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Registered on : 13.07.2016.
Decided on : 16.07.2026.
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IN THE SESSIONS COURT AT AHMEDNAGAR,
DIST. AHMEDNAGAR.

(Presided over by M. A. Shinde)
(Additional Sessions Judge, Ahmednagar.)

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Criminal Appeal No. 143/2016.
Exh.No. 52/A.

1. **Yesudas Bhivaji Jawale,** **Appellant. (Original accused)**
   Age – 57 years, Occ – Business,
   R/o. Gundegaon, Tal. Nagar,
   Dist. Ahmednagar.

Vs.

1. **Zumber Govind Pawar,**
   Age – 51 yrs, Occ – Agri & Business,
   R/o.Dahigaon-sakat, Tal. Nagar,
   Dist. Ahmednagar.

2. **The State of Maharashtra.** : **Respondents.**

Appeal Under Section 374 of Code of Criminal Procedure, 1973.

- **APPEARANCE** -

Shri. P.M. Bhandari, Learned advocate for the Appellant.
Shri. S.B. Bafna, Adv. for the Respondent.

JUDGMENT

(Delivered on 16th July, 2026)

1. The present appeal is filed by the original accused, being aggrieved and dissatisfied with the judgment and order of conviction passed by Ld. Judicial Magistrate First Class, Ahmednagar (Court No.7), in S.C.C. No. 969/2014 dated 14.06.2016 (hereinafter referred as "the impugned judgment" for short), wherein learned Magistrate has convicted the accused of the charge for the offence punishable under sections 138 of Negotiable Instruments Act ("N.I. Act" for short).

2. It is the case of the complainant that, the accused is his friend and requested for hand loan in the year 2013 due to his financial requirements of the business. Therefore, the complainant has advanced an amount of Rs. 16,75,000/- to the accused with condition to repay the same within three months. After three months, the complainant demanded the said amount to the accused who instead of repay in cash, issued a cheque bearing its No. 315945 drawn on A.D.C.C. Bank Ltd., Ahmednagar, Branch Gundegaon dated 15.12.2013 for an amount of Rs. 16,75,000/- (hereinafter referred to as "the cheque" for short).

3. The cheque was deposited by the complainant with his bank, but it was returned by return memo on 05.03.2014 with remark as "payment stopped by the drawer". Therefore, the complainant has issued statutory notice dated 12/03/2014 ("the notice" for short), which was though sent by R.P.A.D. but the

R.P.A.D. was not received, therefore, the complainant has filed his written complaint with the post office on 10.04.2014. The post office communicated stating that the notice was duly served on 13.03.2014 to the accused. As per communication dated 16.04.2014, however, the accused failed to pay the cheque amount, therefore, the complainant has filed the complaint under Section 138 of the N.I. Act in the Court on 28/04/2014.

4. The process was issued against the accused. The accused appeared. Plea was recorded vide Exh.11. The particulars of plea are read over and explained to the accused. Accused pleaded not guilty and claimed to be tried. The defence of accused is misuse of stolen cheque by the complainant.

5. The Ld. Magistrate has given opportunity to lead and argue the matter and after hearing both the parties convicted the accused.

6. Therefore, being aggrieved and dissatisfied with the findings by the Ld. Magistrate, the appellant has approached this Court by filing an appeal, on the grounds more precisely mentioned in the appeal memo.

7. Perused record. Heard both parties. Following points arise for my determination and findings thereon are recorded as under -

	Points	Findings
1.	Whether the complainant proves that, the accused has committed the offence punishable under Section 138 of the N.I. Act?	In the affirmative.
2.	Whether the Ld. Magistrate has committed any illegality in recording order of conviction against the appellant/accused?	In the negative.
3.	Whether any interference is required in the Judgment and order dated 14/06/2016 passed by the Ld. Magistrate in S.S.C. No. 969/2014?	In the negative.
4.	What order ?	The appeal is dismissed.

R E A S O N S

As to Point Nos.1 to 3 :-

8. The Ld. Magistrate has taken a view that, the complainant has established the transaction of hand loan and the complaint is filed within limitation particularly on the background that, the signature on the cheque was not disputed by the accused and the documentary evidence is in favour of the complainant and therefore, convicted the accused of the charge.

9. Assailing the said findings recorded by the Ld. Magistrate, Ld. Counsel Shri. P.M. Bhandari for appellant pointed out that, the complaint is filed beyond the period of limitation. He also pointed out that, the transaction of hand loan is not proved by the complainant. The cheque is misused which was stolen by the

complainant from the house of the accused. The accused has lodged complaint with the police. He also pointed out that, the cheque was dated 15.12.2013 and was deposited after more than two and half months.

