MHKO050036102022	Received on	23/08/2022		
	Registered on	24/08/2022		
	Decided on	19/11/2024		
	Duration	Y.	M.	D.
		02	02	27

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, COURT NO.3 ICHALKARANJI, DIST. KOLHAPUR.
(Presided over by Sanjay D. Wankhede)

SUMMARY CRIMINAL CASE NO. 1629/2022

EXH. NO. 35

FORM No. XXXII
Part 'A'
(Title Page of Judgment)
(Para 44(i) of Chapter VI of Criminal Manual)

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, COURT NO.3 ICHALKARANJI, TAL.HATKANGALE, DIST. KOLHAPUR. (Presided over by Sanjay D. Wankhede) (19 -11-2024) (Summary Criminal Case No. 1629/2022)		
(Sec.138 of the Negotiable Instrument Act)		
COMPLAINANT		**Shri. Muktar Hamid Shaikh** Age :- 38 years, Occup.: Business, R/o. 21/1599, Jawaharnagar, near Rajdoot Hotel, Ichalkaranji, Tal. Hatkanangale, Dist. Kolhapur.
Advocate for Complainant		**Adv. Shri. R. B. Shaikh**
ACCUSED		**Shri. Siraj Abubakar Konnur** Age :-52 years, Occup.: Service, R/o.Mukundnagar, in front of the house

		of Tousif Naikwade, Tardal, Tal. Hatkanangale, Dist. Kolhapur.
Advocate for Accused		**Shri. T. N. Jamdade**

PART – B

[Para 44(ii) of Chapter VI of Criminal Manual]

Date of Offence	:-	26/07/2022
Date of Filing complaint	:-	18/08/2022
Date of Framing of Plea	:-	25/11/2022
Date of commencement of evidence	:-	20/06/2023
Date on which judgment is reserved	:-	16/11/2024
Date of the Judgment	:-	16/11/2024
Date of the Sentencing order, if any,	:-	**Accused is Convicted.**

Accused Details

Rank	Name	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	Siraj Abubakar Konnur	NA	NA	Sec.138 of N.I.Act	**Accused is Convicted.**	Six month S.I.	--

PART – C

[Para 44(iii) of Chapter VI of Criminal Manual]

A. LIST OF COMPLAINANT WITNESS.

RANK	Name of the witness	Nature of witness	Exh. No
CW.1	Muktar Hamid Shaikh	Complainant	17

B. LIST OF DEFENCE WITNESSES :- NIL.

RANK	Name of the witness	Nature of witness	Exh. No
DW.1	Siraj Abubakar Konnur	Accused	30

C. COURT WITNESS IF ANY:-NIL.

LIST OF COMPLAINANT/DEFENCE/COURT EXHIBITS.

A.COMPLAINANT & B. DEFENCE EXHIBITS :-

Sr.No.	Exh. No.	Nature of Document
1.	1	Complaint
2.	9	Plea
3.	20	Original Cheque No. 615932
4.	21	Cheque return memo
5.	22	Notice dated 05/07/2022
6.	23	Postal Receipts
7.	24	Postal Acknowledgment
8.	28	Evidence close pursis by complainant

Sr.No.	Exh. No.	Nature of Document
9.	**29**	Statement of accused u/sec.313 of Cr.P.C
10.	**31**	Evidence close pursis by accused.
11.	**33**	Written argument of accused.

C. COURT EXHIBITS:-NIL

D. MATERIAL OBJECTS :-NIL

JUDGMENT

(Delivered on 19th day of November, 2024)

1. The accused in the dock is facing the trial of the offence punishable under Section 138 of Negotiable Instrument Act, 1981 (hereinafter referred as "138 N.I.Act" in short).

