MHMM170095102019

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Duration : 10-Y 05-M 04-D.

IN THE COURT OF METROPOLITAN MAGISTRATE, 43rd COURT, BORIVALI, MUMBAI

(BEFORE SHRI. S. A. KHALANE)

C. C. No. : 4302394/SS/2019
(Old C.C. S.T.No.135/2017)
(CNR NO.MHMM17-009510-2019)

Exh.21.

Mr.Dinesh Menon.
S/o.Late C.P.Menon.
residing at 001 A-14,
Aradhana, Gokuldham,
Goregaon East, Mumbai-400 063. **...COMPLAINANT.**

V/s.

Mr.Mani C.Kappen.
S/o.Cheriyan J.Kappen,
Kappil Veettil, Lalam Village,
Palai P.O. Kottayam District,
Pin-686 575.
(within the limits of Pala Police Station) **...ACCUSED.**

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OFFENCE PUNISHABLE U/SEC. 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881.

Advocates appeared :-
For the Complainant :- A.R.Pargaonkar.
For Accused :- K.R.Mehta.

JUDGMENT
(Delivered on 01.09.2026)

The accused is tried for the offence punishable under section 138 of the Negotiable Instruments Act, 1881(hereinafter referred to as “N.I. Act” for brevity).

Complainant's case in nutshell is as follows-

2. That, the complainant is a businessman. He is the Chairman and Managing Director of M/s. Menon Financial Services Ltd. and M/s. Menon Aviation and Hospitality Limited, Goregaon (E.). The accused is the businessman and politician. He had been maintaining a good friendly relation with the complainant. He approached the complainant in the year 2010 and requested for a friendly loan of Rs.2 Crores. The complainant agreed to give the said amount. The complainant gave that amount to the accused on different occasions during the year 2010.

3. The accused promised to repay the said amount on or before June, 2011. However, due to some financial difficulties, the accused could not repay the said amount to the complainant as promised. But, he further promised that he will repay the said amount before June, 2012. Considering the long relations with the accused of the complainant, the complainant agreed for the same. The accused was able to pay only an amount of Rs.25,00,000/- to the complainant on 10.04.2022 i.e. before the promised date. On that day he requested the complainant that he may be given more

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time for repayment of the balance amount. He also promised to reasonably compensate the loss sustained to the complainant. Thus, the complainant agreed to give more time to the accused for repayment of the balance amount along with compensation.

4. The non fulfillment of the promise by the accused to repay the balance amount borrowed from the complainant, had caused considerable damage to the complainant. Considering the good relations with the accused, the complainant agreed to settle the issue. So, accordingly, the entire claim of the complainant towards the accused was settled for an amount of Rs.3,25,00,000/-. This amount was including the amount of Rs.25,00,000/- already paid by the accused to the complainant.

5. The above said settlement was reduced into writing. An agreement was executed on 19.11.2013. The accused agreed thereby to pay an amount of Rs.1,00,00,000/- to the complainant on or before 04.12.2013 and the balance amount of Rs.2,00,00,000/- on or before 30.01.2014. It was also agreed that if the accused fails to pay the amount mentioned in the agreement, there shall be charge of the said amount on his immovable property situated at Aymanam village, Kottayam Taluka, purchased by the accused as per sale deed bearing No.644/1/2013 of Kottayam Principal Sub Registery Office.

6. Thereafter, the accused was unable to raise the amount within stipulated period till 19.11.2013. The accused met the complainant on 12.12.2014 at Ernaculam and it was agreed between the complainant and accused to extend the period till 31.05.2015. So, accordingly, the period was extended. As per the terms of the agreement, the accused issued the four cheques of the following description to the complainant-

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Sr. No.	Cheque No.	Date of Cheque	Amount Rs.	Drawee bank
1	036316	31.03.2015	1,00,00,000/-	Axis Bank Ltd., Palai, Kerala
2	036313	31.05.2015	1,00,00,000/-	Axis Bank Ltd., Palai, Kerala
3	036314	31.07.2015	50,00,000/-	Axis Bank Ltd., Palai, Kerala
4	036315	30.08.2015	75,00,000/-	Axis Bank Ltd., Palai, Kerala

7. Later on, again the validity period of the agreement was extended upto 31.08.2015. The complainant presented the cheque bearing No.036315 dated 30.08.2015 drawn on Axis Bank Ltd., Palai branch for an amount of Rs.75,00,000/- for the encashment in account at HDFC Bank, Dindoshi branch, Goregaon(E.), Mumbai. The said cheque issued by the accused returned unpaid with remark 'Drawer's signature differs' on 06.11.2015. The said fact was intimated by the complainant to the accused on 22.01.2016. The accused agreed to cancel the cheque bearing No.036315 and he accordingly issued a fresh cheque bearing No.036319 dated 22.01.2016 for an amount of Rs.75,00,000/- drawn on Axis Bank Ltd., Palai branch.

8. The complainant presented the cheque bearing No.036319 dated 22.01.2016 drawn on Axis Bank Ltd., Palai branch for an amount of Rs.75,00,000/- for the encashment in account at State Bank of Travancore, Ottapalom branch, Kerala. The said cheque issued by the accused returned unpaid with remark 'Funds Insufficient' on 27.01.2016. The complainant issued demand notice to the accused on 17.02.2016. The notice is duly received by the accused on 24.02.2016. However, he failed to pay the amount of dishonoured cheque. Hence, the complainant has filed the present

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complaint praying for conviction of the accused and compensation under section 357 of the Cr.P.C.

PLEA

9. Ld. Predecessor of this Court has recorded the Plea (Exh.P-5) of accused, to which he pleaded not guilty and claimed to be tried.

ORAL AND DOCUMENTARY EVIDENCE ADDUCED ON BEHALF OF THE COMPLAINANT

10. To prove his contentions in the complaint, the complainant has examined himself.

11. Besides, the above oral evidence, the complainant has relied upon the following documentary evidence-

SR.No.	Name of document	Exh.No.
1.	Original Cheque No.036319	8
2.	Bank Memo	9
3.	Postal receipt	10
4.	Demand Notice	11
5.	Postal acknowledgment	12
6.	Cheque No.036315	13
7.	Cheque return memo	14

STATEMENT OF THE ACCUSED AND HIS DEFENCE

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12. After evidence of the complainant came to be closed, the statement of accused under section 313 of the Code of Criminal Procedure came to be recorded. Accused has taken a defence of total denial. He denied to have borrowed any loan from the complainant and denied to have agreed to settle the dispute of repayment of loan

by agreeing to pay an amount of Rs.3,25,00,000/-. He also denied to have agreed to keep charge on his property situated at Aymanam, on failure of his repayment of the loan amount. He took a defence in respect of issuance of cheques as the cheques were issued as a guarantee for the agreement. He has denied to have received the demand notice.

13. The accused chose not to adduce any evidence on his behalf.

Argument on behalf of the complainant-

14. The Ld. Advocate for the complainant has filed on record the written notes of arguments(Exh.19). It is argued that the accused was in need of friendly loan for meeting his business as well as personal needs of Rs.2,00,00,000/-. On the request of the accused, the complainant from time to time on different occasions provided friendly loan to the accused during year 2010. The accused promised to repay the same on or before June, 2011. The accused failed to raise the funds to repay the loan amount within stipulated period. He assured the complainant that he will repay the amount before June, 2012.

15. The accused returned an amount of Rs.25,00,000/- on 10.04.2012. However, he failed to pay the balance amount. Later on, it was agreed between the accused and the complainant that the accused will pay total amount of Rs.3,25,00,000/- including the amount already paid on 10.04.2012. This settlement took place due to failure of accused to pay the amount by the accused till June, 2012 as agreed. So, written agreement was executed as per the settlement on 19.11.2013. The accused agreed to pay Rs.1,00,00,000/- on or before 04.12.2013 and the balance amount of

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Rs.2,00,00,000/- on or before 30.01.2014.

16. As the accused again has failed to repay the amount as per the agreement dated 19.11.2013, on the request of the accused the time was extended for repayment to the accused till 21.05.2015. So, the necessary changes and endorsement was made in the agreement. Thereafter, in the month of February, 2015 the accused again requested the complainant for further time for repayment of the loan amount. He issued four cheques for repayment of the loan amount drawn on Axis Bank, Palai, Kerala. The validity of the agreement was extended till 31.08.2015 and the same was endorsed at the bottom portion of the said agreement and signed by both the parties.

17. As per terms of the agreement between the parties, the complainant presented the disputed cheque in his bank account namely HDFC Bank Limited, Dindoshi branch, Goregaon(E.), Mumbai. The cheque was returned unpaid with a memo having remark "Insufficient Funds". The complainant issued demand notice to the accused through his counsel demanding payment of dishonoured cheque. The accused received the demand notice on 01.05.2015. The accused did not repay the amount of dishonoured cheque nor replied the demand notice.

18. After recording the plea of the accused, the complainant has adduced his evidence. The Ld. Counsel for the accused has cross-examined the complainant in detail. However, no dispute towards the borrowing amount by the accused from the complainant is being raised. On behalf of the accused during cross-examination the M.O.U. is referred from time to time. However, the accused never has disputed the signatures on the said M.O.U. The accused

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has denied his liability in his statement under section 313 of the Cr.P.C. However, he has not examined himself on oath.

19. The accused has not taken a probable defence and has not adduced evidence to that effect. In such circumstances, it is argued that the accused has committed an offence punishable under section 138 of the N.I.Act. Thus, it is requested that accused be convicted and sentenced for imprisonment for the offence punishable under section 138 of the N.I.Act. Moreover, it is prayed that the complainant be adequately compensated in terms of money.

Argument on behalf of the accused.

20. The Ld. Counsel for the accused has filed the written notes of arguments(Exh.20). It has been submitted that, the complainant has examined himself to prove his case. However, he has miserably failed to prove the same. In the cross-examination, he admitted as follows-

"It is correct to say that, all four cheques were issued as per the settlement dated 19.11.2013, which was extended upto 30.04.2016. It is correct to say that all the four cheques were deposited by me before the extended expiry period of agreement which was to come to an end by 30.04.2016".

21. In respect of the above admission in cross-examination it has been argued that on the day and date of presentation of cheque, there was no existing legally enforceable liability. In this case the cheque has been returned on 27.01.2016, much before liability became a legally enforceable liability. So, it is argued that the entire case of the complainant fails absolutely, as the basic criteria mandated under explanation u/sec.138 of the N.I.Act is not fulfilled.

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22. It is further argued that the complainant has admitted in his cross-examination that he is not able to recollect the exact date on which he has made payment to the accused. It is also argued that the complainant has failed to obtain any receipt of the amount from the accused. Further it is argued that the complainant has failed to produce his income tax documents to show the transaction of lending amount of Rs.2,00,00,000/- to the accused.

23. It is argued that the complainant in his affidavit filed in lieu of examination-in-chief stated that, he handed over the amount of Rs.2,00,00,000/- to the accused on different occasions during the year 2010 by way of cheque and cash. However, no record is brought by the complainant to prove the cheque transactions. Hence, it is argued that, the case of the complainant is false.

24. It is argued that complainant in his complaint has averred that the friendly loan was paid to the accused in cash. However, the complainant in his affidavit filed in lieu of examination-in-chief has stated that the amount was handed over to the accused by way of cash and cheque, this falsifies the claim of the accused.

25. It is argued that huge amount was allegedly given to the accused. If the amount really would have been given, proper documentation of it would have taken place. However, there is no proper documentation. The complainant has not adduced any evidence to the effect of his financial capacity. He is having no money lending license. The evidence on record shows the illegal money lending business of the complainant. The agreement executed between the accused and the complainant is admittedly unregistered one.

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26. The extension of agreement has been made on a blank paper, instead of a stamp paper. Therefore, the agreement is having no legal weightage. It is further argued that by way of so called agreement executed between the complainant and the accused, the amount was agreed firstly of Rs.3,00,00,000/- be paid by the accused. However, later on the said amount was increased to Rs.3,25,00,000/- without any justification. It is admitted by the complainant that no confirmation deed about revival or extension of the time period of repayment of loan was registered. Thus, the agreement, the revival of the agreement and extension given to the accused for repayment etc. are stated to be illegal. The agreement is argued to be not enforceable.

27. It is argued that the complainant has admitted in his cross-examination that as and when the repayment is made by the accused, the cheques will be returned to the accused. So, to this effect it is argued that the cheques issued to the complainant were nothing but security instruments. The complainant has admitted that he was supposed to return the instruments to the accused on receipt of the amount in cash. It is argued that the complainant has not come with clean hands to seek justice. He has suppressed true facts.

28. It is argued that as the complainant has failed to adduce any evidence as regards to his capacity to advance loan of the exorbitant amount as mentioned in the complaint, the complainant has failed to prove his contentions in the complaint. It is further argued that the complainant in his verification clause of the evidence affidavit has failed to mention the source of information. Therefore, the affidavit filed by the complainant in lieu of examination-in-chief is not as per Rule V of Chapter VII of the Criminal Manual. Hence, it

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is argued that the affidavit of the complainant is defective and is inadmissible.

29. For all the above reasons, it has been argued that the complainant has not successfully proved his contentions in the complaint. It is argued that the complainant has brought it probable defence. So, it has been prayed that the complaint be dismissed and the accused be acquitted of the offence punishable under section 138 of the N.I.Act.

POINTS FOR DETERMINATION-

30. After having regard to the facts and rival contentions on record, following points do arise for determination of this Court. This Court has recorded its findings on each of them for the reasons stated herein under :-

Sr. No.	Points	Findings
1)	Whether the complainant proves the mandatory compliance of section 142 of the N.I.Act ?	**Yes.**
2)	Whether the complainant proves legally enforceable debt against the accused ?	**Yes.**
3)	Whether accused raised probable defence to rebut the presumption under section 139 and 118 of the N.I.Act ?	**No.**
4)	What order ?	**As per final order.**

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REASONS

AS TO POINT NO. 1 :-

31. The offence punishable under section 138 of N.I.Act can

be proved with the concatenation of the following components-

i) Drawing of the cheque,

ii) Presentation of the cheque to the bank in a stipulated period,

iii) Returning the cheque unpaid by the drawee bank,

iv) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount,

v) Failure of the drawer to make payment within stipulated period of the receipt of notice.