10. He also pointed out that, there is material alteration in the cheque. Moreso, when the complainant has come up with the case of hand loan with the accused but he pointed out with the help of testimony of defence witnesses that it is the accused who has advanced hand loan to the complainant and therefore, the theory of hand loan is totally collapsed and the learned Magistrate has not considered this aspect in the judgment. He pointed out that, there is no documentary evidence except the cheque, to show that there was any hand loan transaction between the parties.

11. Therefore, he submitted to allow the appeal by setting aside the impugned judgment and order of the learned Magistrate. He also filed on record the written notes of arguments at Exh. 47. During his course of arguments, he also relied on following case laws in support of his arguments -

1) ***T. Vasantkumar Vs. Vijayakumari, 2015 AIR SCW 3040.***
2) ***Kulmaya Mineral and Transport Contractor, Dhawaskarda.***
3) ***Bicholim Goa and another Vs. Melrose Trading and another, 2014 ACD 694 (Bom)***.
4) ***Kashinath Balu Gaonkar Vs. Sunita Krishnajirao Dessai and another, 2015 ACD 1138 (Bom).***

5) ***M/s. Saketh India Ltd. Vs. M/s. India Securities Ltd., AIR 1999 SC 1090.***

12. On the other hand, the learned counsel for the complainant Shri.S.B. Bafna supported the impugned judgment passed by the learned Magistrate. He pointed out with help of provisions of General Clauses Act, Limitation Act, 1963 and the provisions of N.I. Act as to how the complaint is filed well within the limitation. During his course of arguments, he relied on following case law a per list Exh. 44 and 51.

1) **M/s. Innovative Enterprises Vs. M/s. Steel and Tubes Syndicate and Ors. 2018 (3) DCR 328.**
2) **Om Prakash Vs. Subhash Chand, 2011 (1) DCR 108.**
3) **Manjit Singh Obhan Vs. State of Maharashtra and Ors 2018 (3) DCR 622.**
4) **Ram Pukar Pandey Vs. State of Jharkhand and another, 2013 (3) DCR 344.**
5) **Clint B. Rodrigues Vs. State of Maharashtra and another, 2009(1) DCR 465.**
6) **Vinay Parulekar Vs. Pramod Meshram, Criminal Appeal No. 37 and 38 of 2006 decided on 06.12.2007.**
7) **Kishor L. Purohit Vs. Prem Saxena and another, 2017 ALL MR (Cri) 148.**
8) **Nandkishore Mehra Vs. Sudhir Transport Ltd. and another, 2009 (1) DCR 608.**
9) **C.P. Abdul Rasak Vs. P. Gangadharan and another, 2016 ALL MR (Cri) Journal 220.**

10) **Shaikh Jalal (D) through L.R.s. Vs. State of Goa and others, 2014(2) DCR 417.**

11) **Sajidur Rehman Vs. Rajiv Kashyap and ors., 2017 (3) DCR 461.**

12) **Annapurna Cast Limited Vs. Akshaya Technologies Pvt. Ltd. and others, 2018 ALL MR (Cri) Journal 60.**

I have carefully gone through the evidence led by both the parties before the learned Magistrate. The complainant has entered into the witness box by filing his evidence affidavit at Exh. 14 and reiterated the facts mentioned in the complaint.

13. In his cross-examination, he tried to point out that, the accused as well as the complainant were acquainted with each other prior to the alleged transaction. The accused is agriculturist and also runs a company. The complainant further admitted that it is not mentioned in the complaint, notice and the evidence affidavit as to for what purpose the accused was required money. He cannot tell the dates on which he had paid the hand loan amount to the accused. He cannot tell the date when he obtained the loan from the credit society.

14. He also admitted that on 13.12.2013 the accused had paid Rs. 1,40,000/- to him by a cheque. He also admitted that the accused also paid Rs. 60,000/- to him by another cheque. He further admitted that except the signature and the name on the cheque, he cannot tell in whose handwriting the rest of the matter

is appearing on the cheque. He also cannot tell the date when the accused handed over the cheque to him.

15. Apart from these admissions in the cross-examinations, the accused / appellant has examined Aman (DW1) The Assistant Manager Indian Overseas Bank to prove that the accused did not have any bank account in the Indian Overseas Bank. Gorakh (DW2) The Branch Manager, A.D.C.C., Ahmednagar, branch at Gundegaon, produced and proved the statements of accounts, particularly the saving account and the application for stop payment submitted by the complainant vide Exh. 68 and 69.

16. The accused / appellant has also examined Gopinath (DW3) and Subhash (DW4) and Somnath (DW5) to prove that the accused has advanced the hand loan to the complainant from time to time. Thus, the accused is trying to point that, it is he who has advanced Rs. 99,000/- to the complainant on 30.08.2013 with the help of bank account statement (Exh. 68) and with the help of oral testimony of Gopinath (PW3), Subhash (PW4) and Somnath (PW5) who have deposed that the accused had advanced various amounts to the complainant.

