EXHIBIT	B- 42		
CNR No.	GASG020026252022		
Presented on	19.08.2022		
Registered on	20.08.2022		
Decided on	29.07.2026		
Point of Sentence	29.07.2026		
Duration	Days	Months	Years
	09	11	03

Form No. XXXII
Part 'A'
(Title Page of Judgment)
[Para44(i)of Chapter VI of Criminal Manual]

	IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS, MARGAO, SOUTH - GOA Present : Mr. Sabino Adrian Braganza, J.M.F.C., "D" Court, Margao South Goa. I/c. 'E' Court, Margao-Goa. [29th July, 2026] **Criminal Case No. OA/356/NIA/2022/E**
	(Details of FIR/Crime and Police Station) -
Complainant	The Shiroda Urban Co-operative Credit Society Limited, Registered Head Office at Shiroda, Ponda Goa and amongst other branches a Branch Office at Santemoll, Raia, Salcete-Goa, Presently represented by its Assistant Manager (Legal), Ms. Naveena Gajanan Naik, Daughter of Mr. Gajanan Ramnath Naik, Age 32 Years,

	Resident of H. No. 450, Murida, Near Nagdevata Temple, Fatorda, Margao, Salcete, South Goa.
Represented by	Advocate (Mr.) A. Naik
Accused	Mrs. Aniket Ashok Chari Aged above 30 Years, Service Resident of Flat No. 2, 1st Floor, Prajakta Appts. Sinquetim Road, Sirvodem, Navelim, Salcete, Goa. Pin Code 403 707
Represented by	Accused Absent. Advocate Absent

Part 'B'

[Para44 (ii) of Chapter VI of Criminal Manual]

Date of Offence	-
Date of F.I.R.	-
Date of Charge sheet	-
Date of explaining Substance of Accusation	11.01.2023
Date of commencement of evidence	20.11.2025
Date on which judgment is reserved	14.07.2026
Date of the Judgment	29.07.2026
Date of the Sentencing Order, if any	29.07.2026

Accused Details

Rank of the Accuse-d	Name of the 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.
A-1	Aniket Ashok Chari	-	-	Section 138 of N.I. Act	**Convicted**	As per order	-

Part 'C'

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

LIST OF PROSECUTION/DEFENCE/COURT WITNESSES

A. Prosecution:

Rank	**Name**	**Nature of Evidence** (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other witness)
Pw-01	Miss. Naveena Gajanan Naik	Representative of the Complainant

B. Defence Witnesses, if any:

Rank	**Name**	**Nature of Evidence** (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other witness)
Dw-1	--	--

C. Court Witnesses, if any:

Rank	**Name**	**Nature of Evidence** (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other witness)
Cw-1	--	--

LIST OF PROSECUTION/DEFENCE/COURT EXHIBITS

A. Complainant:

Sr. No.	**Exhibit Number**	**Description**
1.	C-27/Pw1	Affidavit in Evidence
2.	C-28/Pw1	Cheque bearing No. 029637 dated 28.06.2022 drawn on TJSB Sahakari Bank Ltd.
3.	C-29/Pw1	Original Bank Return Memo dated 30.06.2022
4.	C-30 colly/Pw1	Office copy of the demand notice dated 08.07.2022 along with postal receipt and Reg. A/D card.
5.	C-31/Pw1	Notarized copy of loan agreement dated 06.08.2019
6.	C-32/Pw1	Notarized copy of Promissory Note dated 06.08.2019
7.	C-33/Pw1	Notarized copy of the Payment Voucher

8.	C-34/Pw1	Statement of Medium Term Loan Advance along with the certificate.
9.	C-35 colly/Pw1	Statement of Account (Saving Deposit)
10.	C-36/Pw1	Resolution dated 04.07.2022
11.	C-37 colly/Pw1	Copy of Legal Notice dated 30.06.2022 alongwith unclaimed envelope
12.	C-38 /Pw1	Resolution dated 12.09.2022.

B. Defence:

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

C. Court Exhibits:

Sr. No.	**Exhibit Number**	**Description**
1.	C-15	Substance of Accusation
2.	C-26	Deposition of Pw-1

D. Material Objects:

Sr. No.	**Material Object Number**	**Description**
1	MO1	--

Appearance:-

For Complainant - Ld. Adv. (Ms.) A. Naik present along with the Representative of the Complainant.