The case of the complainant can be abridged as under : -

2. Complainant is doing business of winding in Ichalkaranji City. There is relationship of friendship between the complainant and accused. On 05/10/2021 the accused had taken hand loan of Rs.35000/- from the complainant and promise to repay the same within 6 months. Thereafter, complainant repeatedly demanded and requested the said amount from the accused. But accused has failed to return the said amount within the time agreed upon between the complainant and accused. Thereafter, the complainant repeatedly demanded the amount to the accused, after which the accused issued cheque bearing No.615932 dated 29/06/2022 of Rs.35,000/- of State Bank of India Branch Parvati Industrial Estate, Yadrav with assurance to the complainant that if the cheque was deposited on the appointed date, the cheque would be cleared. Therefore, the complainant accepted the said cheque.

3. The complainant has deposited the said cheque in his bank account at Uco Bank Ltd. Branch Ichalkaranji on 29/06/2022 for encasement. On 30/06/2022 the said cheque was returned unpaid by the bank with remark "*Refer to drawer*". Thereafter the complainant through his advocate issued legal notice dated 05/07/2022 through R.P.A.D. to the accused and demanded cheque amount. The said notice is received by the accused on 11/07/2022. Though the legal notice duly served on accused, but accused failed to reply and also failed to pay amount of cheque. Hence, the complainant filed present complaint.

4. The Ld. Predecessor of this court was issued the process against the accused. The accused appeared before the court. My ld. Predecessor has framed the substance of plea for offence punishable under section 138 N.I. Act against the accused vide Exh.9. The particulars of the said plea were read over and explained to accused in vernacular to which he pleaded not guilty and claimed to be tried.

5. The complainant in order to prove the guilt of the accused examined himself by filing affidavit in lieu of examination-in-chief as CW-1 at Exh.17 and thereafter closed his evidence by filing evidence close pursis at Exh.28. Apart from ocular evidence the complainant has relied upon documents which are mentioned in the title of the judgment. The said documents are discussed later on at appropriate stage.

6. After completion of complainant's evidence, the statement of the accused under section 313 (1)(b) of Criminal Procedure Code, 1973 came to be recorded vide Exh.29, wherein he denied all the allegations leveled against him.

7. The accused come into witness box and examined himself as D.W.1 at Exh.30 and thereafter closed his evidence by filing evidence close pursis at Exh.31. During the cross examination of the complainant and defence evidence, the accused has taken defence such as he is falsely implicated in this case, he is working in the factory of Wasim Choouse as worker. He had taken hand loan of Rs.50,000/- from Wasim Choouse for education of his children and for the security of loan the Wasim Choouse taken the blank signed cheques from the accused. He had returned the said hand loan to the Wasim Choouse, but the Waim Choouse had not returned the cheques. The complainant misused the cheque given by the accused to Wasim Chaus and with collusion of Wasim Choouse the complainant filed false complaint.

8. Heard the learned Advocate R.B.Shaikh for complainant and the learned Advocate T. N. Jamdade for the accused at length. Besides the oral argument the ld. Advocate for the accused filed written notes of argument at Exh.33.

9. In the light of particulars of offence against the accused, the evidence on record, statement of accused under section 313(1)

(b) of Criminal Procedure Code, and the rival submissions at bar, the following points arise for my determination and I have recorded my findings with reasons to be followed thereon.

No.	Points	Finding
1.	Does complainant prove that accused issued cheque bearing number 615932 dated 29/06/2022 drawn on his account with State Bank of India Branch Parvati Industrial Estate, Yadrav for an amount of Rs.35,000/- for discharge of legal liability?	Yes.
2.	Does complainant prove that above cheque when presented was dishonored and accused was served with demand notice for payment of cheque amount?	Yes.
3.	Does complainant prove that accused failed to repay the cheque amount within statutory period and thereby committed an offence punishable under section 138 of Negotiable Instruments Act, 1881?	Yes.
4.	What Order?	Accused is convicted as per final order.

REASONS

AS TO POINT NO.1 :

10. There exist three basic ingredients of the Section 138 of the N. I. Act viz. i) that there is a legally enforceable debt, ii) that the cheque was drawn from the account of the bank for the discharge in whole or in part of any debt or any legal liability which presupposes a legally enforceable debt, iii) the cheque so issued had been returned due to insufficiency of funds.