32. The concatenation of all the five components is a sine-qua-non for the completion of the offence punishable under section 138 of the N.I.Act. In the light of these components it is to be seen whether the complainant succeeds in proving his case or not.

33. In order to see that in the present complaint the complainant has made mandatory compliance, it becomes necessary to see the following dates-

1)	Cheque dated	22.01.2016
2)	Cheque presented on	22.01.2016
3)	Cheque dishonoured on	27.01.2016
4)	Demand notice issued on	17.02.2016
5)	Demand notice received by accused on	24.02.2016
6)	15 days period of notice expired on	11.03.2016
7)	Complaint filed on	28.03.2016

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34. After perusal of the above said all dates, it becomes

amply clear that the present complaint is filed well within the period of limitation. Hence, it is observed that the complainant has made the mandatory compliance as required for proving commission of an offence punishable under section 138 of the N.I.Act. Therefore, point No.1 is answered in the affirmative.

AS TO POINT NOS. 2 and 3 :-

35. These points being interlinked are discussed together to avoid repetitive discussion.

36. The important ingredient of the offence punishable under section 138 of the N.I.Act is that the cheque must have been issued for the discharge in whole or in part of any debt or other liability. If the cheque is not issued for the discharge of any debt or other liability, section 138 cannot be invoked.

37. Hon'ble Apex Court in ***Laxmi Dyechem*** **V/s.*State of Gujarat,* 2013 (1) RCR (Criminal)**, has categorically held that if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. To raise probable defence, accused can rely upon the material submitted by the complainant. Needless to say, if the accused/drawer of cheque in question neither raises a probable defence nor is able to contest existence of a legally enforceable debt or liability, statutory presumption under S.139 of the N.I.Act regarding commission of the offence comes into play.

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38. Section 139 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. While Section 138 of the N.I.Act specifies the strong criminal remedy in relation to

the dishonour of the cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. 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 all preponderance of probabilities.

39. Therefore, if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defence and it is inconceivable that in some cases the accused may not need to adduce the evidence of his/her own. If however, the accused/drawer of a cheque in question neither raises a probable defence nor able to contest existence of a legally enforceable debt or liability, obviously statutory presumption under Section 139 of the NI Act regarding commission of the offence comes into play if the same is not rebutted with regard to the materials submitted by the complainant.

40. In this context this Court find it profitable to quote Judgment in the case of ***Hiten P. Dalal* v.*Bartender Nath Bannerji*, (2001) 6 SCC 16**, wherein it has been held as under:

"The words 'unless the contrary is proved' which occur in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be

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rebutted ……"

41. In view of the above provision, it is necessary to scrutinize evidence brought on record. Dinesh Menon(C.W.1) in his affidavit filed in lieu of examination-in-chief has reiterated the contents of the complaint.

42. Dinesh Menon(C.W.1) is cross-examined by the Ld. Counsel for the accused. In that cross-examination it has been tried to bring on record that, there exist no liability. It has come in the cross-examination as follows-

"In October 2010 I have given amount of Rs.2 Crores to the accused. At this moment, I do not recollect the exact date on which I have made payment of said amount to the accused. I paid said amount to the accused on the occasion of auspicious festival of Onam in the month October, 2010 but I don't recollect the date of said payment. I didn't ask for receipt from the accused, as it was a friendly loan".

43. Further, in the cross-examination of the complainant it has been brought on record that the complainant is having no money lending license. It has been brought on record through cross-examination of the complainant that he has not produced any account statement in support of his statement that he has made payment to the accused on different occasions during year 2010 by way of cheque and cash on various occasions. It has also brought on record that the agreement executed between him and the accused is not a registered one.

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44. After going through the cross-examination and the defence taken on behalf of the accused, it notices that the accused

has taken a defence that the huge amount of Rs.2 Crores is being lent by the complainant to the accused without any agreement, which according to accused is not probable. Further, in order to justify his defence, the accused has tried to bring on record that the complainant has not brought on record any documentary evidence such as bank pass book or income tax returns about payment of Rs.2 Crores to the accused.

45. On scrutiny of the evidence on record, this Court do find that the complainant has filed on record the original M.O.U. in C.C.No.3277/SS/2015(Exh.12). According to the M.O.U., it appears that the M.O.U. is executed by the accused on 19.04.2012, whereby he has in clear terms admitted to have received an amount of Rs.2 Crores and accepted the liability of making payment of Rs.3,25,00,000/- as settlement amount, including the amount of Rs.25,00,000/- paid by the accused on 10.04.2012.

46. The accused in entire cross-examination of the complainant has not disputed the execution of the agreement dated 19.04.2012. Further more, it notices that from time to time the date of agreement is extended is also not disputed by the accused. The initial period granted to the accused for payment of friendly loan amount and compensation is upto 04.12.2013. Thereafter, the period is found to be extended upto 31.05.2015. Thereafter, the period came to be extended upto 31.08.2015. Lastly, the said period came to be extended upto 30.04.2016.

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47. It is admitted by the accused that the period of the agreement was extended upto 30.04.2016. The contents of the agreement dated 19.04.2012 are not found disputed at all. In the said agreement it notices that as per the extension and modified

supplementary agreement it appears that the accused has issued in all four cheques to the complainant as averred by the complainant in the complaint.

48. In the above said circumstances, the accused cannot dispute non receipt of an amount of Rs.2 Crores from the complainant or cannot dispute that he never agreed to pay the amount of Rs.3.25 Crores to the complainant. It is for the reason that the terms of the agreement do speak in clear terms that the accused has agreed for repayment of Rs.3,25,00,000/- including the earlier payment of Rs.25,00,000/- dated 10.04.2012. For the balance amount, he has issued the four cheques as averred by the complainant in his complaint.

49. It appears from the arguments on behalf of the accused that the date of agreement was upto 30.04.2016 and therefore, the complainant ought to have presented the disputed cheques mentioned in the complaint after 30.04.2016. However, this argument is found to be devoid of merits. It is for the reason that the accused has specifically mentioned the dates in the agreement itself. Those all dates mentioned in the agreement of the cheques issued in favour of the complainant are as 31.03.2015, 31.05.2015, 31.07.2015 and 30.08.2015, which are earlier than 30.04.2016.

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50. In the above said circumstances, if the dates of cheques issued by the accused are earlier than the date of agreement period then the accused cannot take the defence that the validity of the agreement was upto 30.04.2016 therefore, the complainant ought to have waited for 30.04.2016. Once the cheque issued of a particular date are presented on that particular date, then the complainant is right in his action. He is having every right for the amount

mentioned on cheque. So, the defence of the accused to this respect is found devoid of merits.

51. So far as the defence of the accused that in the complaint the complainant has averred that he has lent the amount of Rs.2 Crores to the accused in cash and in the affidavit filed in lieu of examination-in-chief, he deposed that he has lent that amount partly in cash and partly through cheques. The defence of accused to this respect is that the complainant has not filed the bank entries. So, according to the Ld. Counsel for the accused, it is doubtful that the accused has received any loan from the complainant.

52. In respect of the above said defence of the accused, it is observed that it is admitted position that for the loan of Rs.2 Crores, no agreement was executed between the complainant and the accused. However, later on, the settlement has taken place between the complainant and the accused and an M.O.U. came to be executed between them. In view of that settlement M.O.U. the accused has admitted the debt amount and has become ready for payment of Rs.3,25,00,000/- as compensation for an amount of loan of Rs.2 Crores, which amount was including the earlier repayment of Rs.25,00,000/- by the accused on 10.04.2012. In such circumstances, without there being anything brought on record about the doubtfulness of the execution of the M.O.U., signatures thereon, etc. the accused cannot take the benefit of the sentence in the evidence affidavit that the amount was paid by the complainant partly in cash and partly through cheques. Once the accused agreed to pay the amount and receipt of the amount by the execution of M.O.U., he is estopped by virtue of the principle of estoppel.

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53. Further more, the defence taken on behalf of the

accused is that the agreement is not a registered one. To this respect, it is observed that Law does not require that the agreement or the M.O.U. of the money lent must be registered one. Even oral transaction is proved maintainable in Law. Further more, the defence of accused is also about capacity of the complainant to advance loan of the exorbitant amount. To this respect also this Court do observe that no evidence is required from the complainant about his capacity if the accused himself by virtue of memorandum of understanding admitted receipt of the amount. The burden in the 138 proceeding is reverse. The accused must have to brought probable defence and create dent in the case of the complainant about its genuineness, to which the accused has miserably failed.

54. It is also one of the defence of the accused that source of information is not stated by the complainant in his evidence affidavit. However, this Court do observe that the accused has not been able to bring on record through cross-examination that which fact was not within the knowledge of the complainant and is stated by the complainant and its source not disclosed by him in his verification of the evidence affidavit. In such circumstances, the evidence affidavit of the complainant cannot be discarded nor can anything in it can be disbelieved.

55. It is crucial to observe that in the instant matter the accused has not adduced any evidence on his behalf. In his statement under section 313 of the Cr.P.C. also the accused is not able to explain the incriminating circumstances against him. He only stated the answers to the questions put forth in his statement under section 313 Cr.P.C. as ‘it is false’. It is pertinent to note that the accused has not disputed his address on which the demand notice was issued. The demand notice issued to the accused is on correct

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address. As per section 27 of the General Clauses Act, if letter is dispatched on correct address, it is presumed to be duly served.

56. The accused has in his statement under section 313 of the Cr.P.C. has taken a defence that he has not received the demand notice. However, for the above said reason, his defence is not acceptable. To the contrary, on behalf of the complainant, the acknowledgment card of the demand notice is filed on record. Therefore, the service of demand notice upon the accused is very well proved by the complainant beyond reasonable doubt.

57. From the perusal of the record it becomes important to note that the accused has failed to give reply to the demand notice despite receipt of the demand notice. This is certainly an adverse fact against the accused. To this respect this Court would like to rely upon Judgment of the Hon'ble Apex Court in the case of **Kuntegowda V/s. Thurubaiah(Judgment dated 04.08.2026) in Special Leave Petition(Criminal) No.2247 of 2024,** wherein it is observed as under-

"The failure of the accused to respond to the statutory notice issued under section 138 of the N.I.Act gives rise to an inference that the complainant's version carries merit. The initial burden of raising a defence that the complainant lacked the financial capacity to advance the loan rests upon the accused and ought to have been specifically pleaded in reply to the demand notice. In absence of such a plea, the complainant cannot be expected, to adduce evidence establishing his financial capacity to pay the loan to the accused while leading his evidence."

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58. In conclusion, for all the aforesaid reasons, it is observed that, in order to rebut the presumption under section 139 of the N.I.Act, accused has miserably failed. Per contra, the complainant

has successfully proved his contentions that accused has issued cheque in his favour for discharge of legally enforceable liability. So, point No.2 is answered in the affirmative and point No.3 is answered in the negative.

AS TO POINT NO. 4 :-

59. As mentioned earlier, the complainant has proved that accused drawn disputed cheque(Exh.8) in his favour for the discharge of his legal liability and the same has been dishonoured. On the contrary, accused has failed to rebut the presumptions under section 118, 139 and 146 of the N.I.Act. The complainant has proved that accused has committed an offence punishable under section 138 of the N.I.Act. Therefore, accused is found guilty and liable to be convicted.

60. This Court do not want to extend benefit of the provisions of the Probation of Offenders Act, 1958 to accused as the present is an economic offence. There is no question of reforming of accused, who are found guilty of the offence. This has very well been observed in the case of **M.V. Nalinakshan V/s. M.Rameshan, 2009 Cr.L.J. 1703.**

Hearing on the point of sentence:

61. In spite of repeated calls accused remained absent. Ld. Advocate for accused Shri.K.R.Mehta present. He submitted that accused is old man, he is heart patient. Hence, he requested to show leniency while awarding sentence. None present on behalf of the complainant to make submissions. Record shows that the accused is avoiding to remain present in the matter without any justifiable reasons. Therefore, this Court is constrained and compelled to proceed with the Judgment in absence of the accused. By his conduct

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accused has waived off his chance to submit on the point of sentence.

62. After hearing on the point of sentence, this Court find it profitable to quote the observations of the Hon'ble Apex Court in the case of **Hari Kishan and State of Haryana V/s. Sukhbir Singh and Ors. (AIR(1988) SC 2127)** wherein it is observed that, *"It is well to remember that this Court has emphasized the need for making liberal use of that provision".*

63. Further, it is observed in the case of Hari Kishan(supra cited) that, *"The Court may enforce the order by imposing sentence in default".*

64. In the case of **Suganthi Sureshkumar Jagdishan (AIR 2002 SUPREME COURT 681)** wherein it is observed that, *"No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light heartedly. The very object of enactment of provisions like Section 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount atleast during the pendency of the case".*

65. Question also needs to be determined whether Magistrate Court can grant interest on the amount of cheque in a case filed for the offence punishable under section 138 of the N.I.Act. A useful reference can be made in this regard through the decision of the Hon'ble Apex Court, in the case of **R.Vijayan V/s. Baby and another (AIR 2012 SUPREME COURT 528)** wherein it is observed as follows, "*As the provisions of Chapter XVII of he Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine upto twice the cheque amount (keeping in view the cheque amount and the simple*

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interest thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation”.

