opportunity for him to make the payment of complainant. However, he has avoided the same and made the complainant to face the consequences of fighting for justice. The accused was having sufficient knowledge that, he has given such cheque to the complainant and therefore, it was his bounden duty to arrange such funds. It does not mean that, he should not make the payment even after giving the cheque to complainant. Therefore, I am not inclined to show extreme leniency. But family responsibilities are on his shoulder, I am inclined to show some leniency.

30. It must be seen that, the transaction was of year 2020 and it is 2026 now. Since 06 years the complainant is awaiting the judgment in this trial Court itself. If complainant would have got such amount at that time itself, he would have invested in his business and would have multiplied it to many extent. Thus, it is obviously a big loss to complainant. Such loss can be compensated by imposing huge fine amount on accused and giving it as compensation to complainant. Considering the period of litigation, I am inclined to impose fine of Rs.20,00,000/- on accused.

31. Considering the period of this litigation, complainant would have borne huge expenses towards process fees, witness allowance and advocates fees coupled with other miscellaneous expenditure. As per **section 359 of Cr.P.C.**, I am inclined to grant such cost to the complainant. This case continued for more than six years and therefore, the approximate expenditure which complainant would have borne would be about Rs.5000/-. Hence I am inclined to grant such cost also from accused. Accused was not behind the bars in present matter. Therefore, there is no question of granting the benefit of set-off as per section 428 of Cr.P.C. Hence, I pass the following order ;

ORDER

i. Accused Jawahar Badusingh Padwale**,** R.O. Sondabhi Po. Jevali Tq. Umarkhed Dist. Yavatmal. is convicted vide section 255(2) of Code of Criminal Procedure, for offence punishable under **section 138 of Negotiable Instruments Act, 1881** and is sentenced to suffer rigorous imprisonment for **One year** and to pay fine of **Rs. 2,00,000/-** (Rupees Two Lac Only). In default of payment of fine, he shall further suffer simple imprisonment for **03 month**.

ii. As per **section 357 (1) of Code of Criminal Procedure,** the entire fine amount of **Rs.2,00,000/-** (Rupees Two Lac Only) be given as **compensation** to complainant **Nagorao Narayan Rawate,** R.O. Sawaleshwar Tq. Umarkhed Dist. Yavatmal. after the appeal period is over.

iii. As per **section 359 of Code of Criminal Procedure,1973** accused shall pay **Rs. 5000/-** (Rupees Five Thousand only) as costs incurred by complainant in present prosecution. In default of payment of cost, accused shall further suffer simple imprisonment for **One Month**.

iv. Accused was not behind the bars, therefore no set-off of any period as per section 428 of The Code of Criminal Procedure.

v. Accused shall surrender to his bail bond and his surety stands discharged.

vi. Issue N.B.W. against accused for execution of sentence.

vii. Copy of this judgment be given to the accused forthwith and free of cost.

Digitally signed by RUBINA ANJUM AMJADUDDIN KHATEEB
Date: 2026.07.24 16:15:04 +0530

Dt. 24.07.2026

(R.A.A.Khateeb)
Judicial Magistrate First Class,
Court No.01, Umarkhed

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	A. A. Dake
Name of Court	Smt.R.A.A.Khateeb, Jt. C.J.J.D & J.M.F.C. Umarkhed
Date of Dictation	24/07/2026
Judgment signed by the P.O. on	24/07/2026
Judgment uploaded on	24/07/2026