11. The learned Advocate Shri R.B.Shaikh for complainant submitted that accused has taken amount of Rs.35,000/- from the complainant as hand loan. The accused for the payment of outstanding amount issued cheque in question of Rs.35,000/-, which came to be dishonored and hence, legal liability arises on accused to pay the complainant. He further submitted that the debt is legally enforceable debt and hence, the offence under section 138 of N. I. Act is made out against the accused. He further submitted that the legal notice dully served upon the accused, but he failed to reply and comply the same. He further submitted that the accused has failed to rebut the presumptions under section 118 and 139 of the N.I. Act.

12. The learned Advocate Shri T. N. Jamdade for accused submitted that the accused has falsely implicated in the present case. There is no legally enforceable debt, The accused was working in the factory of Wasim Choouse as worker. Accused had taken hand loan of Rs.50,000/- from Wasim Choouse for education of his children and for the security of loan the Wasim Choouse taken the blank signed cheques from the accused. Accused had returned the said hand loan to the Wasim Choouse, but the Waim Choouse had not returned the cheques. The complainant misused the cheque given by the accused to Wasim Chaus and with collusion of Wasim Choouse the complainant filed false complaint, the complainant failed to prove that the accused has received said amount. The accused has proved his defence by raising the probable defence with preponderance of probabilities. Therefore, the accused is entitled for acquittal. The learned advocate for accused for his submission relied upon the case laws which are discussed later on at appropriate stage.

13. Before discussing the oral and documentary evidence on record it would be refer to ***Hiten P. Dalal Vs. Bratindranath Benerjee, Air 2001 SC 3897*** wherein the ***Hon'ble Supreme Court*** while dealing with the question as to whether an offence under section 138 N.I. Act had been proved or not held that "*In accordance with the section 139 of the N.I. Act, it shall be presumed unless the contrary is proved that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge in whole or a part of any debt or other liability, the presumption places the evidential burden on the accused for proving that cheque had not been received by the complainant towards the discharge of any liability*". It was also laid down that it is obligatory for the court to raise the presumption in every case where the factual basis for the raising of the same had been established. Such a presumption it was stated is a presumption of law and cannot be discharged merely by showing the fact that the explanation offered by the accused is reasonable and probable but it must further be shown that the said explanation is true and one.

14. The complainant examined himself by filing affidavit in lieu of examination-in-chief below Exh.14 as CW-1 in which he has reiterated all the contents mentioned in the complaint. The accused examine himself as D.W.1 at Exh. 30. From the cross examination of complainant taken by the learned advocate for accused and the defence evidence of accused it reveals that the accused has taken defence that he is falsely implicated in this case, he is working in the factory of Wasim Choouse as worker. He had taken hand loan of Rs.50,000/- from Wasim Choouse for education of his children and for the security of loan the Wasim Choouse taken the blank signed cheques from the accused. He had returned the said hand loan to the Wasim Choouse, but the Waim Choouse had not returned the cheques. The complainant misused the cheque given by the accused to Wasim Chaus and with collusion of Wasim Choouse the complainant filed false complaint. Therefore, it would be proper to scrutinize the cross examination of complainant below Exh.17 and the defnence evidence of accused at Exh.30 to verify whether presumption is rebutted or not.

15. In these facts and circumstances, now it has to be gathered whether the accused is guilty or not. The accused is not disputing his signature on disputed cheque at Exh.20 and issuance of the said cheque. It is also not the case of accused that the cheque at Exh.20 is not the cheque of his account. So, the presumption under section 139 of N. I. Act lies in favour of complainant. However, this is rebuttable presumption and burden is lies upon the accused to prove that disputed cheque is not issued by him towards repayment of the amount.

16. On perusal of cross examination of complainant, it is seen that the accused has taken defence in respect of financial capacity of complainant to pay the amount to the accused. As per contention of accused, the complainant has failed to show that he is having sufficient funds to pay the accused and also failed to show that he is having documentary evidence to show that he is having funds. The learned advocate for accused also argued that the complainant admitted that he has not filed a documentary proof to show that he has paid amount to the accused. It is not a case of complainant that after receiving hand loan by the accused, he executed promissory note or agreement or receipt in respect of the said loan. Therefore, question does not arise to produce the document in respect of the said fact. In contra, the accused the accused has not disputed his signature on the said cheque. Therefore, the burden shifted upon the accused to prove that he has not issued said cheque to the complainant for the discharge legal liability.