66. In Judgment reported in **Krishi Vikas Kendra V/s. Mukund Funde (2006 ALL MR (Cri) 416)** wherein it is observed that, *“Quantum of compensation shall also include interest, costs etc.”*

67. Having regard to the above legal position, now quantum of punishment and of compensation is required to be decided. Case record clearly shows that, accused gave a cheque in question to the complainant for repayment of the amount. The cheque issued in the case is for discharging of his legal liability. Considering the nature of the offence and circumstances under which it is committed, it will be proper to convict accused and sentence him to suffer Simple Imprisonment for One year. The complainant has suffered loss due to illegal act of the accused. Therefore, it will be proper to direct accused to pay the compensation amount to the complainant i.e. an amount of Rs.1,20,00,000/-(Rupees One Crore Twenty Lakhs only) with simple interest @ 9% p.a. from the date of this order till realization of the entire amount towards the compensation within a period of one month from the date of this order vide section 357(3) of the Code of Criminal Procedure, 1973 and in default sentence him to suffer Simple Imprisonment for three months. Considering all the above aspects, in answer to point No.4, the following order is passed-

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<u>O R D E R</u>

1) The accused Mr.Mani C. Kappen is hereby convicted for the offence punishable under section 138 of the Negotiable Instrument Act, 1881 vide section 255(2) of the Code of Criminal Procedure, 1973.

2) Accused is sentenced to suffer simple imprisonment for period of One Year and he shall pay compensation of Rs.1,20,00,000/- (Rupees One Crore Twenty Lakhs only) with simple interest @ 9% p.a. from the date of this order till realization of the entire amount towards the compensation within a period of one month from the date of this order vide section 357(3) of the Code of Criminal Procedure, 1973 in default of payment of compensation, the accused shall suffer further simple imprisonment for the period of three months.

3) The amount of compensation if realized from the accused, it shall be paid to the complainant, subject to expiry of the appeal period or the orders of Honourable Appellate Court (if any).

4) Accused to surrender his bail bonds.

5) Today i.e. on the date of Judgment accused remained absent, hence issue standing Non-bailable warrant against him for his arrest through concerned police station for execution of sentence in view of Section 418 (2) of Cr.P.C.

6) The copy of this Judgment shall be provided to the convicted accused free of cost, in view of section 363(1) of the Code of Criminal Procedure, 1973.

(Dictated and pronounced in open Court)

SHIVAJI ARJUN KHALANE
Digitally signed by SHIVAJI ARJUN KHALANE
Date: 2026.09.01 17:45:34 +0530

(**S. A. KHALANE**)
Metropolitan Magistrate,
43rd Court, Borivali, Mumbai.

Date : 01.09.2026.
kdc

Dictated on : 01.09.2026.
Typed on : 01.09.2026.
Signed on : 01.09.2026.

MHMM170230532015

Received on (To Kerala Court)
: 29.05.2015.
Received on (To this Court)
: 03.05.2016.
Registered on : 03.05.2016.
Decided on : 01.09.2026.
Duration : 11-Y 03-M 03-D.

IN THE COURT OF METROPOLITAN MAGISTRATE, 43rd COURT, BORIVALI, MUMBAI

(BEFORE SHRI. S. A. KHALANE)

C. C. No. : 4302080/SS/2016
(Old C.C. S.T.No.2698/2015)
(CNR NO.MHMM17-023053-2015)

Exh.21.

Mr.Dinesh Menon.
S/o.Late C.P.Menon.
Residing at 001 A-14,
Aradhana, Gokuldham,
Goregaon East, Mumbai-400 063. **...COMPLAINANT.**

V/s.

Mr.Mani C. Kappen.
S/o.Cheriyan J.Kappen,
Kappil Veettil, Lalam Village,
Palai P.O. Kottayam District,
Pin-686 575. **...ACCUSED.**

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OFFENCE PUNISHABLE U/SEC. 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881.

Advocates appeared :-
For the Complainant :- A.R.Pargaonkar.
For Accused :- K.R.Mehta.

JUDGMENT
(Delivered on 01.09.2026)

The accused is tried for the offence punishable under section 138 of the Negotiable Instruments Act, 1881(hereinafter referred to as "N.I. Act" for brevity).

Complainant's case in nutshell is as follows-

2. That, the complainant is a businessman. He is the Chairman and Managing Director of M/s. Menon Financial Services Ltd. and M/s. Menon Aviation and Hospitality Limited, Goregaon (E.). The accused is the businessman and politician. He had been maintaining a good friendly relation with the complainant. He approached the complainant in the year 2010 and requested for a friendly loan of Rs.2 Crores. The complainant agreed to give the said amount. The complainant gave that amount to the accused on different occasions during the year 2010.

3. The accused promised to repay the said amount on or before June, 2011. However, due to some financial difficulties, the accused could not repay the said amount to the complainant as promised. But, he further promised that he will repay the said amount before June, 2012. Considering the long relations with the accused of the complainant, the complainant agreed for the same. The accused was able to pay only an amount of Rs.25,00,000/- to the complainant on 10.04.2022 i.e. before the promised date. On that day he requested the complainant that he may be given more time for repayment of the balance amount. He also promised to reasonably compensate the loss sustained to the complainant. Thus, the complainant agreed to give more time to the accused for

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repayment of the balance amount along with compensation.

4. The non fulfillment of the promise by the accused to repay the balance amount borrowed from the complainant, had caused considerable damage to the complainant. Considering the good relations with the accused, the complainant agreed to settle the issue. So, accordingly, the entire claim of the complainant towards the accused was settled for an amount of Rs.3,25,00,000/-. This amount was including the amount of Rs.25,00,000/- already paid by the accused to the complainant.

5. The above said settlement was reduced into writing. An agreement was executed on 19.11.2013. The accused agreed thereby to pay an amount of Rs.1,00,00,000/- to the complainant on or before 04.12.2013 and the balance amount of Rs.2,00,00,000/- on or before 30.01.2014. It was also agreed that if the accused fails to pay the amount mentioned in the agreement, there shall be charge of the said amount on his immovable property situated at Aymanam village, Kottayam Taluka, purchased by the accused as per sale deed bearing No.644/1/2013 of Kottayam Principal Sub Registery Office.

6. Thereafter, the accused was unable to raise the amount within stipulated period till 19.11.2013. The accused met the complainant on 12.12.2014 at Ernaculam and it was agreed between the complainant and accused to extend the period till 31.05.2015. So, accordingly, the period was extended. As per the terms of the agreement, the accused issued the four cheques of the following description to the complainant-

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Sr. No.	Cheque No.	Date of Cheque	Amount Rs.	Drawee bank
1	036316	31.03.2015	1,00,00,000/-	Axis Bank Ltd., Palai, Kerala

2	036313	31.05.2015	1,00,00,000/-	Axis Bank Ltd., Palai, Kerala
3	036314	31.07.2015	50,00,000/-	Axis Bank Ltd., Palai, Kerala
4	036315	30.08.2015	75,00,000/-	Axis Bank Ltd., Palai, Kerala

7. Later on, again the validity period of the agreement was extended upto 31.08.2015. The complainant presented the cheque bearing No.036316 dated 31.03.2015 drawn on Axis Bank Ltd., Palai branch for an amount of Rs.1,00,00,000/- for the encashment in account at HDFC Bank, Dindoshi branch, Goregaon(E.), Mumbai. The said cheque issued by the accused returned unpaid with remark 'Insufficient funds' on 02.04.2015. The complainant issued demand notice to the accused on 29.04.2015. The notice is duly received by the accused on 01.05.2015. However, he failed to pay the amount of dishonoured cheque. Hence, the complainant has filed the present complaint praying for conviction of the accused and compensation under section 357 of the Cr.P.C.

PLEA

8. Ld. Predecessor of this Court has recorded the Plea (Exh.P-4) of accused, to which he pleaded not guilty and claimed to be tried.

ORAL AND DOCUMENTARY EVIDENCE ADDUCED ON BEHALF OF THE COMPLAINANT

9. To prove his contentions in the complaint, the complainant has examined himself.

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10. Besides, the above oral evidence, the complainant has relied upon the following documentary evidence-

SR.No.	**Name of document**	**Exh.No.**
1.	Cheque	6
2.	Bank Memo	7
3.	Demand Notice	8
4.	Postal receipt	9
5.	Postal acknowledgment cards	10

STATEMENT OF THE ACCUSED AND HIS DEFENCE

11. After evidence of the complainant came to be closed, the statement of accused under section 313 of the Code of Criminal Procedure came to be recorded. Accused has taken a defence of total denial. He denied to have borrowed any loan from the complainant and denied to have agreed to settle the dispute of repayment of loan by agreeing to pay an amount of Rs.3,25,00,000/-. He also denied to have agreed to keep charge on his property situated at Aymanam, on failure of his repayment of the loan amount. He took a defence in respect of issuance of cheques as the cheques were issued as a guarantee for the agreement. He has denied to have received the demand notice.

12. The accused chose not to adduce any evidence on his behalf.

Argument on behalf of the complainant-

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13. The Ld. Advocate for the complainant has filed on record the written notes of arguments(Exh.19). It is argued that the accused was in need of friendly loan for meeting his business as well as personal needs of Rs.2,00,00,000/-. On the request of the accused, the complainant from time to time on different occasions provided friendly loan to the accused during year 2010. The accused promised

to repay the same on or before June, 2011. The accused failed to raise the funds to repay the loan amount within stipulated period. He assured the complainant that he will repay the amount before June, 2012.

14. The accused returned an amount of Rs.25,00,000/- on 10.04.2012. However, he failed to pay the balance amount. Later on, it was agreed between the accused and the complainant that the accused will pay total amount of Rs.3,25,00,000/- including the amount already paid on 10.04.2012. This settlement took place due to failure of accused to pay the amount by the accused till June, 2012 as agreed. So, written agreement was executed as per the settlement on 19.11.2013. The accused agreed to pay Rs.1,00,00,000/- on or before 04.12.2013 and the balance amount of Rs.2,00,00,000/- on or before 30.01.2014.

15. As the accused again has failed to repay the amount as per the agreement dated 19.11.2013, on the request of the accused the time was extended for repayment to the accused till 21.05.2015. So, the necessary changes and endorsement was made in the agreement. Thereafter, in the month of February, 2015 the accused again requested the complainant for further time for repayment of the loan amount. He issued four cheques for repayment of the loan amount drawn on Axis Bank, Palai, Kerala. The validity of the agreement was extended till 31.08.2015 and the same was endorsed at the bottom portion of the said agreement and signed by both the parties.

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16. As per terms of the agreement between the parties, the complainant presented the disputed cheque in his bank account namely HDFC Bank Limited, Dindoshi branch, Goregaon(E.),

Mumbai. The cheque was returned unpaid with a memo having remark “Insufficient Funds”. The complainant issued demand notice to the accused through his counsel demanding payment of dishonoured cheque. The accused received the demand notice on 01.05.2015. The accused did not repay the amount of dishonoured cheque nor replied the demand notice.

17. After recording the plea of the accused, the complainant has adduced his evidence. The Ld. Counsel for the accused has cross-examined the complainant in detail. However, no dispute towards the borrowing amount by the accused from the complainant is being raised. On behalf of the accused during cross-examination the M.O.U. is referred from time to time. However, the accused never has disputed the signatures on the said M.O.U. The accused has denied his liability in his statement under section 313 of the Cr.P.C. However, he has not examined himself on oath.

18. The accused has not taken a probable defence and has not adduced evidence to that effect. In such circumstances, it is argued that the accused has committed an offence punishable under section 138 of the N.I.Act. Thus, it is requested that accused be convicted and sentenced for imprisonment for the offence punishable under section 138 of the N.I.Act. Moreover, it is prayed that the complainant be adequately compensated in terms of money.

<u>Argument on behalf of the accused.</u>

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19. The Ld. Counsel for the accused has filed the written notes of arguments(Exh.20). It has been submitted that, the complainant has examined himself to prove his case. However, he has miserably failed to prove the same. In the cross-examination, he admitted as follows-

"It is correct to say that, all four cheques were issued as per the settlement dated 19.11.2013, which was extended upto 30.04.2016. It is correct to say that all the four cheques were deposited by me before the extended expiry period of agreement which was to come to an end by 30.04.2016".

20. In respect of the above admission in cross-examination it has been argued that on the day and date of presentation of cheque, there was no existing legally enforceable liability. In this case the cheque has been returned on 02.04.2015, much before liability became a legally enforceable liability. So, it is argued that the entire case of the complainant fails absolutely, as the basic criteria mandated under explanation u/sec.138 of the N.I.Act is not fulfilled.

21. It is further argued that the complainant has admitted in his cross-examination that he is not able to recollect the exact date on which he has made payment to the accused. It is also argued that the complainant has failed to obtain any receipt of the amount from the accused. Further it is argued that the complainant has failed to produce his income tax documents to show the transaction of lending amount of Rs.2,00,00,000/- to the accused.

22. It is argued that the complainant in his affidavit filed in lieu of examination-in-chief stated that, he handed over the amount of Rs.2,00,00,000/- to the accused on different occasions during the year 2010 by way of cheque and cash. However, no record is brought by the complainant to prove the cheque transactions. Hence, it is argued that, the case of the complainant is false.

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23. It is argued that complainant in his complaint has averred that the friendly loan was paid to the accused in cash. However, the complainant in his affidavit filed in lieu of

examination-in-chief has stated that the amount was handed over to the accused by way of cash and cheque, this falsifies the claim of the accused.

24. It is argued that huge amount was allegedly given to the accused. If the amount really would have been given, proper documentation of it would have taken place. However, there is no proper documentation. The complainant has not adduced any evidence to the effect of his financial capacity. He is having no money lending license. The evidence on record shows the illegal money lending business of the complainant. The agreement executed between the accused and the complainant is admittedly unregistered one.

25. The extension of agreement has been made on a blank paper, instead of a stamp paper. Therefore, the agreement is having no legal weightage. It is further argued that by way of so called agreement executed between the complainant and the accused, the amount was agreed firstly of Rs.3,00,00,000/- be paid by the accused. However, later on the said amount was increased to Rs.3,25,00,000/- without any justification. It is admitted by the complainant that no confirmation deed about revival or extension of the time period of repayment of loan was registered. Thus, the agreement, the revival of the agreement and extension given to the accused for repayment etc. are stated to be illegal. The agreement is argued to be not enforceable.