For Accused – Absent. Advocate Absent.

J U D G M E N T
(Delivered on 29th July, 2026)

By Virtue of this Order, shall dispose the present complaint filed under Section 138 and 142 of the Negotiable Instrument Act, 1881 (In short "N.I. Act" for sake of brevity).

2. **Case of the Complainant**: Stated in brief: is that the complainant had advanced an amount of Rs. 1,50,000/- to the accused for purpose of purchase of furniture and had agreed to repay the said loan along with interest in installments under the terms and conditions stipulated in the said loan Agreement and towards the repayment of the Outstanding loan amount, the Accused had issued the cheque bearing No. 029637 dated 28.06.2022 for an amount of Rs. 1,70,000/- drawn on TJSB Sahakari Bank, Ltd. Vasco-Da Gama Branch, being a loan payment, which was presented for encashment returned as 'Funds insufficient" vide returned memo.

3. The Complainant through her advocate issued a Legal Notice dated 08.07.2022 in respect of the cheque by Registered A/D demanding payment of the said total amount of Rs. 1,70,000/- due and payable on the said cheque within the statutory period of 15 days.

4. The Accused failed to pay the said amount of Rs. 1,70,000/- within the said period of 15 days which expired, giving rise to a cause of

action to institute the present complaint under Section 138 of the Negotiable Instruments Act.

5. Upon Process being issued, the Accused was furnished with copies of Annexures in terms of Section 207 of the Code of Criminal Procedure, 1973.

6. **<u>Substance of Accusation</u>**: The Substance of Accusation was explained to the Accused on 11.01.2023 and plea was recorded at Exhibit C-15 under Section 251 of Cr.P.C., to which pleaded guilty and accordingly claimed to be tried.

7. From perusal of Records, there is no application filed by the Accused under Section 145(2) of N.I. Act praying to Cross Examine the Complainant which is not as per the decision in ***Meters and Instrument Private Limited and Another Versus Kanchan Mehta*** reported in ***2018 (1) SCC (Cri.) 477*** and ***Rukmakar @ Bharat Tulshidas Naik Versus Santosh Shaba Gaonkar (Criminal Writ Petition No. 35 of 2019 of the Hon'ble High Court of Bombay, at Goa*** is considered.

8. In the course of trial, the Representative of the Complainant examined herself as Pw-01 at Exhibit C-26 and reiterated the

contents of the Complaint by Filing Affidavit in Evidence at Exhibit C-27/PW1 and in the Evidence the documents. Thereafter the Complainant closed its evidence by endorsing on Page No. 3 of Exhibit C-26.

9. Inspite of Opportunities given, as per Roznama, the Accused was inconsistent in pursuing the proceedings.

10. In the Case of ***Navneet Singh Gogia and Another Versus State of Maharashtra (Criminal Revision Application No. 70 of 2023 with Interim Application No. 1696 of 2023 - The Hon'ble High Court of Judicature At Bombay (Criminal Appellate Jurisdiction)*** has held that Trial for the Offence under Section 138 of N.I.A. can proceed in the absence of the accused and without recording a statement under Section 313 CrPC, if the accused or their advocate has not been attending the trial or the accused has not sought for dispensing personal attendance. The Hon'ble High Court has further observed and arrived at such a view as the per the Hon'ble Supreme Court termed Section 138 as a 'civil sheep' in a 'criminal wolf's' clothing' and observed that the provision as a 'quasi criminal proceeding' is meant to enforce a civil remedy, in ***P. Mohanraj & Ors. v Shah Brothers ISPAT Pvt. Ltd. (Civil Appeal No. 10355 of***

2018).

11. The Accused in her defence did not step into the witness box nor did not led any evidence, inspite of opportunity given. Further as per Roznama record and exemption application reveals that Accused is taking casual approach in litigating the matter. Hence the Defence Evidence stands closed.

12. The Accused has failed to explain or show any document that at the time of dishonor of the cheque, the Accused had sufficient balance in the Account or Account Blocked of the Accused and neither a document is produced on record to prove that the reason for dishonor of the cheque is "Funds Insufficient". However, the Accused has not led any evidence to show the contrary to records.

13. The Accused as per records has not even made part payment. All defenses taken by the Accused is only delay tactics as records speak for itself.