17. To prove as the disputed cheque has not issued by the accused to the complainant for arising out legal liability, the accused has taken defenace such as he is working in the factory of Wasim Choouse as worker. He had taken hand loan of Rs.50,000/- from Wasim Choouse for education of his children and for the security of loan the Wasim Choouse taken the blank signed cheques from the accused. He had returned the said hand loan to the Wasim Choouse, but the Waim Choouse had not returned the cheques. The complainant misused the cheque given by the accused to Wasim Chaus and with collusion of Wasim Choouse the complainant filed false complaint. Therefore, the accused ought to have prove his defence by leading cognate evidence or by during the cross examination of complainant.

18. The learned advocate for accused has taken cross examination of the complainant at length. But nothing is brough on record to show that the complainant has misused the disputed cheque with the help of Wasim Choouse. Apart from it, the learned advocate for accused asked questions in respect of transaction of accused with the Wasim Choouse, but the complainant specifically denied the said fact. The accused also failed to examine the said Wasim Choouse. If really the accused had taken amount of Rs.50,000/- from the Wasim Choouse and same was repaid to the Wasim and the Wasim was not returned the cheques which were taken for the security of hand loan taken by the accused from the Wasim, then definitely the accused has filed complaint against the Wasim Choouse or sent notice to the said Wasim Choouse for return of cheques. The accused during his cross examination specifically admitted that he has not taken any legal action against the Wasim Choouse and also complainant in respect of misused the disputed cheques. This admission is sufficient to show that there is no transaction of accused with the Wasim Choouse. Therefore, question does not arise misused of disputed cheque by the complainant with the help of Wasim Choouse.

19. Moreover, it is not a case of accused that he has not received demand notice at Exh.22. As per contention of complainant the demand notice was received by the accused on 11/07/2022. To prove the said fact, the complainant filed and proved the postal acknowledgment at Exh.24. Admittedly, the demand notice at Exh.22 was received by the accused on 11/07/2022. It is also admitted that the accused had not send reply to the said demand notice. As the accused taken defence such as he is working in the factory of Wasim Choouse as worker. He had taken hand loan of Rs.50,000/- from Wasim Choouse for education of his children and for the security of loan the Wasim Choouse taken the blank signed cheques from the accused. He had returned the said hand loan to the Wasim Choouse, but the Waim Choouse had not returned the cheques. The complainant misused the cheque given by the accused to Wasim Chaus and with collusion of Wasim Choouse the complainant filed false complaint, then the accused definitely stated this fact to the complainant by issuing reply notice. The accused failed to reply the demand notice. Therefore, doubt will be created that the accused has taken such defence only not to giving the hand loan to the complainant which was taken by the accused.

20. The learned advocate for accused during his argument submitted that there was no friendship between the complainant and accused as they are not known to each other. Therefore, question does not arise to take hand loan from the complainant by the accused. Though the accused has taken defence that he does not know to the complainant, but during the cross examination of complainant the learned advocate for accused asked question in respect friendship of accused and complainant. The complainant specifically stated that since the year 2019-2020 the friendship of him and accused is started. This admission is sufficient to show that there is friendship between the complainant and account and in friendship the complainant had given hand loan to the accused. Therefore, I do not agree with the argument advanced by the learned advocate for accused as the there is no friendship between the complainant and accused as the accused does not know the complainant.

