

MHNS190010902020 	Presented on	22/09/2020
	Registered on	22/09/2020
	Decided on	01/08/2026
	Duration	05Y. 10M. 10D.

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,**YEOLA****Before: Shri. S. M. Bohara****(Date of Judgment : 01/08/2026)****S.C.C. No.550/2020****Exh. No. 44**

Complainant	Maruti Parshram Shelke Age : 48 years, Occupation : Address: Thangaon Tal. Yeola Dist. Nashik
Represented by	Ld. Adv. Shri. Chavan
Accused	Ashok Vijay Gaikawad Age: 45 years, Occupation : Address: Lakshmivadi, Post Shingnapur, Tal. Kopargaon, Dist. A.nagar
Represented by	Ld. Adv. Shri. Raka

Date of Offence	05/09/2020
Date of Complaint	22/09/2020
Date of Plea	27/02/2024
Date of commencement of evidence	30/01/2024
Date on which judgment is reserved	-
Date of the Judgment	01/08/2026
Date of the sentencing order, if any	01/08/2026

ACCUSED DETAILS

Rank of the Accused	Name of Accused	Date of Arrest	Date of Released on Bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial.
A1	Ashok Vijay Gaikawad	--	--	Section 138 of N.I. Act	Convicted	sentenced to pay fine of Rs.80,000/- in default to undergo simple imprisonment for term of 3 months.	N.A.

LIST OF COMPLAINANT WITNESSES

Rank	Name	Nature of evidence
CW-1	Maruti Parshram Shelke	complainant

LIST OF DEFENCE WITNESSES

Rank	Name	Nature of evidence
DW-1	N.A.	N.A.

LIST OF COURT WITNESSES

Rank	Name	Nature of evidence
CW-1	N.A.	N.A.

LIST OF COMPLAINANT EXHIBITS

Sr.No.	Exhibit Number	Nature of evidence
1.	Exh.35/CW-1	Original Cheque
2.	Exh.36/CW-1	Cheque Deposit Receipt
3.	Exh.37/CW-1	Return Memo
4.	Exh.38/CW-1	Demand Notice
5.	Exh.39/CW-1	Postal Receipt

6.	Exh.40/CW-1	Acknowledgment
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DOCUMENTS ADMITTED BY DEFENSE

Sr.No.	Exhibit Number	Nature of evidence
1	Nil	Nil

LIST OF DEFENSE EXHIBITS

Sr.No	Exhibit Number	Nature of evidence
1	Nil	Nil

LIST OF COURT EXHIBITS

Sr.No	Exhibit Number	Nature of evidence
1	Nil	Nil

MATERIAL OBJECTS

Sr.No	Material Object No.	Description
1	Nil	Nil

J U D G M E N T

(Delivered in open Court on 01 August 2026)

The accused is facing trial for an offence punishable under section 138 of the Negotiable Instruments Act, 1881(hereinafter referred to as “ the Act ”).

2. The case of complainant in nutshell is as follows :-

The complainant and accused have business relations. The accused borrowed JCB machine of the complainant on rent. The accused used JCB machine of complainant till June-2020. The complainant asked accused for payment of rent of JCB machine.

3. In order to discharge his legal liability accused has issued a cheque

No.000949 for Rs.40,000/- dated 22/06/2020 in favour of the complainant drawn on Axis Bank Branch Kopargaon. The complainant presented said cheque for encashment. However, on 24/07/2020 the said cheque returned unpaid with an endorsement "Funds Insufficient". On 08/08/2020, the complainant issued demand notice to the accused for the payment of said cheque amount. The intimation of said notice was received by accused on 21/08/2020. In spite of notice accused failed to make payment of the said amount within prescribed period. Hence, the complainant has filed present complaint.

4. The plea of accused was recorded which is at Exh.26. The particulars of the offence were read over and explained to the accused in vernacular. The accused pleaded not guilty and claimed to be tried.

5. To bring home the guilt of accused, the complainant has examined himself as (C.W.1) at Exh.4. The complainant has closed his evidence by filing pursis.

6. The accused since recording of plea at Exh.26, remained absent in proceeding. Due to the constant absence of accused his right to cross examine the complainant was forfeited by passing order at Exh.4 on 08.05.2026. The accused neither appeared in the matter nor filed any adjournment application in the matter since his appearance. Finally on 08.05.2026 matter is posted for recording statement of accused under Section 313 of Cr.P.C. In spite of this accused remained absent and did not proceed with the matter. It shows that the accused is purposely remaining absent and deliberately prolonging the matter. The accused has not remained present even for recording of his statement in spite of sufficient opportunities.