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26. It is argued that the complainant has admitted in his cross-examination that as and when the repayment is made by the accused, the cheques will be returned to the accused. So, to this effect it is argued that the cheques issued to the complainant were

nothing but security instruments. The complainant has admitted that he was supposed to return the instruments to the accused on receipt of the amount in cash. It is argued that the complainant has not come with clean hands to seek justice. He has suppressed true facts.

27. It is argued that as the complainant has failed to adduce any evidence as regards to his capacity to advance loan of the exorbitant amount as mentioned in the complaint, the complainant has failed to prove his contentions in the complaint. It is further argued that the complainant in his verification clause of the evidence affidavit has failed to mention the source of information. Therefore, the affidavit filed by the complainant in lieu of examination-in-chief is not as per Rule V of Chapter VII of the Criminal Manual. Hence, it is argued that the affidavit of the complainant is defective and is inadmissible.

28. For all the above reasons, it has been argued that the complainant has not successfully proved his contentions in the complaint. It is argued that the complainant has brought it probable defence. So, it has been prayed that the complaint be dismissed and the accused be acquitted of the offence punishable under section 138 of the N.I.Act.

POINTS FOR DETERMINATION-

29. After having regard to the facts and rival contentions on record, following points do arise for determination of this Court. This Court has recorded its findings on each of them for the reasons stated herein under :-

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Sr. No.	Points	Findings
1)	Whether the complainant proves the mandatory compliance of section 142 of the N.I.Act ?	**Yes.**
2)	Whether the complainant proves legally enforceable debt against the accused ?	**Yes.**
3)	Whether accused raised probable defence to rebut the presumption under section 139 and 118 of the N.I.Act ?	**No.**
4)	What order ?	**As per final order.**

R E A S O N S

AS TO POINT NO. 1 :-

30. The offence punishable under section 138 of N.I.Act can be proved with the concatenation of the following components-

i) Drawing of the cheque,

ii) Presentation of the cheque to the bank in a stipulated period,

iii) Returning the cheque unpaid by the drawee bank,

iv) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount,

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v) Failure of the drawer to make payment within stipulated period of the receipt of notice.

31. The concatenation of all the five components is a sine-qua-non for the completion of the offence punishable under section

138 of the N.I.Act. In the light of these components it is to be seen whether the complainant succeeds in proving his case or not.

32. In order to see that in the present complaint the complainant has made mandatory compliance, it becomes necessary to see the following dates-

1)	Cheque dated	31.03.2015
2)	Cheque presented on	02.04.2015
3)	Cheque dishonoured on	02.04.2015
4)	Demand notice issued on	29.04.2015
5)	Demand notice received by accused on	01.05.2015
6)	15 days period of notice expired on	16.05.2015
7)	Complaint filed on	29.05.2015

33. After perusal of the above said all dates, it becomes amply clear that the present complaint is filed well within the period of limitation. Hence, it is observed that the complainant has made the mandatory compliance as required for proving commission of an offence punishable under section 138 of the N.I.Act. Therefore, point No.1 is answered in the affirmative.

AS TO POINT NOS. 2 and 3 :-

34. These points being interlinked are discussed together to avoid repetitive discussion.

35. The important ingredient of the offence punishable under section 138 of the N.I.Act is that the cheque must have been issued for the discharge in whole or in part of any debt or other liability. If the cheque is not issued for the discharge of any debt or other liability, section 138 cannot be invoked.

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36. Hon'ble Apex Court in ***Laxmi Dyechem*** **V/s.*State of Gujarat,*** **2013 (1) RCR (Criminal)**, has categorically held that if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. To raise probable defence, accused can rely upon the material submitted by the complainant. Needless to say, if the accused/drawer of cheque in question neither raises a probable defence nor is able to contest existence of a legally enforceable debt or liability, statutory presumption under S.139 of the N.I.Act regarding commission of the offence comes into play.

37. Section 139 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. While Section 138 of the N.I.Act specifies the strong criminal remedy in relation to the dishonour of the cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. 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 all preponderance of probabilities.

38. Therefore, if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defence and it is **inconvincibl**e that in some cases the accused may not need to adduce the evidence of his/her own. If however, the accused/drawer of a cheque in question neither raises a probable defence nor able to contest existence of a legally enforceable debt or liability, obviously statutory presumption under Section 139 of the NI Act regarding commission of the offence comes

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into play if the same is not rebutted with regard to the materials submitted by the complainant.

39. In this context this Court find it profitable to quote Judgment in the case of ***Hiten P. Dalal* v.*Bartender Nath Bannerji*, (2001) 6 SCC 16**, wherein it has been held as under:

"The words 'unless the contrary is proved' which occur in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted ......"

40. In view of the above provision, it is necessary to scrutinize evidence brought on record. Dinesh Menon(C.W.1) in his affidavit filed in lieu of examination-in-chief has reiterated the contents of the complaint.

41. Dinesh Menon(C.W.1) is cross-examined by the Ld. Counsel for the accused. In that cross-examination it has been tried to bring on record that, there exist no liability. It has come in the cross-examination as follows-

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"In October 2010 I have given amount of Rs.2 Crores to the accused. At this moment, I do not recollect the exact date on which I have made payment of said amount to the accused. I paid said amount to the accused on the occasion of auspicious festival of Onam in the month October, 2010 but I don't recollect the date of

said payment. I didn't ask for receipt from the accused, as it was a friendly loan".

42. Further, in the cross-examination of the complainant it has been brought on record that the complainant is having no money lending license. It has been brought on record through cross-examination of the complainant that he has not produced any account statement in support of his statement that he has made payment to the accused on different occasions during year 2010 by way of cheque and cash on various occasions. It has also brought on record that the agreement executed between him and the accused is not a registered one.

43. After going through the cross-examination and the defence taken on behalf of the accused, it notices that the accused has taken a defence that the huge amount of Rs.2 Crores is being lent by the complainant to the accused without any agreement, which according to accused is not probable. Further, in order to justify his defence, the accused has tried to bring on record that the complainant has not brought on record any documentary evidence such as bank pass book or income tax returns about payment of Rs.2 Crores to the accused.

44. On scrutiny of the evidence on record, this Court do find that the complainant has filed on record the original M.O.U. in C.C.No.3277/SS/2015(Exh.12). According to the M.O.U., it appears that the M.O.U. is executed by the accused on 19.04.2012, whereby he has in clear terms admitted to have received an amount of Rs.2 Crores and accepted the liability of making payment of Rs.3,25,00,000/- as settlement amount, including the amount of Rs.25,00,000/- paid by the accused on 10.04.2012.

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45. The accused in entire cross-examination of the complainant has not disputed the execution of the agreement dated 19.04.2012. Further more, it notices that from time to time the date of agreement is extended is also not disputed by the accused. The initial period granted to the accused for payment of friendly loan amount and compensation is upto 04.12.2013. Thereafter, the period is found to be extended upto 31.05.2015. Thereafter, the period came to be extended upto 31.08.2015. Lastly, the said period came to be extended upto 30.04.2016.

46. It is admitted by the accused that the period of the agreement was extended upto 30.04.2016. The contents of the agreement dated 19.04.2012 are not found disputed at all. In the said agreement it notices that as per the extension and modified supplementary agreement it appears that the accused has issued in all four cheques to the complainant as averred by the complainant in the complaint.

47. In the above said circumstances, the accused cannot dispute non receipt of an amount of Rs.2 Crores from the complainant or cannot dispute that he never agreed to pay the amount of Rs.3.25 Crores to the complainant. It is for the reason that the terms of the agreement do speak in clear terms that the accused has agreed for repayment of Rs.3,25,00,000/- including the earlier payment of Rs.25,00,000/- dated 10.04.2012. For the balance amount, he has issued the four cheques as averred by the complainant in his complaint.

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48. It appears from the arguments on behalf of the accused that the date of agreement was upto 30.04.2016 and therefore, the complainant ought to have presented the disputed cheque mentioned

in the complaint after 30.04.2016. However, this argument is found to be devoid of merits. It is for the reason that the accused has specifically mentioned the dates in the agreement itself. Those all dates mentioned in the agreement of the cheques issued in favour of the complainant are as 31.03.2015, 31.05.2015, 31.07.2015 and 30.08.2015, which are earlier than 30.04.2016.

49. In the above said circumstances, if the dates of cheques issued by the accused are earlier than the date of agreement period then the accused cannot take the defence that the validity of the agreement was upto 30.04.2016 therefore, the complainant ought to have waited for 30.04.2016. Once the cheque issued of a particular date are presented on that particular date, then the complainant is right in his action. He is having every right for the amount mentioned on cheque. So, the defence of the accused to this respect is found devoid of merits.

50. So far as the defence of the accused that in the complaint the complainant has averred that he has lent the amount of Rs.2 Crores to the accused in cash and in the affidavit filed in lieu of examination-in-chief, he deposed that he has lent that amount partly in cash and partly through cheques. The defence of accused to this respect is that the complainant has not filed the bank entries. So, according to the Ld. Counsel for the accused, it is doubtful that the accused has received any loan from the complainant.

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51. In respect of the above said defence of the accused, it is observed that it is admitted position that for the loan of Rs.2 Crores, no agreement was executed between the complainant and the accused. However, later on, the settlement has taken place between the complainant and the accused and an M.O.U. came to be executed

between them. In view of that settlement M.O.U. the accused has admitted the debt amount and has become ready for payment of Rs.3,25,00,000/- as compensation for an amount of loan of Rs.2 Crores, which amount was including the earlier repayment of Rs.25,00,000/- by the accused on 10.04.2012. In such circumstances, without there being anything brought on record about the doubtfulness of the execution of the M.O.U., signatures threon, etc. the accused cannot take the benefit of the sentence in the evidence affidavit that the amount was paid by the complainant partly in cash and partly through cheques. Once the accused agreed to pay the amount and receipt of the amount by the execution of M.O.U., he is estopped by virtue of the principle of estoppel.

52. Further more, the defence taken on behalf of the accused is that the agreement is not a registered one. To this respect, it is observed that Law does not require that the agreement or the M.O.U. of the money lent must be registered one. Even oral transaction is proved maintainable in Law. Further more, the defence of accused is also about capacity of the complainant to advance loan of the exorbitant amount. To this respect also this Court do observe that no evidence is required from the complainant about his capacity if the accused himself by virtue of memorandum of understanding admitted receipt of the amount. The burden in the 138 proceeding is reverse. The accused must have to brought probable defence and create dent in the case of the complainant about its genuineness, to which the accused has miserably failed.

53. It is also one of the defence of the accused that source of information is not stated by the complainant in his evidence affidavit. However, this Court do observe that the accused has not been able to bring on record through cross-examination that which

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fact was not within the knowledge of the complainant and is stated by the complainant and its source not disclosed by him in his verification of the evidence affidavit. In such circumstances, the evidence affidavit of the complainant cannot be discarded nor can anything in it can be disbelieved.

54. It is crucial to observe that in the instant matter the accused has not adduced any evidence on his behalf. In his statement under section 313 of the Cr.P.C. also the accused is not able to explain the incriminating circumstances against him. He only stated the answers to the questions put forth in his statement under section 313 Cr.P.C. as 'it is false'. It is pertinent to note that the accused has not disputed his address on which the demand notice was issued. The demand notice issued to the accused is on correct address. As per section 27 of the General Clauses Act, if letter is dispatched on correct address, it is presumed to be duly served.

55. The accused has in his statement under section 313 of the Cr.P.C. has taken a defence that he has not received the demand notice. However, for the above said reason, his defence is not acceptable. To the contrary, on behalf of the complainant, the acknowledgment card of the demand notice is filed on record. Therefore, the service of demand notice upon the accused is very well proved by the complainant beyond reasonable doubt.

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56. From the perusal of the record it becomes important to note that the accused has failed to give reply to the demand notice despite receipt of the demand notice. This is certainly an adverse fact against the accused. To this respect this Court would like to rely upon Judgment of the Hon'ble Apex Court in the case of **Kuntegowda V/s. Thurubaiah(Judgment dated 04.08.2026) in Special Leave**

Petition(Criminal) No.2247 of 2024, wherein it is observed as under-

"The failure of the accused to respond to the statutory notice issued under section 138 of the N.I.Act gives rise to an inference that the complainant's version carries merit. The initial burden of raising a defence that the complainant lacked the financial capacity to advance the loan rests upon the accused and ought to have been specifically pleaded in reply to the demand notice. In absence of such a plea, the complainant cannot be expected, to adduce evidence establishing his financial capacity to pay the loan to the accused while leading his evidence."

57. In conclusion, for all the aforesaid reasons, it is observed that, in order to rebut the presumption under section 139 of the N.I.Act, accused has miserably failed. Per contra, the complainant has successfully proved his contentions that accused has issued cheque in his favour for discharge of legally enforceable liability. So, point No.2 is answered in the affirmative and point No.3 is answered in the negative.

<u>AS TO POINT NO. 4 :-</u>

58. As mentioned earlier, the complainant has proved that accused drawn disputed cheque(Exh.6) in his favour for the discharge of his legal liability and the same has been dishonoured. On the contrary, accused has failed to rebut the presumptions under section 118, 139 and 146 of the N.I.Act. The complainant has proved that accused has committed an offence punishable under section 138 of the N.I.Act. Therefore, accused is found guilty and liable to be convicted.

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59. This Court do not want to extend benefit of the provisions of the Probation of Offenders Act, 1958 to accused as the

present is an economic offence. There is no question of reforming of accused, who are found guilty of the offence. This has very well been observed in the case of **M.V. Nalinakshan V/s. M.Rameshan, 2009 Cr.L.J. 1703.**

Hearing on the point of sentence:

60. In spite of repeated calls accused remained absent. Ld. Advocate for accused Shri.K.R.Mehta present. He submitted that accused is old man, he is heart patient. Hence, he requested to show leniency while awarding sentence. None present on behalf of the complainant to make submissions. Record shows that the accused is avoiding to remain present in the matter without any justifiable reasons. Therefore, this Court is constrained and compelled to proceed with the Judgment in absence of the accused. By his conduct accused has waived off his chance to submit on the point of sentence.