21. The learned advocate for accused submitted that the accused has proved his defence by preponderance of probabilities to show that there is no legally enforceable debts. The learned advocate for accused also submitted that during the cross examination the complainant admitted that he has documentary evidence to show that he has given hand laon to the accused but he failed to filed such documents on record. Therefore, it is sufficient to show that the complainant has not given hand loan to the accused. Hence, the accused is entitled for acquittal as the accused has not received hand laon from the complainant. The learned advocate for accused for his submission relied upon the cases ***Dilip Virumal Ahuja Vs. Rekha Vitthal Patil and another reported in MhlJ 2023(1) Page No.211 to 216 and Rajendraprasad S/o Gangabishen Porwal Vs. Mr. Santoshkumar Parasmal Saklecha and Criminal Appeal No.3257 of 2024 Sri Dattatraya Vs. Sharanappa decided on 07/08/2014 by the Hon'ble Supreme Court.*** I have gone through above cited supra cases. The above cites supra cases are in respect to presumption and burden of proof. But it is pertinent to note that it is settled principle of law that once the cheque was issued by the accused for discharge of legally enforceable debt, the accused to prove the cheque was not towards the discharge of any liability. The court will necessarily presume that the cheque had been issued towards discharge of a legally enforceable debt liability in two circumstances firstly, when the drawer of the cheque admits issuance of the cheque and secondly, in the event where the complainant proves that cheque issued in his favour by the drawer. Though during the cross examination, the complainant admitted that he has documentary evidence to show that he had given amount to the accused and he has filed the abstract of account along with list of documents at Exh.27, which is not exhibited, but this admission is not fatal to the case of complainant. It is bounded duty of accused to prove that the disputed cheque was not issued to discharge of a legally enforceable debt. In the present case the accused failed to show that the disputed cheque was not issued to the complaint for discharge of legally enforceable debt. Therefore, with due respect the ratio laid down in above cited supra cases do not useful to the case of accused. Hence, I do not agree with the argument advanced by the learned advocate for accused.

22. During the course of argument, the learned advocate for accused submitted that the complainant with collusion of Wasim misused the disputed cheque and filed false complaint against accused. But during the cross examination the complainant specifically denied said fact. In contra, the learned advocate for complainant submitted that it is not disputed by the accused that he has not received the demand notice. If the complainant misused the disputed cheque, then the complainant ought to have file his reply to the complainant mentioning this fact. But the accused failed to reply the notice. Therefore, it is crystal clear that the accused has issued disputed cheque for his legally enforceable debt to the complainant. I place reliance on the cases ***Crl. R.C. No. 1477 of 2005 Kannan Vs. Andhra Cements Limited decided on 21/04.2011 by the Hon'ble High Court of Judicature at Madras, Yogendra Bhagtram Sachdev Vs. The State of Maharashtra and Shri Shambu reported in 2003 BOMCR (CRI) and Criminal Appeal No. 102 of 2008 Sawan Baldevraj Sahani Vs. Shankar Meshram and Ano decided on 19/09/2018 by the Hon'ble Bombay High Court Bench at Nagpur***. The ratio laid down in above cited supra cases is applicable to the present case as in the present case also the accused received demand notice but failed to reply the same. If really the complainant misused the disputed cheque with the help of Wasim Choouse, then definitely the accused sent reply to the demand notice or had taken legal action against the complainant as well as Wasim Choouse. The accused failed to do. Therefore, the accused failed to rebut the presumption as the complainant has misused the disputed cheque with the help of Wasim Choouse. Therefore, I do not agree with the argument advanced by the learned advocate for accused that the complainant misused the disputed cheque with the help of Wasim Choouse and filed false case against the accused.

23. Apart from it, the accused has failed to prove that how and what purpose his cheque comes in the possession of complainant. The accused also failed to prove the said defence by preponderance of probability. During the cross examination of complainant nothing is brough on record to disprove the above documents. Therefore, it is proved that the accused has taken hand loan from the complainant and he has not paid the said hand loan to the complainant and to pay the outstanding amount of loan, the accused has issued the cheque at Exh.20, which is dishonoured. It leads to only conclusion that cheque at Exh.20 was issued by accused to discharge his legal liability. Accused failed to rebut presumption under section 139 of N. I. Act on basis of preponderance of probability. Therefore, the evidence of complainant is trustworthy, reliable and unchallenged. As per submission of the learned advocate for accused there is no legally enforceable debt against the accused. But it is pertinent to note that the complainant has proved the fact that there is legally enforceable debt by leading cognate evidence.