7. The recording of said statement under section 313 of the Code of

Criminal Procedure is not a mere formality. It has a dual purpose to discharge, firstly, that the entire material parts of the incriminating evidence should be put to the accused in accordance with law and secondly to provide an opportunity to the accused to explain his conduct or his version of the case. If the accused deliberately fails to avail this opportunity, then the consequences in law have to follow, particularly when it would be expected of the accused in the normal course of conduct to disclose certain facts which may be within his personal knowledge and have a bearing on the case. Therefore, due to deliberate absence of the accused his statement of accused under section 313 of the Code of Criminal Procedure was not recorded. Moreover as per Suo Motu Writ Petition (Crl.) No.2/2020 the matters under Negotiable Instruments Act are directed to be disposed off within six months. For this reason also the statement of accused under section 313 is dispensed off.

8. Here useful reference can be given In *Prakash Chimanlal Sheth Versus T. Ramalingam Nadar and Others*, 2022 SCC OnLine Bom 10161, the Hon'ble High Court of Bombay has observed that, “ Considering the fact that the proceedings under Section 138 of N.I. Act are required to be concluded expeditiously in the light of guidelines issued by the Courts from time to time for speedy disposal of the cases, the scope of Sections 141, 142, 143 and 145 of the N.I. Act, it was not necessary for the trial Court to wait for Accused to make his appearance. The facts of the present case denote that the Accused was exempted from appearing and thereafter they continued to disappear from appearing before the Court. Warrants were issued. The warrants could not be executed. The Accused even failed to appear before this Court. In this circumstances, the Court is empowered to proceed with the case without recording the statement of the Accused under Section 313 of Cr. P.C. The decision relied upon by learned APP *Reena Hazarika v. State of Assam* (supra)

relates to scope of Section 313 of the Code. It is observed that the Section 313 of the Code confers valuable right upon the accused to establish his innocence. The mere use of word 'may' cannot be held to confer a discretionary power on the Court to consider or not to consider such defence, since it constitutes a valuable right of an accused for access to justice. However, in the present case, accused have not bothered to remain present before the Court. The complainant is victim He is running from pillar to post for prosecuting the accused. This is a fit case to exercise discretion and proceed with case by dispensing with statement under Section 313 of the Code. The accused have no regard for directions of Court. The trial Court had already passed order of no cross. Hence, the impugned order of trial Court is required to be set aside with direction to dispense with statement of accused under Section 313 of the Code and proceed with the case.” (underline supplied)

9. *In Naresh Kumar Versus State of Delhi, 2024 SCC OnLine SC 1641, the Hon'ble Supreme Court of India* has observed that, “At the same time, we may hasten to add that it is a well-neigh settled position that non-examination or inadequate examination under Section 313, Cr. P.C., on any incriminating circumstance, by itself, would not vitiate a trial qua the convict concerned unless it has resulted in material prejudice to him or in miscarriage of justice. In the decision in *Suresh Chandra Bihari v. State of Bihar* and in *Wariyam Singh v. State of U.P.*, this Court held that mere defective/improper examination under Section 313, Cr. P.C., would be no ground to set aside a conviction of the accused unless it has resulted in prejudice to the accused. In view of the said position which is being followed with alacrity we do not think it necessary to multiply the authorities on it.”

10. “In the light of the above view of the matter, we are inclined to

consider the further question whether the non-questioning on the aforesaid twin incriminating circumstances to the appellant during his examination under Section 313, Cr. P.C., had caused material prejudice to him. The decision of this Court in *State of Punjab v. Swaran Singh*, constrain us to consider one another factor while considering the question of prejudice. In *Swaran Singh's case* (supra), this Court held that where the evidence of the witnesses is recorded in the presence of the accused who had the opportunity to cross examine them but did not cross examine them in respect of facts deposed, then, omission to put question to the accused regarding the evidence of such witnesses would not cause prejudice to such an accused and, therefore, could not be held as grounds vitiating the trial *qua* the convict concerned. We have already found that Anil Kumar (PW-7), Smt. Prem Devi (PW-8), Mrs. Madhu (PW-19) and Anand Kumar (PW-22) have deposed about the said circumstances. A scanning of their oral testimonies, available on record, would undoubtedly reveal that on both the points, on behalf of the appellants they were cross examined.”

11. *In State of Punjab v. Swaran Singh, (2005) 6 SCC 101* it is observed that, “ 15. In the instant case, the accused was not in any way prejudiced by not giving him an opportunity to answer specifically regarding the evidence of PW 1 and PW 4. If at all, the evidence of PW 1 and PW 4 was recorded in his presence, he had the opportunity to cross-examine the witnesses but he did not specifically cross-examine these two witnesses in respect of the facts deposed by them. The learned Single Judge seriously erred in holding that the evidence of PW 1 and PW 4 could not have been used against the accused. The acquittal of the accused was improper as the evidence in this case clearly established that the accused was in possession of 5 kg of opium and thereby committed the offence under Section 18 of the NDPS Act.”