14. Heard learned Advocate (Ms.) P. Lotlikar for the Complainant and the following points arise for my determination, to which, I have also noted my findings against the points framed for reasons which are thereafter as follows:-

SR. NO.	POINTS FOR DETERMINATION	FINDINGS
1.	Whether the Complainant proves that the Accused has issued the Cheque in lawful discharge of a Legally Enforceable Debt?	... Yes
2.	Whether the Complainant proves that the Said Cheque was dishonoured for reason of "Funds Insufficient" respectively in the Account of the Accused?	... Yes
3.	Whether the Complainant proves that the Accused has Committed an offence under Section 138 of the N.I. Act?	... Yes
4.	What relief? What Order?	... As per Final Order.

R E A S O N S

***Point No. 1:-* Whether the Complainant proves that the Accused has issued the Cheque in lawful discharge of a Legally Enforceable Debt?**

***Point No. 2:-* Whether the Complainant proves that the said Cheque was dishonoured for reason of "Funds Insufficient" in the Account of the Accused?**

{Both the Points of Determination being inter-connected/inter-linked for relief sought, it would be efficient for the Sake of Brevity, convenience and in-order to avoid unnecessary repetition of facts, Points are taken together for effective adjudication}.

15. For the purpose of establishing an offence under Section 138 of the Negotiable Instrument Act, 1881, the following ingredient is required to be established:

a) *A person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account.*

b) *That the Cheque in question was issued in whole or in part in discharge of any debt or liability.*

c) *That the Cheque was presented to the Bank for payment within the period of validity of the Cheque.*

d) *That the cheque was returned unpaid by the Bank dishonored.*

e) *That the Complainant issued notice to the Accused demanding payment of the said amount due and payable on the said cheque within 30 days of the receipt of information by him from the bank regarding the return of the Cheque as unpaid.*

f) *That the drawer of the Cheque fails to make payment of the said amount of money to the Payee that is, the Complainant within 15 days from the date of receipt of said notice.*

16. Similarly Section 118 and 139 of the Act raises a presumption in favour of the holder of the cheque until contrary is proved, the same which are reproduced as under:

"Section 118 of N. I. Act - Presumptions as to negotiable instruments —Until the contrary is proved, the following presumptions shall be made:—

(a) of consideration—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;

(b) as to date —that every negotiable instrument bearing a date was made or drawn on such date;

Section 139 of N.I. Act - Presumption in favour of holder.—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 in part, of any debt or other liability.

17. In the case of ***K. Bhaskaran Versus Sankaran Vaidhyan Balan [AIR 1999 SC 3762]*** the Apex Court has held when the signature on the cheque is admitted to be that of the Accused, the presumption envisaged under Section 118 of the Act can legally be

inferred that the cheque was made or drawn for consideration on the date which the cheque bears and Section 139 of the Act enjoined on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability and the burden is on the Accused to rebut the presumption.

18. In the instant case, the Complainant has exhibited in inquiry a Cheque alongwith the Bank Return Memo Letter. The Complainant in complaint has stated that the said Cheque was issued towards a legal enforceable debt. The said presumption is not rebutted by the Accused at all as per records as the Accused remained absent and matter proceeded in absence of the Accused.

19. Thus, it is well-settled that the presumption that the cheque is issued towards legally enforceable debt is in favour of the Complainant, and this being a presumption of law, should be raised in all cases, and it is for the Accused to rebut the presumption and this can be done by the Accused based on the material on record, and he need not even step into the witness box, as the standard of proof on is based on preponderance of probabilities and is only required to bring on record certain suspicious facts which will create doubt in respect of the case of the complainant and result in rebuttal of the presumption in

favour of the Complainant.

20. The Accused has thus not been able to rebut the presumption existing in favour of the complainant's under Section 139 and Section 118 of the N.I. Act and has failed to lead evidence to bring on record any probable defense existing in favour.

21. The Accused has also not replied to the Demand Notice stating about the fact of repayment of the part amount and neither on the very first two hearing decided to clear the balance disputed amount.

22. As the Inquiry of the Complainant is not rebutted, I am of the opinion that the Complainant has established that the cheque in question was, issued towards a legally enforceable debt by the Accused. Hence, I answer Point No. 1 in the affirmative.