24. The learned advocate for accused submitted that the complainant with collusion of Wasim misused the disputed cheque and filed false complaint against accused. Therefore, the accused is entitled for acquittal. In contra, the learned advocate for complainant submitted that it is proved that the accused has given cheque at Exh.20 of his signature only to pay outstanding amount. Therefore, he is legally bound to pay cheque amount to the complainant. The learned advocate for complainant also submitted that the accused received the demand notice. If really the accused has not liable to pay cheque amount, then he ought to have file his reply and also lodged complaint for misuse of cheque. But nothing is on record to show that the accused has lodged complaint against the complainant. Lastly, the learned advocate for complainant requested the accused be punished as per law. The reliance kept upon case ***Sawan Baldevraj Sahani Vs. Shankar Meshram Criminal Appeal No.***

102 of 2008 decided on 19/09/2018 in which the Hon'ble Bombay High Court Bench at Nagpur held that "*though the accused served with notice, but neither gave reply to the notice nor have taken any legal action against the complainant for misusing the cheque. It has to be held that the cheque was issued by the accused to pay the amount due and payable by him to the complainant*". In the case in hand also the accused received the notice, but he has not given reply to the said notice and also not taken any legal action against the complainant for misusing the cheque. Therefore, the ratio laid down in above cited supra case is applicable to the facts of the present case.

25. The testimony of CW-1 coupled with the documents on record clearly shows that the accused has taken hand loan from the complainant and issued cheque at Exh.20 to pay the part outstanding amount Rs.35,000/- to the complainant. It leads to only conclusion that cheque at Exh.20 was issued by accused to discharge his legal liability. Accused failed to rebut presumption under section 139 of N. I. Act on basis of preponderance of probability. Therefore, the evidence of complainant is trustworthy, reliable and unchallenged. As discussion noted above, I am of the view that the accused has issued cheque at Exh.20 for his legal liability to pay due amount to the complainant. Therefore, I answer the point no.1 is in the affirmative.

AS TO POINT NOS. 2 TO 4 :-

26. The complainant deposed that cheque issued by accused was presented for encashment, but it was dishonoured because the reason *Refer to drawer*. The return memo of Uco Bank Branch Ichalkaranji is at Exh.21. It is duly proved through evidence of complainant. The return memo shows that cheque bearing no.615932 for an amount of Rs.35,000/- was returned unpaid. So also, as per section 146 of the N. I. Act, return memo is having presumptive value unless contrary is proved. The fact of dishonour of cheque is not disproved by accused. Therefore, it is crystal clear that cheque at Exh.20 when presented for encasement was dishonoured with endorsement '*Refer to drawer*'.

27. The complainant issued demand notice through his Advocate by Registered Post Acknowledgment Due to accused on 05/07/2022. The office copy of demand notice is at Exh.22. The said notice dully served on accused on 11/07/2022. The postal acknowledgement is at Exh. 24. It is not a case of accused that he does not receive demand notice. Apart from it, the accused has not denied his signature on acknowledgment at Exh.24. Therefore, the complainant proved that the notice at Exh.22 is dully served on the accused.

28. The learned advocate for complainant submitted that though the accused received the demand notice, but failed to reply the said notice. Failure to reply the demand notice it presumed that the accused has no defence. The reliance is kept upon the case ***Yogendra Bhagatram Sachdev Vs. State of Maharashtra and Another, reported in 2003 ALL M.R. (Cri.) 639, in which the Hon'ble Bombay High Court*** has held that "*When the accused fails to reply the statutory notice under section 138 of the Negotiable*

Instruments Act, 1881 and failure to give reply not being explained, it would raise the presumption that the accused had, in fact, no defence whatsoever" and ***Kannan Vs. Andhra Cements Ltd., reported in 2002 ALL M.R. (Cri.) 1 the Hon'ble Madras High Court*** has held that "*When accused had sent no reply to statutory notice under section 138 of The Negotiable Instruments Act, 1881, issuance of cheque also not denied in statement by accused under section 313 of Cr.P.C. and no evidence is let in to rebut the presumption under section 118 and section 139 of The Negotiable Instruments Act, 1881, then the cheque in question is proved to have been issued for discharging legally enforceable debt*". The ratio laid down in the above cited supra cases are applicable to the facts of the present case. In the present case also though the accused received demand notice but failed to reply the same. In the present case, the complainant proved that the demand notice dully served on the accused, but he failed to reply and to pay amount of cheque to the complainant. Therefore, I agree with the submission advanced by the learned advocate for complainant that the notice dully served on the accused.