61. After hearing on the point of sentence, this Court find it profitable to quote the observations of the Hon'ble Apex Court in the case of **Hari Kishan and State of Haryana V/s. Sukhbir Singh and Ors. (AIR(1988) SC 2127)** wherein it is observed that, *"It is well to remember that this Court has emphasized the need for making liberal use of that provision".*

62. Further, it is observed in the case of Hari Kishan(supra cited) that, *"The Court may enforce the order by imposing sentence in default".*

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63. In the case of **Suganthi Sureshkumar Jagdishan (AIR 2002 SUPREME COURT 681)** wherein it is observed that, *"No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light heartedly. The very object of enactment of provisions like*

Section 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount atleast during the pendency of the case".

64. Question also needs to be determined whether Magistrate Court can grant interest on the amount of cheque in a case filed for the offence punishable under section 138 of the N.I.Act. A useful reference can be made in this regard through the decision of the Hon'ble Apex Court, in the case of **R.Vijayan V/s. Baby and another (AIR 2012 SUPREME COURT 528)** wherein it is observed as follows, "*As the provisions of Chapter XVII of he Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine upto twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation".*

65. In Judgment reported in **Krishi Vikas Kendra V/s. Mukund Funde (2006 ALL MR (Cri) 416)** wherein it is observed that, *"Quantum of compensation shall also include interest, costs etc."*

66. Having regard to the above legal position, now quantum of punishment and of compensation is required to be decided. Case record clearly shows that, accused gave a cheque in question to the complainant for repayment of the amount. The cheque issued in the case is for discharging of his legal liability. Considering the nature of the offence and circumstances under which it is committed, it will be proper to convict accused and sentence him to suffer Simple Imprisonment for One year. The complainant has suffered loss due to illegal act of the accused. Therefore, it will be proper to direct accused to pay the compensation amount to the complainant i.e. an

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amount of Rs.1,70,00,000/-(Rupees One Crore Seventy Lakhs only) with simple interest @ 9% p.a. from the date of this order till realization of the entire amount towards the compensation within a period of one month from the date of this order vide section 357(3) of the Code of Criminal Procedure, 1973 and in default sentence him to suffer Simple Imprisonment for six months. Considering all the above aspects, in answer to point No.4, the following order is passed-

O R D E R

1) The accused Mr.Mani C. Kappen is hereby convicted for the offence punishable under section 138 of the Negotiable Instrument Act, 1881 vide section 255(2) of the Code of Criminal Procedure, 1973.

2) Accused is sentenced to suffer simple imprisonment for period of One Year and he shall pay compensation of Rs.1,70,00,000/- (Rupees One Crore Seventy Lakhs only) with simple interest @ 9% p.a. from the date of this order till realization of the entire amount towards the compensation within a period of one month from the date of this order vide section 357(3) of the Code of Criminal Procedure, 1973 in default of payment of compensation, the accused shall suffer further simple imprisonment for the period of Six months.

3) The amount of compensation if realized from the accused, it shall be paid to the complainant, subject to expiry of the appeal period or the orders of Honourable Appellate Court (if any).

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4) Accused to surrender his bail bonds.

5) Today i.e. on the date of Judgment accused remained

absent, hence issue standing Non-bailable warrant against him for his arrest through concerned police station for execution of sentence in view of Section 418 (2) of Cr.P.C.

6) The copy of this Judgment shall be provided to the convicted accused free of cost, in view of section 363(1) of the Code of Criminal Procedure, 1973.

(Dictated and pronounced in open Court)

SHIVAJI ARJUN KHALANE Digitally signed by SHIVAJI ARJUN KHALANE Date: 2026.09.01 17:44:22 +0530

(**S. A. KHALANE**)
Metropolitan Magistrate,
43rd Court, Borivali, Mumbai.

Date : 01.09.2026.
kdc

Dictated on : 01.09.2026.
Typed on : 01.09.2026.
Signed on : 01.09.2026.

MHMM170230542015

Received on (To Kerala Court)
: 20.07.2015.
Received on (To this Court)
: 03.05.2016.
Registered on : 03.05.2016.
Decided on : 01.09.2026.
Duration : 11-Y 01-M 12-D.

IN THE COURT OF METROPOLITAN MAGISTRATE, 43rd COURT, BORIVALI, MUMBAI

(BEFORE SHRI. S. A. KHALANE)

C. C. No. : 4302081/SS/2016
(Old C.C. S.T.No.2706/2015)
(CNR NO.MHMM17-023054-2015)

Exh.24.

Mr.Dinesh Menon.
S/o.Late C.P.Menon.
residing at 001 A-14,
Aradhana, Gokuldham,
Goregaon East, Mumbai-400 063. **...COMPLAINANT.**

V/s.

Mr.Mani C.Kappen.
S/o.Cheriyan J.Kappen,
Kappil Veettil, Lalam Village,
Palai P.O. Kottayam District,
Pin-686 575. **...ACCUSED.**

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OFFENCE PUNISHABLE U/SEC. 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881.

Advocates appeared :-
For the Complainant :- A.R.Pargaonkar.
For Accused :- K.R.Mehta.

JUDGMENT

(Delivered on 01.09.2026)

The accused is tried for the offence punishable under section 138 of the Negotiable Instruments Act, 1881(hereinafter referred to as “N.I. Act” for brevity).

Complainant's case in nutshell is as follows-

2. That, the complainant is a businessman. He is the Chairman and Managing Director of M/s. Menon Financial Services Ltd. and M/s. Menon Aviation and Hospitality Limited, Goregaon (E.). The accused is the businessman and politician. He had been maintaining a good friendly relation with the complainant. He approached the complainant in the year 2010 and requested for a friendly loan of Rs.2 Crores. The complainant agreed to give the said amount. The complainant gave that amount to the accused on different occasions during the year 2010.

3. The accused promised to repay the said amount on or before June, 2011. However, due to some financial difficulties, the accused could not repay the said amount to the complainant as promised. But, he further promised that he will repay the said amount before June, 2012. Considering the long relations with the accused of the complainant, the complainant agreed for the same. The accused was able to pay only an amount of Rs.25,00,000/- to the complainant on 10.04.2022 i.e. before the promised date. On that day he requested the complainant that he may be given more time for repayment of the balance amount. He also promised to reasonably compensate the loss sustained to the complainant. Thus, the complainant agreed to give more time to the accused for

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repayment of the balance amount along with compensation.

4. The non fulfillment of the promise by the accused to repay the balance amount borrowed from the complainant, had caused considerable damage to the complainant. Considering the good relations with the accused, the complainant agreed to settle the issue. So, accordingly, the entire claim of the complainant towards the accused was settled for an amount of Rs.3,25,00,000/-. This amount was including the amount of Rs.25,00,000/- already paid by the accused to the complainant.

5. The above said settlement was reduced into writing. An agreement was executed on 19.11.2013. The accused agreed thereby to pay an amount of Rs.1,00,00,000/- to the complainant on or before 04.12.2013 and the balance amount of Rs.2,00,00,000/- on or before 30.01.2014. It was also agreed that if the accused fails to pay the amount mentioned in the agreement, there shall be charge of the said amount on his immovable property situated at Aymanam village, Kottayam Taluka, purchased by the accused as per sale deed bearing No.644/1/2013 of Kottayam Principal Sub Registery Office.

6. Thereafter, the accused was unable to raise the amount within stipulated period till 19.11.2013. The accused met the complainant on 12.12.2014 at Ernaculam and it was agreed between the complainant and accused to extend the period till 31.05.2015. So, accordingly, the period was extended. As per the terms of the agreement, the accused issued the four cheques of the following description to the complainant-

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Sr. No.	Cheque No.	Date of Cheque	Amount Rs.	Drawee bank
1	036316	31.03.2015	1,00,00,000/-	Axis Bank Ltd., Palai, Kerala

2	036313	31.05.2015	1,00,00,000/-	Axis Bank Ltd., Palai, Kerala
3	036314	31.07.2015	50,00,000/-	Axis Bank Ltd., Palai, Kerala
4	036315	30.08.2015	75,00,000/-	Axis Bank Ltd., Palai, Kerala

7. Later on, again the validity period of the agreement was extended upto 31.08.2015. The complainant presented the cheque bearing No.036313 dated 31.05.2015 drawn on Axis Bank Ltd., Palai branch for an amount of Rs.1,00,00,000/- for the encashment in account at HDFC Bank, Dindoshi branch, Goregaon(E.), Mumbai. The said cheque issued by the accused returned unpaid with remark 'Insufficient funds' on 06.06.2015. The complainant issued demand notice to the accused on 01.07.2015. The notice is duly received by the accused on 03.07.2015. However, he failed to pay the amount of dishonoured cheque. Hence, the complainant has filed the present complaint praying for conviction of the accused and compensation under section 357 of the Cr.P.C.

PLEA

8. Ld. Predecessor of this Court has recorded the Plea (Exh.P-4) of accused, to which he pleaded not guilty and claimed to be tried.

ORAL AND DOCUMENTARY EVIDENCE ADDUCED ON BEHALF OF THE COMPLAINANT

9. To prove his contentions in the complaint, the complainant has examined himself.

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10. Besides, the above oral evidence, the complainant has relied upon the following documentary evidence-

SR.No.	Name of document	Exh.No.
1.	Cheque	6
2.	Bank Memo	7
3.	Demand Notice	8
4.	Postal receipt	9
5.	Copy of Cheque deposit slip	15
6.	Xerox copy of cheque bearing No.626635	16
7.	Tri parte agreement	17
8.	Certificate of registration	18
9.	Commercial license	19

STATEMENT OF THE ACCUSED AND HIS DEFENCE

11. After evidence of the complainant came to be closed, the statement of accused under section 313 of the Code of Criminal Procedure came to be recorded. Accused has taken a defence of total denial. He denied to have borrowed any loan from the complainant and denied to have agreed to settle the dispute of repayment of loan by agreeing to pay an amount of Rs.3,25,00,000/-. He also denied to have agreed to keep charge on his property situated at Aymanam, on failure of his repayment of the loan amount. He took a defence in respect of issuance of cheques as the cheques were issued as a guarantee for the agreement. He has denied to have received the demand notice.

12. The accused chose not to adduce any evidence on his behalf.

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Argument on behalf of the complainant-

13. The Ld. Advocate for the complainant has filed on record the written notes of arguments(Exh.22). It is argued that the

accused was in need of friendly loan for meeting his business as well as personal needs of Rs.2,00,00,000/-. On the request of the accused, the complainant from time to time on different occasions provided friendly loan to the accused during year 2010. The accused promised to repay the same on or before June, 2011. The accused failed to raise the funds to repay the loan amount within stipulated period. He assured the complainant that he will repay the amount before June, 2012.

14. The accused returned an amount of Rs.25,00,000/- on 10.04.2012. However, he failed to pay the balance amount. Later on, it was agreed between the accused and the complainant that the accused will pay total amount of Rs.3,25,00,000/- including the amount already paid on 10.04.2012. This settlement took place due to failure of accused to pay the amount by the accused till June, 2012 as agreed. So, written agreement was executed as per the settlement on 19.11.2013. The accused agreed to pay Rs.1,00,00,000/- on or before 04.12.2013 and the balance amount of Rs.2,00,00,000/- on or before 30.01.2014.

15. As the accused again has failed to repay the amount as per the agreement dated 19.11.2013, on the request of the accused the time was extended for repayment to the accused till 21.05.2015. So, the necessary changes and endorsement was made in the agreement. Thereafter, in the month of February, 2015 the accused again requested the complainant for further time for repayment of the loan amount. He issued four cheques for repayment of the loan amount drawn on Axis Bank, Palai, Kerala. The validity of the agreement was extended till 31.08.2015 and the same was endorsed at the bottom portion of the said agreement and signed by both the parties.

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16. As per terms of the agreement between the parties, the complainant presented the disputed cheque in his bank account namely HDFC Bank Limited, Dindoshi branch, Goregaon(E.), Mumbai. The cheque was returned unpaid with a memo having remark "Insufficient Funds". The complainant issued demand notice to the accused through his counsel demanding payment of dishonoured cheque. The accused received the demand notice on 01.05.2015. The accused did not repay the amount of dishonoured cheque nor replied the demand notice.

17. After recording the plea of the accused, the complainant has adduced his evidence. The Ld. Counsel for the accused has cross-examined the complainant in detail. However, no dispute towards the borrowing amount by the accused from the complainant is being raised. On behalf of the accused during cross-examination the M.O.U. is referred from time to time. However, the accused never has disputed the signatures on the said M.O.U. The accused has denied his liability in his statement under section 313 of the Cr.P.C. However, he has not examined himself on oath.

18. The accused has not taken a probable defence and has not adduced evidence to that effect. In such circumstances, it is argued that the accused has committed an offence punishable under section 138 of the N.I.Act. Thus, it is requested that accused be convicted and sentenced for imprisonment for the offence punishable under section 138 of the N.I.Act. Moreover, it is prayed that the complainant be adequately compensated in terms of money.

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Argument on behalf of the accused.

19. The Ld. Counsel for the accused has filed the written notes of arguments(Exh.23). It has been submitted that, the

complainant has examined himself to prove his case. However, he has miserably failed to prove the same. In the cross-examination, he admitted as follows-

"It is correct to say that, all four cheques were issued as per the settlement dated 19.11.2013, which was extended upto 30.04.2016. It is correct to say that all the four cheques were deposited by me before the extended expiry period of agreement which was to come to an end by 30.04.2016".