17. On this point, the learned defence counsel has relied on ***Clint B. Rodrigues Vs. State of Maharashtra and another, (supra), Vinay Parulekar Vs. Pramod Meshram, (supra), Kishor L. Purohit Vs. Prem Saxena and another (supra) and Sajidur Rehman Vs. Rajiv Kashyap and ors.(supra).***

18. However, on perusal of this evidence both the parties are claiming that they had advanced hand loan to each other. But so far as the money transactions as brought on record by the learned defence counsel as reflected in the defence evidence, it appears to be that it is a separate and independent money transaction in between both the parties. It is not repayment of the cheque amount. Even it is not the case of the accused that those various amounts were repaid towards the cheque amount by the accused. On the contrary, the accused has come up with the case that, it is he who had advanced an amount of Rs. 8,12,000/- to the complainant from time to time and on demand of the same, the complainant has filed this false complaint against him. Therefore, the said ratio relied by the learned defence counsel is not helpful to the accused / appellant in the present case.

19. The accused has come up with a defence that, his cheque was stolen from his house and therefore, he lodged complaint with the police but on perusal of the cross-examination of the complainant, it is suggested by the accused that, the accused has lodged written complaint with Nagar Taluka Police station and Police superintendent, Ahmednagar on 09.01.2014. But as rightly observed by the learned Magistrate in her judgment that, when the notice was received by the accused on 12.03.2014 then why the accused was waiting till 01.09.2014. The learned Magistrate has made a reference of RCC No. 742/2014 which was filed on 15.11.2014 wherein the allegations are made against the complainant under sections 379, 465, 468 and 471 of IPC, But the

said proceeding also suffers from non-explaining inordinate delay initiating criminal proceeding against the complainant.

20. So far as the issue of limitation is concerned, it is much agitated by the learned counsel for the accused arguing that the notice is issued to the accused on 13.03.2014 and therefore, 15 days expires on 28.03.2014 and the complaint is filed on 28.04.2014 which is beyond the period of limitation as stipulated in section 142(1)(b) of the N.I. Act. He relied on ***Ram Pukar Pandey Vs. State of Jharkhand and another (supra)*** and ***Annapurna Cast Limited Vs. Akshaya Technologies Pvt. Ltd. and others (supra).***

21. I have carefully gone through the record of the present case. It is matter of record that the notice dated 12.03.2014 was received to the accused on 13.03.2014 as per R.P.A.D. Exh 27 and the postal communication Exh. 29. Moreso, the accused himself admitted that the notice is received to him as per claim of the complainant, therefore, the 15 days expires on 28.03.2014. A cause of action to file the complaint arose on 29.03.2014. The date 29.03.2014 is to be excluded while reckoning the period of limitation of 1 month as stipulated in section 142(1) of N.I. Act in view of the provisions of section 12(1) of the Limitation Act in computing the period of limitation for any suit appeal or application the day from which such period is to be reckoned, shall be excluded. Moreso the learned counsel for the complainant has filed on record the calendar of April 2014 which reflects that on

26th and 27th April, it was fourth Saturday and Sunday and therefore, on these days the Court proceedings were closed and the Courts were opened on 28th April, 2014 and therefore, in view of section 4 of the Limitation Act, the Civil proceedings is to be filed on the date when the Court opens if it is presided by the holidays. Therefore, the ratio relied on by the learned defence counsel needs to be considered in view of the above referred to the provisions of law. Therefore, the learned counsel for the complainant has rightly relied on ***M/s. Saketh India Ltd. Vs. M/s. India Securities Ltd. (supra)***, wherein the Hon'ble Supreme Court has held as under -

> *"The aforesaid principle of excluding the day from which the period is to be reckoned is incorporated in section 12(1) and (2) of the Limitation Act, 1963. Section 12(1) specifically provides that in computing the period of Limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. Similar provision is made in sub-section (2) for appeal, revision or review. The same principle is also incorporated in Section 9 of General Clauses Act, 1897 which, inter-alia, provides that in any Central Act made after the commencement of the General Clauses Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to". Hence, there is no reason for not adopting the rule enunciated in the aforesaid case which is consistently followed and which is adopted in the General Clauses Act and the Limitation Act. Ordinarily in computing the time, the rule observed is to exclude the first day and to include the last.. Applying the said rule, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of receipt of the notice by the drawer, expires. Period of 15 day, in the present case, expired on 14th October, 1995. So cause of action for filling complaint would arise from 15th October, 1995. That day (15th October) is to be excluded for counting the period of one month. Complaint is filled on 15th November, 1995. The result would be that the complaint filed on 15th November is within time."*