29. The evidence adduced by complainant is cognate, trustworthy, reliable, unshaken. The oral testimony of the CW-1 is supported by the documentary evidence. So, it establishes that accused issued cheque in question towards the repayment of outstanding amount. The cheque was dishonoured and notice for demand of cheque amount was also served on the accused. The accused failed to make the payment within stipulated period. The accused has also miserably failed to rebut the presumptions under the Negotiable Instruments Act, 1881. The accused has even failed to extract any material evidence in form of admissions or any documentary evidence to support his defence. On the basis of evidence available on record it is crystal clear that accused is liable to be punished for the offence under section 138 of N. I. Act. Accordingly, I answer the point Nos.2 and 3 in the affirmative.

30. As the accused found guilty for the offence punishable under section 138 of N. I. Act, it is necessary to heard the accused on the point of sentence. Hence, I take a pause to hear the accused on point of sentence.

Date: 19/11/2024 **(Sanjay D. Wankhede)**
Place: Ichalkaranji. **Judicial Magistrate F.C.,Court No.3,**
Ichalkaranji.

31. Heard accused in person on point of sentence and compensation. He submitted that he is only a person to his family to earn the money. The learned advocate for accused submitted that lenient view may be taken. The learned advocate for complainant submitted that punishment as provided by the law may be imposed. He further submitted that amount of cheque be given as compensation to complainant.

32. For the aforesaid discussion it will be apposite to mention the law laid down by Hon'ble Apex Court in ***R. Vijayan VS. Baby Anr. in Cri. Appeal No. 1902/2011 dated 11/10/2011*** which is to the following effect :

"*As the provision of Chapter XVII of the Act strongly lean towards grant of reimbursement of the loss by way of compensation, the court should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine up to twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per anum as the reasonable quantum of loss) and directed payment of such amount as compensation. Direction to pay compensation by way of restitution in regard to the loss on account of dishour of the cheque should be practical and realistic, which would mean not only the payment of the cheque amount but interest thereon at a reasonable rate. Uniformity and consistency in deciding similar cases by different courts, not only increase the credibility of cheque as negotiable instruments, but also the credibility of courts of justice*".

33. Considered the submissions of both sides on the point of sentence and compensation. Admittedly, complainant is not able to utilize cheque amount because of its dishonour. Therefore, it would be just and lawful to compensate loss of complainant. In the given set of facts and circumstances on record, imposition of imprisonment along with award of compensation under section 357(3) of Criminal Procedure Code, 1973 would meet the ends of justice. Hence, I proceed to pass the following order.

ORDER

1. The accused is hereby convicted vide Section 255(2) of Criminal Procedure Code,1973 for the offence punishable under section 138 of Negotiable Instruments Act, 1881 and

sentenced to suffer Simple Imprisonment for period of Six months.

2. Accused to pay compensation in view of Section 357(3) of Criminal Procedure Code,1973 to complainant to the tune of Rs.70,000/- (Rs. Seventy Thousand only) i.e. double the cheque amount within period of thirty days, in default of payment of compensation, accused shall suffer simple imprisonment for period of one month.
3. Accused to surrender his bail bonds.
4. Copy of judgment be supplied to accused free of costs.

Pronounced in open court.

Digitally signed by SANJAY DIGAMBERRAO WANKHEDE
Date: 2024.11.19 17:46:41 +0530

Date: 19/11/2024
Place: Ichalkaranji.

(Sanjay D. Wankhede)
Judicial Magistrate F.C.,
Court No.3, Ichalkaranji
District- Kolhapur.