20. In respect of the above admission in cross-examination it has been argued that on the day and date of presentation of cheque, there was no existing legally enforceable liability. In this case the cheque has been returned on 06.06.2015, much before liability became a legally enforceable liability. So, it is argued that the entire case of the complainant fails absolutely, as the basic criteria mandated under explanation u/sec.138 of the N.I.Act is not fulfilled.

21. It is further argued that the complainant has admitted in his cross-examination that he is not able to recollect the exact date on which he has made payment to the accused. It is also argued that the complainant has failed to obtain any receipt of the amount from the accused. Further it is argued that the complainant has failed to produce his income tax documents to show the transaction of lending amount of Rs.2,00,00,000/- to the accused.

22. It is argued that the complainant in his affidavit filed in lieu of examination-in-chief stated that, he handed over the amount of Rs.2,00,00,000/- to the accused on different occasions during the year 2010 by way of cheque and cash. However, no record is brought by the complainant to prove the cheque transactions. Hence, it is argued that, the case of the complainant is false.

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23. It is argued that complainant in his complaint has averred that the friendly loan was paid to the accused in cash. However, the complainant in his affidavit filed in lieu of examination-in-chief has stated that the amount was handed over to the accused by way of cash and cheque, this falsifies the claim of the accused.

24. It is argued that huge amount was allegedly given to the accused. If the amount really would have been given, proper documentation of it would have taken place. However, there is no proper documentation. The complainant has not adduced any evidence to the effect of his financial capacity. He is having no money lending license. The evidence on record shows the illegal money lending business of the complainant. The agreement executed between the accused and the complainant is admittedly unregistered one.

25. The extension of agreement has been made on a blank paper, instead of a stamp paper. Therefore, the agreement is having no legal weightage. It is further argued that by way of so called agreement executed between the complainant and the accused, the amount was agreed firstly of Rs.3,00,00,000/- be paid by the accused. However, later on the said amount was increased to Rs.3,25,00,000/- without any justification. It is admitted by the complainant that no confirmation deed about revival or extension of the time period of repayment of loan was registered. Thus, the agreement, the revival of the agreement and extension given to the accused for repayment etc. are stated to be illegal. The agreement is argued to be not enforceable.

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26. It is argued that the complainant has admitted in his

cross-examination that as and when the repayment is made by the accused, the cheques will be returned to the accused. So, to this effect it is argued that the cheques issued to the complainant were nothing but security instruments. The complainant has admitted that he was supposed to return the instruments to the accused on receipt of the amount in cash. It is argued that the complainant has not come with clean hands to seek justice. He has suppressed true facts.

27. It is argued that as the complainant has failed to adduce any evidence as regards to his capacity to advance loan of the exorbitant amount as mentioned in the complaint, the complainant has failed to prove his contentions in the complaint. It is further argued that the complainant in his verification clause of the evidence affidavit has failed to mention the source of information. Therefore, the affidavit filed by the complainant in lieu of examination-in-chief is not as per Rule V of Chapter VII of the Criminal Manual. Hence, it is argued that the affidavit of the complainant is defective and is inadmissible.

28. For all the above reasons, it has been argued that the complainant has not successfully proved his contentions in the complaint. It is argued that the complainant has brought it probable defence. So, it has been prayed that the complaint be dismissed and the accused be acquitted of the offence punishable under section 138 of the N.I.Act.

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POINTS FOR DETERMINATION-

29. After having regard to the facts and rival contentions on record, following points do arise for determination of this Court. This Court has recorded its findings on each of them for the reasons

stated herein under :-

Sr. No.	Points	Findings
1)	Whether the complainant proves the mandatory compliance of section 142 of the N.I.Act ?	**Yes.**
2)	Whether the complainant proves legally enforceable debt against the accused ?	**Yes.**
3)	Whether accused raised probable defence to rebut the presumption under section 139 and 118 of the N.I.Act ?	**No.**
4)	What order ?	**As per final order.**

REASONS

AS TO POINT NO. 1 :-

30. The offence punishable under section 138 of N.I.Act can be proved with the concatenation of the following components-

i) Drawing of the cheque,

ii) Presentation of the cheque to the bank in a stipulated period,

iii) Returning the cheque unpaid by the drawee bank,

iv) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount,

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v) Failure of the drawer to make payment within stipulated period of the receipt of notice.

31. The concatenation of all the five components is a sine-

qua-non for the completion of the offence punishable under section 138 of the N.I.Act. In the light of these components it is to be seen whether the complainant succeeds in proving his case or not.

32. In order to see that in the present complaint the complainant has made mandatory compliance, it becomes necessary to see the following dates-

1)	Cheque dated	31.05.2015
2)	Cheque presented on	31.05.2015
3)	Cheque dishonoured on	06.06.2015
4)	Demand notice issued on	01.07.2015
5)	Demand notice received by accused on	03.07.2015
6)	15 days period of notice expired on	18.07.2015
7)	Complaint filed on	20.07.2015

33. After perusal of the above said all dates, it becomes amply clear that the present complaint is filed well within the period of limitation. Hence, it is observed that the complainant has made the mandatory compliance as required for proving commission of an offence punishable under section 138 of the N.I.Act. Therefore, point No.1 is answered in the affirmative.

<u>AS TO POINT NOS. 2 and 3 :-</u>

34. These points being interlinked are discussed together to avoid repetitive discussion.

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35. The important ingredient of the offence punishable under section 138 of the N.I.Act is that the cheque must have been issued for the discharge in whole or in part of any debt or other liability. If the cheque is not issued for the discharge of any debt or

other liability, section 138 cannot be invoked.

36. Hon'ble Apex Court in ***Laxmi Dyechem* V/s.*State of Gujarat*, 2013 (1) RCR (Criminal)**, has categorically held that if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. To raise probable defence, accused can rely upon the material submitted by the complainant. Needless to say, if the accused/drawer of cheque in question neither raises a probable defence nor is able to contest existence of a legally enforceable debt or liability, statutory presumption under S.139 of the N.I.Act regarding commission of the offence comes into play.

37. Section 139 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. While Section 138 of the N.I.Act specifies the strong criminal remedy in relation to the dishonour of the cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. 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 all preponderance of probabilities.

38. Therefore, if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defence and it is inconceivable that in some cases the accused may not need to adduce the evidence of his/her own. If however, the accused/drawer of a cheque in question neither raises a probable defence nor able to contest existence of a legally

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enforceable debt or liability, obviously statutory presumption under Section 139 of the NI Act regarding commission of the offence comes into play if the same is not rebutted with regard to the materials submitted by the complainant.

39. In this context this Court find it profitable to quote Judgment in the case of ***Hiten P. Dalal* v.*Bartender Nath Bannerji,* (2001) 6 SCC 16**, wherein it has been held as under:

"The words 'unless the contrary is proved' which occur in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted ……"

40. In view of the above provision, it is necessary to scrutinize evidence brought on record. Dinesh Menon(C.W.1) in his affidavit filed in lieu of examination-in-chief has reiterated the contents of the complaint.

41. Dinesh Menon(C.W.1) is cross-examined by the Ld. Counsel for the accused. In that cross-examination it has been tried to bring on record that, there exist no liability. It has come in the cross-examination as follows-

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"In October 2010 I have given amount of Rs.2 Crores to the accused. At this moment, I do not recollect the exact date on which I have made payment of said amount to the accused. I paid

said amount to the accused on the occasion of auspicious festival of Onam in the month October, 2010 but I don't recollect the date of said payment. I didn't ask for receipt from the accused, as it was a friendly loan".

42. Further, in the cross-examination of the complainant it has been brought on record that the complainant is having no money lending license. It has been brought on record through cross-examination of the complainant that he has not produced any account statement in support of his statement that he has made payment to the accused on different occasions during year 2010 by way of cheque and cash on various occasions. It has also brought on record that the agreement executed between him and the accused is not a registered one.

43. After going through the cross-examination and the defence taken on behalf of the accused, it notices that the accused has taken a defence that the huge amount of Rs.2 Crores is being lent by the complainant to the accused without any agreement, which according to accused is not probable. Further, in order to justify his defence, the accused has tried to bring on record that the complainant has not brought on record any documentary evidence such as bank pass book or income tax returns about payment of Rs.2 Crores to the accused.

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44. On scrutiny of the evidence on record, this Court do find that the complainant has filed on record the original M.O.U. in C.C.No.3277/SS/2015(Exh.12). According to the M.O.U., it appears that the M.O.U. is executed by the accused on 19.04.2012, whereby he has in clear terms admitted to have received an amount of Rs.2 Crores and accepted the liability of making payment of

Rs.3,25,00,000/- as settlement amount, including the amount of Rs.25,00,000/- paid by the accused on 10.04.2012.

45. The accused in entire cross-examination of the complainant has not disputed the execution of the agreement dated 19.04.2012. Further more, it notices that from time to time the date of agreement is extended is also not disputed by the accused. The initial period granted to the accused for payment of friendly loan amount and compensation is upto 04.12.2013. Thereafter, the period is found to be extended upto 31.05.2015. Thereafter, the period came to be extended upto 31.08.2015. Lastly, the said period came to be extended upto 30.04.2016.

46. It is admitted by the accused that the period of the agreement was extended upto 30.04.2016. The contents of the agreement dated 19.04.2012 are not found disputed at all. In the said agreement it notices that as per the extension and modified supplementary agreement it appears that the accused has issued in all four cheques to the complainant as averred by the complainant in the complaint.

47. In the above said circumstances, the accused cannot dispute non receipt of an amount of Rs.2 Crores from the complainant or cannot dispute that he never agreed to pay the amount of Rs.3.25 Crores to the complainant. It is for the reason that the terms of the agreement do speak in clear terms that the accused has agreed for repayment of Rs.3,25,00,000/- including the earlier payment of Rs.25,00,000/- dated 10.04.2012. For the balance amount, he has issued the four cheques as averred by the complainant in his complaint.

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48. It appears from the arguments on behalf of the accused

that the date of agreement was upto 30.04.2016 and therefore, the complainant ought to have presented the disputed cheques mentioned in the complaint after 30.04.2016. However, this argument is found to be devoid of merits. It is for the reason that the accused has specifically mentioned the dates in the agreement itself. Those all dates mentioned in the agreement of the cheques issued in favour of the complainant are as 31.03.2015, 31.05.2015, 31.07.2015 and 30.08.2015, which are earlier than 30.04.2016.

49. In the above said circumstances, if the dates of cheques issued by the accused are earlier than the date of agreement period then the accused cannot take the defence that the validity of the agreement was upto 30.04.2016 therefore, the complainant ought to have waited for 30.04.2016. Once the cheque issued of a particular date are presented on that particular date, then the complainant is right in his action. He is having every right for the amount mentioned on cheque. So, the defence of the accused to this respect is found devoid of merits.

50. So far as the defence of the accused that in the complaint the complainant has averred that he has lent the amount of Rs.2 Crores to the accused in cash and in the affidavit filed in lieu of examination-in-chief, he deposed that he has lent that amount partly in cash and partly through cheques. The defence of accused to this respect is that the complainant has not filed the bank entries. So, according to the Ld. Counsel for the accused, it is doubtful that the accused has received any loan from the complainant.

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51. In respect of the above said defence of the accused, it is observed that it is admitted position that for the loan of Rs.2 Crores, no agreement was executed between the complainant and the

accused. However, later on, the settlement has taken place between the complainant and the accused and an M.O.U. came to be executed between them. In view of that settlement M.O.U. the accused has admitted the debt amount and has become ready for payment of Rs.3,25,00,000/- as compensation for an amount of loan of Rs.2 Crores, which amount was including the earlier repayment of Rs.25,00,000/- by the accused on 10.04.2012. In such circumstances, without there being anything brought on record about the doubtfulness of the execution of the M.O.U., signatures thereon, etc. the accused cannot take the benefit of the sentence in the evidence affidavit that the amount was paid by the complainant partly in cash and partly through cheques. Once the accused agreed to pay the amount and receipt of the amount by the execution of M.O.U., he is estopped by virtue of the principle of estoppel.

52. Further more, the defence taken on behalf of the accused is that the agreement is not a registered one. To this respect, it is observed that Law does not require that the agreement or the M.O.U. of the money lent must be registered one. Even oral transaction is proved maintainable in Law. Further more, the defence of accused is also about capacity of the complainant to advance loan of the exorbitant amount. To this respect also this Court do observe that no evidence is required from the complainant about his capacity if the accused himself by virtue of memorandum of understanding admitted receipt of the amount. The burden in the 138 proceeding is reverse. The accused must have to brought probable defence and create dent in the case of the complainant about its genuineness, to which the accused has miserably failed.

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53. It is also one of the defence of the accused that source of information is not stated by the complainant in his evidence

affidavit. However, this Court do observe that the accused has not been able to bring on record through cross-examination that which fact was not within the knowledge of the complainant and is stated by the complainant and its source not disclosed by him in his verification of the evidence affidavit. In such circumstances, the evidence affidavit of the complainant cannot be discarded nor can anything in it can be disbelieved.

54. It is crucial to observe that in the instant matter the accused has not adduced any evidence on his behalf. In his statement under section 313 of the Cr.P.C. also the accused is not able to explain the incriminating circumstances against him. He only stated the answers to the questions put forth in his statement under section 313 Cr.P.C. as ‘it is false’. It is pertinent to note that the accused has not disputed his address on which the demand notice was issued. The demand notice issued to the accused is on correct address. As per section 27 of the General Clauses Act, if letter is dispatched on correct address, it is presumed to be duly served.

55. The accused has in his statement under section 313 of the Cr.P.C. has taken a defence that he has not received the demand notice. However, for the above said reason, his defence is not acceptable. To the contrary, on behalf of the complainant, the acknowledgment card of the demand notice is filed on record. Therefore, the service of demand notice upon the accused is very well proved by the complainant beyond reasonable doubt.