22. So far as the case laws relied on by the learned counsel for the accused / appellant are concerned, he submitted that there is material alteration in cheque and has not been properly explained by the complainant and further if the blank signed cheques are issued without mentioning the amount or date, it may be considered that the cheques were not issued for valuable consideration, therefore, the accused / appellant cannot be convicted under section 138 of the N.I. Act. On this point, he relied on ***M/s. Innovative Enterprises Vs. M/s. Steel and Tubes Syndicate and Ors (supra), Om Prakash Vs. Subhash Chand (supra), Manjit Singh Obhan Vs. State of Maharashtra and Ors (supra) and Nandkishore Mehra Vs. Sudhir Transport Ltd. and another(supra).***

However, the said ratio is not helpful to the defence as the cheque is returned with a reason of "payment stopped by the drawer".

23. The learned defence counsel submitted that the notice allegedly issued by the complainant does not comply with the statutory requirements because the cheque amount was not demanded in the said notice and relied on ***C.P. Abdul Rasak Vs. P. Gangadharan and another (supra)***. However, on perusal of the notice it appears that there is sufficient mentioning of the cheque amount and demand of the cheque amount. Therefore, the said ratio is not helpful to the accused /appellant in the present case.

24. The learned counsel for defence has submitted that, the accused / appellant has successfully rebutted the presumption of existing or past legal enforceable liability by conducting cross-examination of the complainant and also leading evidence oral as well as documentary and relied on ***Shaikh Jalal (D) through L.R.s. Vs. State of Goa and others (supra)***. However, in view of above discussion, the complainant has successfully brought on record the hand loan transaction by producing relevant entries in the bank accounts, on the contrary the defence evidence on the point of money transaction is altogether different and has nothing to do with the present hand loan amount mentioned in the cheque, therefore, it cannot be said that the accused / appellant has successfully discharged the presumption as laid down in section 139 of the N.I. Act. Therefore, the said ratio is not helpful to the accused /appellant in the present case.

25. The finding recorded by the learned Magistrate is in consonance with the facts and law. It is rightly held that the cheque was issued for legally enforceable debt or liability and therefore, the learned counsel for the complainant / respondent has rightly relied on ***T. Vasantkumar Vs. Vijayakumari (supra), Kulmaya Mineral and Transport Contractor, Dhawaskarda, (supra), Bicholim Goa and another Vs. Melrose Trading and another, (supra) and Kashinath Balu Gaonkar Vs. Sunita Krishnajirao Dessai and another(supra).***

26. In the result, I hold that the complainant has successfully proved that the cheque is issued for legally enforceable debt and liability and in view of above discussion, no interference in this appeal is required. Thus, I answer point No.1 in the affirmative and point No.2 and 3 in the negative.

27. The appellant / accused and his learned counsel on record are called repeatedly but remained absent. Therefore, conviction warrant is required to be issued against the appellant / accused. Therefore, following order is passed -

ORDER

1. The Criminal Appeal No. 143/2016 is dismissed.
2. The Judgment and order dated 14/06/2016 in S.C.C. No. 969/2014 passed by the Ld. Judicial Magistrate, First Class (Court No.7), Ahmednagar, is confirmed.
3. Accused Yesudas Bhivaji Jawale is convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, vide provisions of Section 255(2) of the Code of Criminal Procedure, 1973 read with 143 of the N.I. Act and is sentenced to suffer simple imprisonment for six months.
4. The accused to pay compensation of Rs. 16,75,000/- (Rs. Sixteen Lacs, Seventy Five Thousand only) to the complainant within a

period of one month from today vide section 357(3) of the Code of Criminal Procedure and in default to suffer simple imprisonment for four months.

5. Accused to surrender his bail bonds.
6. The complainant shall be at liberty to withdraw the amount, if deposited, after appeal / revision period is over.
7. Copy of judgment be given to accused free of cost as per section 363 of the Code of Criminal Procedure, 1973.
8. Issue conviction warrant against accused.
9. The Record & Proceedings be sent back forthwith to the Ld. Judicial Magistrate, First Class, (Court No.7), Ahmednagar.
10. Inform the Ld. Judicial Magistrate, First Class, (Court No.7), Ahmednagar, accordingly.

(Dictated and pronounced in open Court.)

MADHAV ARVIND SHINDE

Digitally signed by MADHAV ARVIND SHINDE
DN: cn=MADHAV ARVIND SHINDE, ou=BOMBAY HIGH COURT,CID - 6951301, o=BOMBAY HIGH COURT, st=Maharashtra, c=IN
Date: 2026.07.16 18:03:39 +0530

Date : 16/07/2026.

(**M.A. Shinde**)
Additional Sessions Judge,
Ahmednagar.