23. According to Section 146 of the Negotiable Instrument Act, as amended, the Court shall, in respect of every proceeding under this Chapter, on production of bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved.

24. The cheque Return Memo Letter, clearly states that the cheque in

question was dishonoured for the reason "Insufficient Funds". There is also no positive evidence led by the Accused to rebut the said presumption.

25. In the absence of any evidence to the contrary the presumption under Section 146 of the Negotiable Instrument Act remains unrebutted.

26. Hence, in view of the above reasons, the Point No. 1 and 2 are answered in the affirmative.

Point No. 3 - ***Whether the Complainant proves that the Accused has committed an offence under Section 138 of the N.I. Act?***

27. As Point No. 1 and Point No. 2 are answered in the affirmative, Point No. 3 which is a consequence of Point No. 1 and 2 having been answered in the affirmative since the Cheque was presented before the expiry of the Cheque and came to be dishonored. The Complainant addressed the Legal Demand notice through Advocate which the Accused failed to reply or repay the cheque amount within 15 days as per the notice. Thereafter the Complaint was filed within time. Hence all the necessary ingredients required under Section 138 of N.I. Act exists, hence the Accused has committed an offence under Section 138 of the Act. Therefore

I answer Point No. 3 in the affirmative.

Point No. 4 - What relief? What Order?

28. Hence taking into consideration the findings of Point Nos. 1 to 3, I am of the opinion that the Complainant has proved that the Accused has committed an offence punishable under Section 138 of the Negotiable Instrument Act.

29. Hence, in view of the above, I am inclined to pass the following:

O R D E R

i) The Accused is held guilty of the offence punishable under Section 138 of the Negotiable Instrument Act, 1881.

ii) Accused is absent and absconding and Heard the Complainant.

Margao, South – Goa
Dated:-29.07.2026.

(Sabino Adrian Braganza)
Judicial Magistrate First Class,
'D' Court, Margao - South Goa.
I/c. 'E' Court, Margao-Goa.

Af/-

J U D G M E N T C O N T I N U E D

(Delivered on 29th July, 2026)

30. Learned Advocate for the Complainant had earlier submitted at Point of Sentence, that maximum punishment be imposed as the Complainant was made to suffer and Accused also be made to pay compensation.

31. In **Ravji versus State of Rajasthan, 1996 (2) SCC 175**; it has been held in the said case that it is the nature and gravity of the crime and not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim, but also against the society, to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant, but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal".

32. The Accused in the present case is not serious as seen from the circumstances of the Court records, however, imposing imprisonment will not be solution. Thus, imposing compensation would be just and proper and no leniency can be given to the Accused as was inconsistent in pursuing the records.

33. After considering the arguments, and considering the object behind the Act, the benefit of the Probation of the Offenders Act is not granted. As per Section 138 of the Negotiable Instruments Act, —Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque, or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque or with both.

34. In my opinion, sentencing the Accused to imprisonment as provided under Section 138 of N.I. Act, will not serve the purpose. However, the interest of the Complainant has to be kept in mind, and hence, instead of imposing harsh substantive sentence at this stage, the Accused can be made to pay the cheque amount. Furthermore, the Accused is directed to pay additional compensation to the Complainant considering the fact that if the amount was paid earlier, the complainant would have some benefit.

35. Hence the following:-

F I N A L O R D E R

i) The Accused is convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 under Section 255 (2) of Criminal Procedure Code, 1973.

ii) The Accused shall pay to the Complainant a compensation of Rs. 3,00,000/- (Rupees Three Lakhs Only) towards the cheque as Fine. In default, the Accused shall undergo sentence of simple imprisonment for a period of 6 months.

iii) Fine shall be recovered in terms of Section 421 of Criminal Procedure Code, 1973.

iv) The Accused to pay in total an amount of Rs. 3,00,000/- (Rupees Three Lakh Only) shall be paid within a period of 30 days.

v) Bail Bond at Exhibit D-18 to be forfeited to State Treasury.

Pronounced in the Open Court.
Proceedings stands Closed.

Margao, South – Goa
Dated:29.07.2026.

(Sabino Adrian Braganza)
Judicial Magistrate First Class,
'D' Court, Margao - South Goa.
I/c. 'E' Court, Margao-Goa.

Af/-