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56. From the perusal of the record it becomes important to note that the accused has failed to give reply to the demand notice despite receipt of the demand notice. This is certainly an adverse fact against the accused. To this respect this Court would like to rely

upon Judgment of the Hon'ble Apex Court in the case of **Kuntegowda V/s. Thurubaiah(Judgment dated 04.08.2026) in Special Leave Petition(Criminal) No.2247 of 2024,** wherein it is observed as under-

"The failure of the accused to respond to the statutory notice issued under section 138 of the N.I.Act gives rise to an inference that the complainant's version carries merit. The initial burden of raising a defence that the complainant lacked the financial capacity to advance the loan rests upon the accused and ought to have been specifically pleaded in reply to the demand notice. In absence of such a plea, the complainant cannot be expected, to adduce evidence establishing his financial capacity to pay the loan to the accused while leading his evidence."

57. In conclusion, for all the aforesaid reasons, it is observed that, in order to rebut the presumption under section 139 of the N.I.Act, accused has miserably failed. Per contra, the complainant has successfully proved his contentions that accused has issued cheque in his favour for discharge of legally enforceable liability. So, point No.2 is answered in the affirmative and point No.3 is answered in the negative.

<u>AS TO POINT NO. 4 :-</u>

58. As mentioned earlier, the complainant has proved that accused drawn disputed cheque(Exh.6) in his favour for the discharge of his legal liability and the same has been dishonoured. On the contrary, accused has failed to rebut the presumptions under section 118, 139 and 146 of the N.I.Act. The complainant has proved that accused has committed an offence punishable under section 138 of the N.I.Act. Therefore, accused is found guilty and liable to be convicted.

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59. This Court do not want to extend benefit of the provisions of the Probation of Offenders Act, 1958 to accused as the present is an economic offence. There is no question of reforming of accused, who are found guilty of the offence. This has very well been observed in the case of **M.V. Nalinakshan V/s. M.Rameshan, 2009 Cr.L.J. 1703.**

<u>Hearing on the point of sentence</u>:

60. In spite of repeated calls accused remained absent. Ld. Advocate for accused Shri.K.R.Mehta present. He submitted that accused is old man, he is heart patient. Hence, he requested to show leniency while awarding sentence. None present on behalf of the complainant to make submissions. Record shows that the accused is avoiding to remain present in the matter without any justifiable reasons. Therefore, this Court is constrained and compelled to proceed with the Judgment in absence of the accused. By his conduct accused has waived off his chance to submit on the point of sentence.

61. After hearing on the point of sentence, this Court find it profitable to quote the observations of the Hon'ble Apex Court in the case of **Hari Kishan and State of Haryana V/s. Sukhbir Singh and Ors. (AIR(1988) SC 2127)** wherein it is observed that, *"It is well to remember that this Court has emphasized the need for making liberal use of that provision"*.

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62. Further, it is observed in the case of Hari Kishan(supra cited) that, *"The Court may enforce the order by imposing sentence in default"*.

63. In the case of **Suganthi Sureshkumar Jagdishan (AIR 2002 SUPREME COURT 681)** wherein it is observed that, *"No drawer*

of the cheque can be allowed to take dishonour of the cheque issued by him light heartedly. The very object of enactment of provisions like Section 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount atleast during the pendency of the case".

64. Question also needs to be determined whether Magistrate Court can grant interest on the amount of cheque in a case filed for the offence punishable under section 138 of the N.I.Act. A useful reference can be made in this regard through the decision of the Hon'ble Apex Court, in the case of **R.Vijayan V/s. Baby and another (AIR 2012 SUPREME COURT 528)** wherein it is observed as follows, "*As the provisions of Chapter XVII of he Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine upto twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation".*

65. In Judgment reported in **Krishi Vikas Kendra V/s. Mukund Funde (2006 ALL MR (Cri) 416)** wherein it is observed that, *"Quantum of compensation shall also include interest, costs etc."*

66. Having regard to the above legal position, now quantum of punishment and of compensation is required to be decided. Case record clearly shows that, accused gave a cheque in question to the complainant for repayment of the amount. The cheque issued in the case is for discharging of his legal liability. Considering the nature of the offence and circumstances under which it is committed, it will be proper to convict accused and sentence him to suffer Simple Imprisonment for One year. The complainant has suffered loss due

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to illegal act of the accused. Therefore, it will be proper to direct accused to pay the compensation amount to the complainant i.e. an amount of Rs.1,70,00,000/-(Rupees One Crore Seventy Lakhs only) with simple interest @ 9% p.a. from the date of this order till realization of the entire amount towards the compensation within a period of one month from the date of this order vide section 357(3) of the Code of Criminal Procedure, 1973 and in default sentence him to suffer Simple Imprisonment for six months. Considering all the above aspects, in answer to point No.4, the following order is passed-

O R D E R

1) The accused Mr.Mani C. Kappen is hereby convicted for the offence punishable under section 138 of the Negotiable Instrument Act, 1881 vide section 255(2) of the Code of Criminal Procedure, 1973.

2) Accused is sentenced to suffer simple imprisonment for period of One Year and he shall pay compensation of Rs.1,70,00,000/- (Rupees One Crore Seventy Lakhs only) with simple interest @ 9% p.a. from the date of this order till realization of the entire amount towards the compensation within a period of one month from the date of this order vide section 357(3) of the Code of Criminal Procedure, 1973 in default of payment of compensation, the accused shall suffer further simple imprisonment for the period of Six months.

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3) The amount of compensation if realized from the accused, it shall be paid to the complainant, subject to expiry of the appeal period or the orders of Honourable Appellate Court (if any).

4) Accused to surrender his bail bonds.

5) Today i.e. on the date of Judgment accused remained absent, hence issue standing Non-bailable warrant against him for his arrest through concerned police station for execution of sentence in view of Section 418 (2) of Cr.P.C.

6) The copy of this Judgment shall be provided to the convicted accused free of cost, in view of section 363(1) of the Code of Criminal Procedure, 1973.

(Dictated and pronounced in open Court)

SHIVAJI ARJUN KHALANE
Digitally signed by SHIVAJI ARJUN KHALANE
Date: 2026.09.01 17:44:46 +0530

(**S. A. KHALANE**)
Metropolitan Magistrate,
43rd Court, Borivali, Mumbai.

Date : 01.09.2026.
kdc

Dictated on : 01.09.2026.
Typed on : 01.09.2026.
Signed on : 01.09.2026.

MHMM170132472015

Received on : 16.10.2015.
Registered on : 16.10.2015.
Decided on : 01.09.2026.
Duration : 10-Y 10-M 16-D.

IN THE COURT OF METROPOLITAN MAGISTRATE,
43rd COURT, BORIVALI, MUMBAI

(BEFORE SHRI. S. A. KHALANE)

C. C. No. : 4303277/SS/2015
(CNR NO.MHMM17-013247-2015)

Exh.27.

Dinesh Menon.
Of Mumbai Indian Inhabitant
residing at 001 A-14,
Aradhana, Gokuldham, Goregaon East,
Mumbai-400 063.
Through **C.A.DEVIKA DINESH MENON**
Age 27 yrs., Occu : Service. **...COMPLAINANT.**

V/s.

Mr.Mani C.Kappen.
of Kerala Indian Inhabitant
residing at Kappil Veettil,
Lalam Village, Palai P.O.
Kottayam District, Pin-686 575. **...ACCUSED.**

OFFENCE PUNISHABLE U/SEC. 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881.

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Advocates appeared :-
For the Complainant :- A.R.Pargaonkar.
For Accused :- K.R.Mehta.

JUDGMENT
(Delivered on 01.09.2026)

The accused is tried for the offence punishable under section 138 of the Negotiable Instruments Act, 1881(hereinafter referred to as “N.I. Act” for brevity).

Complainant's case in nutshell is as follows-

2. That, the complainant is a businessman. He is the Chairman and Managing Director of M/s. Menon Financial Services Ltd. and M/s. Menon Aviation and Hospitality Limited, Goregaon (E.). The present complaint is filed through the daughter of the complainant namely Devika Menon, who is acquainted with all the facts of the matter and who is authorized by the complainant to power-of-attorney executed in her favour. The accused is the businessman and politician. He had been maintaining a good friendly relation with the complainant. He approached the complainant in the year 2010 and requested for a friendly loan of Rs.2 Crores. The complainant agreed to give the said amount. The complainant gave that amount to the accused on different occasions during the year 2010.

3. The accused promised to repay the said amount on or before June, 2011. However, due to some financial difficulties, the accused could not repay the said amount to the complainant as promised. But, he further promised that he will repay the said amount before June, 2012. Considering the long relations with the accused of the complainant, the complainant agreed for the same. The accused was able to pay only an amount of Rs.25,00,000/- to the complainant on 10.04.2022 i.e. before the promised date. On that day he requested the complainant that he may be given more

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time for repayment of the balance amount. He also promised to reasonably compensate the loss sustained to the complainant. Thus, the complainant agreed to give more time to the accused for repayment of the balance amount along with compensation.

4. The non fulfillment of the promise by the accused to repay the balance amount borrowed from the complainant, had caused considerable damage to the complainant. Considering the good relations with the accused, the complainant agreed to settle the issue. So, accordingly, the entire claim of the complainant towards the accused was settled for an amount of Rs.3,25,00,000/-. This amount was including the amount of Rs.25,00,000/- already paid by the accused to the complainant.

5. The above said settlement was reduced into writing. An agreement was executed on 19.11.2013. The accused agreed thereby to pay an amount of Rs.1,00,00,000/- to the complainant on or before 04.12.2013 and the balance amount of Rs.2,00,00,000/- on or before 30.01.2014. It was also agreed that if the accused fails to pay the amount mentioned in the agreement, there shall be charge of the said amount on his immovable property situated at Aymanam village, Kottayam Taluka, purchased by the accused as per sale deed bearing No.644/1/2013 of Kottayam Principal Sub Registery Office.

6. Thereafter, the accused was unable to raise the amount within stipulated period till 19.11.2013. The accused met the complainant on 12.12.2014 at Ernaculam and it was agreed between the complainant and accused to extend the period till 31.05.2015. So, accordingly, the period was extended. As per the terms of the agreement, the accused issued the four cheques of the following description to the complainant-

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Sr. No.	Cheque No.	Date of Cheque	Amount Rs.	Drawee bank
1	036316	31.03.2015	1,00,00,000/-	Axis Bank Ltd., Palai, Kerala
2	036313	31.05.2015	1,00,00,000/-	Axis Bank Ltd., Palai, Kerala
3	036314	31.07.2015	50,00,000/-	Axis Bank Ltd., Palai, Kerala
4	036315	30.08.2015	75,00,000/-	Axis Bank Ltd., Palai, Kerala

7. Later on, again the validity period of the agreement was extended upto 31.08.2015. The complainant presented the cheque bearing No.036314 dated 31.07.2015 drawn on Axis Bank Ltd., Palai branch for an amount of Rs.50,00,000/- for the encashment in account at HDFC Bank, Dindoshi branch, Goregaon(E.), Mumbai. The said cheque issued by the accused returned unpaid with remark 'Insufficient funds' on 07.08.2015. The complainant issued demand notice to the accused on 01.09.2015. The notice is duly received by the accused on 04.09.2015. However, he failed to pay the amount of dishonoured cheque. Hence, the complainant has filed the present complaint praying for conviction of the accused and compensation under section 357 of the Cr.P.C.

PLEA

8. Ld. Predecessor of this Court has recorded the Plea (Exh.P-5) of accused, to which he pleaded not guilty and claimed to be tried.

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ORAL AND DOCUMENTARY EVIDENCE ADDUCED ON BEHALF OF THE COMPLAINANT

9. To prove his contentions in the complaint, the

complainant has examined himself and his daughter Devika Menon (C.W.2), who is the power-of-attorney of the complainant.

10. Besides, the above oral evidence, the complainant has relied upon the following documentary evidence-

SR.No.	Name of document	Exh.No.
1.	Tri-Parte Sale Agreement of Flat in Kharghar	8
2.	Original SEBI Certificate	9
3.	Commercial License of Trading	10
4.	Bank statement of Nebula Trading FZE	11
5.	Agreement dated 19.11.2013	12
6.	Cheque	13
7.	Bank Memo	14
8.	Demand Notice	15
9.	Postal receipt	16
10.	Postal acknowledgment	17

STATEMENT OF THE ACCUSED AND HIS DEFENCE

11. After evidence of the complainant came to be closed, the statement of accused under section 313 of the Code of Criminal Procedure came to be recorded. Accused has taken a defence of total denial. He denied to have borrowed any loan from the complainant and denied to have agreed to settle the dispute of repayment of loan by agreeing to pay an amount of Rs.3,25,00,000/-. He also denied to have agreed to keep charge on his property situated at Aymanam, on failure of his repayment of the loan amount. He took a defence in respect of issuance of cheques as the cheques were issued as a guarantee for the agreement. He has denied to have received the demand notice.

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12. The accused chose not to adduce any evidence on his behalf.

Argument on behalf of the complainant-

13. The Ld. Advocate for the complainant has filed on record the written notes of arguments(Exh.23). It is argued that the accused was in need of friendly loan for meeting his business as well as personal needs of Rs.2,00,00,000/-. On the request of the accused, the complainant from time to time on different occasions provided friendly loan to the accused during year 2010. The accused promised to repay the same on or before June, 2011. The accused failed to raise the funds to repay the loan amount within stipulated period. He assured the complainant that he will repay the amount before June, 2012.

14. The accused returned an amount of Rs.25,00,000/- on 10.04.2012. However, he failed to pay the balance amount. Later on, it was agreed between the accused and the complainant that the accused will pay total amount of Rs.3,25,00,000/- including the amount already paid on 10.04.2012. This settlement took place due to failure of accused to pay the amount by the accused till June, 2012 as agreed. So, written agreement was executed as per the settlement on 19.11.2013. The accused agreed to pay Rs.1,00,00,000/- on or before 04.12.2013 and the balance amount of Rs.2,00,00,000/- on or before 30.01.2014.