12. Moreover, as per recent Judgment of Hon'ble Bombay High Court in Navneet Singh Gogia Vs. The State of Maharashtra, Criminal Revision Application No. 70/2023 decided on 21/01/2025 it is observed that, " I am inclined to take a view, in a case before this Court when it is found out that the accused is not attending the trial, nor sought for dispensing the personal attendance and not represented by the advocate, the trial Magistrate is justified in proceeding in absence of the accused and without recording 313 statement also. However, when such power can be exercised is a question of fact. Trial Court can consider :-

- a) for how many occasions accused has remained absent
- b) steps taken by the complainant to secure presence of the accused.
- c) reason why presence could not be secured.
- d) whether all modes permissible as per law were exhausted.

After ascertaining all factors, then only such power can be exercised.

Above are few of the factors.

13. Heard Shri. Chavan learned Advocate for the complainant and learned advocate for the accused absent when called out. Following points arise for my consideration to which I have recorded my findings with reasons thereunder:-

Sr. No.	POINTS FOR CONSIDERATION	FINDINGS
1.	Whether the complainant has complied with the provisions of section 138(a) and (b) section 142(a) and (b) of the Negotiable Instruments Act ?	In Affirmative.
2.	Whether the complainant has established that the accused dishonored the subject cheque ?	In Affirmative.

3.	Whether the subject cheque was drawn by the accused for the discharge of a legally enforceable debt or other liability ?	In Affirmative.
4.	What Order ?	Accused is convicted.

REASONS

14. The learned Advocate for the complainant has submitted, the presumption under section 139 of the N.I. Act is in favour of the complainant. The complainant has proved its case against the accused beyond reasonable doubt.

15. The Ld. Advocate for accused and accused himself absent when called out for argument.

AS TO POINT NO. 1 :-

16. Indisputably, the subject cheque is dated 22/06/2020. The subject cheque was returned unpaid by the drawee Bank on 24/07/2020. Therefore, it is clear, that the subject cheque was presented to the drawee Bank within a period of three months from the date on which it was drawn. Thus, the complainant has complied with the provisions of section 138 (a) of the N. I. Act.

17. The complainant gave a notice in writing (Exh.38) to the accused making a demand for the payment of amount of the subject cheque. The said notice is dated 08/08/2020.

18. In view of the above discussion, it becomes manifestly clear, that the complainant has complied with the provisions of section 138(b) of the N. I. Act by giving a notice in writing to the accused within thirty days of the

receipt of information by it from the Bank regarding the return of subject cheque as unpaid.

19. The notice (Exh.38) was received by the accused on 21/08/2020. It is not the case of accused, that he made payment of the amount of subject cheque after receipt of the said notice. Thus, the accused failed to make the payment of the amount of subject cheque to the complainant within fifteen days of receipt of the statutory notice.

20. The complainant has made the present complaint on 22/09/2020. As such, the complainant has duly complied with the mandatory provisions of section 142(a) and (b) of the N.I.Act. Hence, point No.1 is answered in the 'affirmative'.

AS TO POINT NO. 2 :-

21. The accused has not disputed the presentation of the subject cheque for encashment and also its dishonor. The subject cheque was returned unpaid to the complainant. The subject cheque was returned unpaid for the reason of "Funds Insufficient" in the account of the accused. Moreover, section 146 of the N. I.Act provides for a special presumption of the fact of dishonor of cheque on production of Bank's memo. Thus, it is duly proved, that the accused dishonored the subject cheque. Hence, point No.2 is answered in the affirmative.

AS TO POINT NO.3 :-

22. Maruti (C.W.1) has deposed in respect of the transaction between the complainant and the accused. He has deposed, that the accused has issued subjected cheque. The cheque and return memo are on record.

23. In spite of sufficient opportunity the accused failed to cross-examine the witness of the complainant. Therefore, the entire evidence of the complainant goes unchallenged and undisputed.

24. As discussed above, the accused had not given reply to notice of complainant. The accused has not disputed outstanding amount as well. This clearly shows, that the accused has to pay legal debt of Rs.40,000/- to the complainant.

25. The complainant by adducing his oral evidence has discharged its initial burden to prove that the subject cheque was issued by the accused in discharge of a legally enforceable debt. Therefore, the presumption available under section 139 of the N. I. Act would come into play.

26. It is now well settled, that the presumption mandated by section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. This is of course in the nature of rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that, there is an initial presumption which favours the complainant. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments.

27. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that, when an accused has to rebut the presumption under section 139, the standard of proof for doing so is that of preponderance of probabilities. Therefore, if the accused is able to raise a probable defence which creates doubt accused failed to cross examine the

complainant's witness. The accused has not adduced his positive evidence. In the present case at hand, the accused has not given any sort of explanation in respect of the present complaint filed against him.

28. In view of the above discussion, the complainant Society has sufficiently proved, that the subject cheque was drawn by the accused for the discharge of a legally enforceable debt. Hence, point No.3 is answered in the affirmative.

AS TO POINT NO. 4 :-

29. In view of the findings on points No. 1 to 3, the accused is found guilty for the offence punishable under section 138 of the Negotiable Instruments Act. Now it is necessary to hear the accused on the point of sentence.

30. The learned Advocate for the complainant submitted, that the accused has dragged the prosecution for such a long period. Therefore, maximum punishment be imposed on the accused.

31. Today Ld. Advocate for accused and accused himself are absent when called out repeatedly. No adjournment application filed on record. The accused is well aware about the fact that today the matter is posted for judgment. In spite of that he remained absent for taking opportunity of argument on point of sentence. From the record it also appears that the accused is absent in the proceeding since long. It shows that he is not interested to argue upon quantum of sentence. Considering the age of matter the accused is willfully delaying the matter by remaining the absent. Hence it wont be proper to keep the matter pending for hearing of the accused on quantum of sentence.

32. Further, it would be not illegal to pass the judgment of conviction in absence of accused as section 353(6) and section 418(2) of Code of Criminal Procedure which empowers the Court to pronounce judgment even of conviction in absence of accused and to issue conviction warrant if Court find it to be just and proper. Hence coupling the provisions led down under section 353(6) and 418(2) of Code of Criminal Procedure with the guidelines to dispose of the old cases expeditiously. Therefore I found it just and proper to pass judgment of conviction in absence of accused where accused is bent upon to cause delay rather exercising his right for defence.

33. The accused is found guilty for dishonor of a cheque of an amount of Rs.40,000/-. The transaction between the complainant and the accused is loan transaction. Disputed cheque was drawn on 22/06/2020. If it would have cashed regularly, complainant would have received the amount in the month of June-2020. That amount is admittedly lying with the accused. But at the same time it is not the case of the complainant that the accused is habitual offender to whom certain harsh punishment must be imposed. The object of the Act is to enhance the credibility of the negotiable instruments. The cheque involved in the case in hand is of Rs.40,000/-. Thus, after considering the cheque amount, nature and manner of the offence, in my opinion, sentence to payment of fine of Rs.80,000/- will be proper and justified. The sentence of fine is also permissible to impose in the absence of accused as per Section 353(6) and 418(2) of Code of Criminal Procedure.

34. In view of the observations of the Hon'ble Apex Court in the case of R. Vijayan Vs. Baby and Anr. MANU/SC/1245/2011, the complainant is entitled to get interest at the rate of 9 % p.a. on the amount of subject cheque from the date of its issuance till today and costs by way of compensation would be proper and also justified. The said period is of 06 years, 01 months

and 10 days. Thus the total amount goes to Rs.61,900/- and stamp duty paid by the complainant is Rs.800/-. But while issuing compensation out of fine amount it can not be more than fine amount. Thus, it would be proper to direct compensation of Rs.62,700/-.Thus, the amount of Rs.62,700/- is necessary to give to the complainant out of fine amount. With this, proceed to pass the following order,

ORDER

1. Accused **Ashok Vijay Gaikwad**, R/o. Lakshmivadi, Post Shingnapur, Tal. Kopargaon is convicted under Section 255 (2) of the Code of Criminal Procedure, 1973 for an offence punishable under Section 138 of the Negotiable Instrument Act, 1881 and sentenced to pay fine of Rs.80,000/- (Rs. Eighty Thousand only) in default to undergo simple imprisonment for term of 3 months.
2. The fine amount of Rs.80,000/- (Rs. Eighty Thousand only) if recovered from the accused, out of that fine amount, Rs.62,700/- (Rs. Sixty Two Thousand Seven Hundred only) be paid to the complainant as compensation after appeal period is over.
3. The accused to surrender his bail bonds.
4. Issue Conviction Warrant to secure the presence of accused before the Court for payment of fine or for undergoing the default sentence.

Yeola
Date 01.08.2026

(**S. M. Bohara,**)
Judicial Magistrate F.C.,
Yeola

CERTIFICATE

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

Name of Stenographer	:-	V.A. Chavan (Jr. Clerk)
Court	:-	Shri. S.M. Bohara, CJJD & JMFC, Yeola.
Date	:-	01/08/2026
Judgment signed by the Presiding Officer on	:-	01/08/2026
Judgment uploaded on	:-	01/08/2026