15. As the accused again has failed to repay the amount as per the agreement dated 19.11.2013, on the request of the accused the time was extended for repayment to the accused till 21.05.2015. So, the necessary changes and endorsement was made in the agreement. Thereafter, in the month of February, 2015 the accused

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again requested the complainant for further time for repayment of the loan amount. He issued four cheques for repayment of the loan amount drawn on Axis Bank, Palai, Kerala. The validity of the agreement was extended till 31.08.2015 and the same was endorsed at the bottom portion of the said agreement and signed by both the parties.

16. As per terms of the agreement between the parties, the complainant presented the disputed cheque in his bank account namely HDFC Bank Limited, Dindoshi branch, Goregaon(E.), Mumbai. The cheque was returned unpaid with a memo having remark "Insufficient Funds". The complainant issued demand notice to the accused through his counsel demanding payment of dishonoured cheque. The accused received the demand notice on 01.05.2015. The accused did not repay the amount of dishonoured cheque nor replied the demand notice.

17. After recording the plea of the accused, the complainant has adduced his evidence. The Ld. Counsel for the accused has cross-examined the complainant in detail. However, no dispute towards the borrowing amount by the accused from the complainant is being raised. On behalf of the accused during cross-examination the M.O.U. is referred from time to time. However, the accused never has disputed the signatures on the said M.O.U. The accused has denied his liability in his statement under section 313 of the Cr.P.C. However, he has not examined himself on oath.

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18. The accused has not taken a probable defence and has not adduced evidence to that effect. In such circumstances, it is argued that the accused has committed an offence punishable under section 138 of the N.I.Act. Thus, it is requested that accused be

convicted and sentenced for imprisonment for the offence punishable under section 138 of the N.I.Act. Moreover, it is prayed that the complainant be adequately compensated in terms of money.

Argument on behalf of the accused.

19. The Ld. Counsel for the accused has filed the written notes of arguments(Exh.25). It has been submitted that, the complainant has examined himself to prove his case. However, he has miserably failed to prove the same. In the cross-examination, he admitted as follows-

"It is correct to say that, all four cheques were issued as per the settlement dated 19.11.2013, which was extended upto 30.04.2016. It is correct to say that all the four cheques were deposited by me before the extended expiry period of agreement which was to come to an end by 30.04.2016".

20. In respect of the above admission in cross-examination it has been argued that on the day and date of presentation of cheque, there was no existing legally enforceable liability. In this case the cheque has been returned on 07.08.2015, much before liability became a legally enforceable liability. So, it is argued that the entire case of the complainant fails absolutely, as the basic criteria mandated under explanation u/sec.138 of the N.I.Act is not fulfilled.

21. It is further argued that the complainant has admitted in his cross-examination that he is not able to recollect the exact date on which he has made payment to the accused. It is also argued that the complainant has failed to obtain any receipt of the amount from the accused. Further it is argued that the complainant has failed to produce his income tax documents to show the transaction of

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lending amount of Rs.2,00,00,000/- to the accused.

22. It is argued that the complainant in his affidavit filed in lieu of examination-in-chief stated that, he handed over the amount of Rs.2,00,00,000/- to the accused on different occasions during the year 2010 by way of cheque and cash. However, no record is brought by the complainant to prove the cheque transactions. Hence, it is argued that, the case of the complainant is false.

23. It is argued that complainant in his complaint has averred that the friendly loan was paid to the accused in cash. However, the complainant in his affidavit filed in lieu of examination-in-chief has stated that the amount was handed over to the accused by way of cash and cheque, this falsifies the claim of the accused.

24. It is argued that huge amount was allegedly given to the accused. If the amount really would have been given, proper documentation of it would have taken place. However, there is no proper documentation. The complainant has not adduced any evidence to the effect of his financial capacity. He is having no money lending license. The evidence on record shows the illegal money lending business of the complainant. The agreement executed between the accused and the complainant is admittedly unregistered one.

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25. The extension of agreement has been made on a blank paper, instead of a stamp paper. Therefore, the agreement is having no legal weightage. It is further argued that by way of so called agreement executed between the complainant and the accused, the amount was agreed firstly of Rs.3,00,00,000/- be paid by the accused. However, later on the said amount was increased to

Rs.3,25,00,000/- without any justification. It is admitted by the complainant that no confirmation deed about revival or extension of the time period of repayment of loan was registered. Thus, the agreement, the revival of the agreement and extension given to the accused for repayment etc. are stated to be illegal. The agreement is argued to be not enforceable.

26. It is argued that the complainant has admitted in his cross-examination that as and when the repayment is made by the accused, the cheques will be returned to the accused. So, to this effect it is argued that the cheques issued to the complainant were nothing but security instruments. The complainant has admitted that he was supposed to return the instruments to the accused on receipt of the amount in cash. It is argued that the complainant has not come with clean hands to seek justice. He has suppressed true facts.

27. It is argued that as the complainant has failed to adduce any evidence as regards to his capacity to advance loan of the exorbitant amount as mentioned in the complaint, the complainant has failed to prove his contentions in the complaint. It is further argued that the complainant in his verification clause of the evidence affidavit has failed to mention the source of information. Therefore, the affidavit filed by the complainant in lieu of examination-in-chief is not as per Rule V of Chapter VII of the Criminal Manual. Hence, it is argued that the affidavit of the complainant is defective and is inadmissible.

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28. For all the above reasons, it has been argued that the complainant has not successfully proved his contentions in the complaint. It is argued that the complainant has brought it probable

defence. So, it has been prayed that the complaint be dismissed and the accused be acquitted of the offence punishable under section 138 of the N.I.Act.

POINTS FOR DETERMINATION-

29. After having regard to the facts and rival contentions on record, following points do arise for determination of this Court. This Court has recorded its findings on each of them for the reasons stated herein under :-

Sr. No.	**Points**	**Findings**
1)	Whether the complainant proves the mandatory compliance of section 142 of the N.I.Act ?	**Yes.**
2)	Whether the complainant proves legally enforceable debt against the accused ?	**Yes.**
3)	Whether accused raised probable defence to rebut the presumption under section 139 and 118 of the N.I.Act ?	**No.**
4)	What order ?	**As per final order.**

R E A S O N S

AS TO POINT NO. 1 :-

30. The offence punishable under section 138 of N.I.Act can be proved with the concatenation of the following components-

i) Drawing of the cheque,

ii) Presentation of the cheque to the bank in a stipulated period,

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iii) Returning the cheque unpaid by the drawee bank,

iv) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount,

v) Failure of the drawer to make payment within stipulated period of the receipt of notice.

31. The concatenation of all the five components is a sine-qua-non for the completion of the offence punishable under section 138 of the N.I.Act. In the light of these components it is to be seen whether the complainant succeeds in proving his case or not.

32. In order to see that in the present complaint the complainant has made mandatory compliance, it becomes necessary to see the following dates-

1)	Cheque dated	31.07.2015
2)	Cheque presented on	07.08.2015
3)	Cheque dishonoured on	07.08.2015
4)	Demand notice issued on	01.09.2015
5)	Demand notice received by accused on	04.09.2015
6)	15 days period of notice expired on	19.09.2015
7)	Complaint filed on	16.10.2015

33. After perusal of the above said all dates, it becomes amply clear that the present complaint is filed well within the period of limitation. Hence, it is observed that the complainant has made the mandatory compliance as required for proving commission of an offence punishable under section 138 of the N.I.Act. Therefore, point No.1 is answered in the affirmative.

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<u>AS TO POINT NOS. 2 and 3 :-</u>

34. These points being interlinked are discussed together to avoid repetitive discussion.

35. The important ingredient of the offence punishable under section 138 of the N.I.Act is that the cheque must have been issued for the discharge in whole or in part of any debt or other liability. If the cheque is not issued for the discharge of any debt or other liability, section 138 cannot be invoked.

36. Hon'ble Apex Court in ***Laxmi Dyechem*** **V/s.*****State of Gujarat*****, 2013 (1) RCR (Criminal)**, has categorically held that if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. To raise probable defence, accused can rely upon the material submitted by the complainant. Needless to say, if the accused/drawer of cheque in question neither raises a probable defence nor is able to contest existence of a legally enforceable debt or liability, statutory presumption under S.139 of the N.I.Act regarding commission of the offence comes into play.

37. Section 139 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. While Section 138 of the N.I.Act specifies the strong criminal remedy in relation to the dishonour of the cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. 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 all preponderance of probabilities.

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38. Therefore, if the accused is able to establish a probable defence which creates doubt about the existence of a legally enforceable debt or liability, the prosecution can fail. The accused can rely on the materials submitted by the complainant in order to raise such a defence and it is inconceivable that in some cases the accused may not need to adduce the evidence of his/her own. If however, the accused/drawer of a cheque in question neither raises a probable defence nor able to contest existence of a legally enforceable debt or liability, obviously statutory presumption under Section 139 of the NI Act regarding commission of the offence comes into play if the same is not rebutted with regard to the materials submitted by the complainant.

39. In this context this Court find it profitable to quote Judgment in the case of ***Hiten P. Dalal* v.*Bartender Nath Bannerji*, (2001) 6 SCC 16**, wherein it has been held as under:

"The words 'unless the contrary is proved' which occur in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted ……"

40. In view of the above provision, it is necessary to scrutinize evidence brought on record. Dinesh Menon(C.W.1) in his affidavit filed in lieu of examination-in-chief has reiterated the contents of the complaint.

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41. Dinesh Menon(C.W.1) is cross-examined by the Ld. Counsel for the accused. In that cross-examination it has been tried to bring on record that, there exist no liability. It has come in the cross-examination as follows-

"In October 2010 I have given amount of Rs.2 Crores to the accused. At this moment, I do not recollect the exact date on which I have made payment of said amount to the accused. I paid said amount to the accused on the occasion of auspicious festival of Onam in the month October, 2010 but I don't recollect the date of said payment. I didn't ask for receipt from the accused, as it was a friendly loan".

42. Further, in the cross-examination of the complainant it has been brought on record that the complainant is having no money lending license. It has been brought on record through cross-examination of the complainant that he has not produced any account statement in support of his statement that he has made payment to the accused on different occasions during year 2010 by way of cheque and cash on various occasions. It has also brought on record that the agreement executed between him and the accused is not a registered one.

43. Devika Menon(C.W.2) deposed in her affidavit filed in lieu of examination-in-chief that she is authorized by her father to file the present complaint, due to his frequent travelling. She deposed that she has filed the complaint and she is aware of the facts of the case. She deposed that the accused had approached her father for financial assistance. She further deposed that she personally do not have knowledge of the transaction but her father has told her about the said transaction.

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44. Devika Menon(C.W.2) is cross-examined by the Ld. Counsel for the accused, in which she admitted that she was not present at the time of transaction between the complainant and the accused. However, she has denied that her father has not given a single penny to the accused.

45. After going through the cross-examination of the complainant Dinesh Menon(C.W.1) and the defence taken on behalf of the accused, it notices that the accused has taken a defence that the huge amount of Rs.2 Crores is being lent by the complainant to the accused without any agreement, which according to accused is not probable. Further, in order to justify his defence, the accused has tried to bring on record that the complainant has not brought on record any documentary evidence such as bank pass book or income tax returns about payment of Rs.2 Crores to the accused.

46. On scrutiny of the evidence on record, this Court do find that the complainant has filed on record the original M.O.U. (Exh.12). According to the M.O.U., it appears that the M.O.U. is executed by the accused on 19.04.2012, whereby he has in clear terms admitted to have received an amount of Rs.2 Crores and accepted the liability of making payment of Rs.3,25,00,000/- as settlement amount, including the amount of Rs.25,00,000/- paid by the accused on 10.04.2012.

47. The accused in entire cross-examination of the complainant has not disputed the execution of the agreement dated 19.04.2012. Further more, it notices that from time to time the date of agreement is extended is also not disputed by the accused. The initial period granted to the accused for payment of friendly loan amount and compensation is upto 04.12.2013. Thereafter, the

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period is found to be extended upto 31.05.2015. Thereafter, the period came to be extended upto 31.08.2015. Lastly, the said period came to be extended upto 30.04.2016.

48. It is admitted by the accused that the period of the agreement was extended upto 30.04.2016. The contents of the agreement dated 19.04.2012 are not found disputed at all. In the said agreement it notices that as per the extension and modified supplementary agreement it appears that the accused has issued in all four cheques to the complainant as averred by the complainant in the complaint.

49. In the above said circumstances, the accused cannot dispute non receipt of an amount of Rs.2 Crores from the complainant or cannot dispute that he never agreed to pay the amount of Rs.3.25 Crores to the complainant. It is for the reason that the terms of the agreement do speak in clear terms that the accused has agreed for repayment of Rs.3,25,00,000/- including the earlier payment of Rs.25,00,000/- dated 10.04.2012. For the balance amount, he has issued the four cheques as averred by the complainant in his complaint.

50. It appears from the arguments on behalf of the accused that the date of agreement was upto 30.04.2016 and therefore, the complainant ought to have presented the disputed cheques mentioned in the complaint after 30.04.2016. However, this argument is found to be devoid of merits. It is for the reason that the accused has specifically mentioned the dates in the agreement itself. Those all dates mentioned in the agreement of the cheques issued in favour of the complainant are as 31.03.2015, 31.05.2015, 31.07.2015 and 30.08.2015, which are earlier than 30.04.2016.

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51. In the above said circumstances, if the dates of cheques issued by the accused are earlier than the date of agreement period then the accused cannot take the defence that the validity of the agreement was upto 30.04.2016 therefore, the complainant ought to have waited for 30.04.2016. Once the cheques issued of a particular date are presented on that particular date, then the complainant is right in his action. He is having every right for the amount mentioned on cheques. So, the defence of the accused to this respect is found devoid of merits.

52. So far as the defence of the accused that in the complaint the complainant has averred that he has lent the amount of Rs.2 Crores to the accused in cash and in the affidavit filed in lieu of examination-in-chief, he deposed that he has lent that amount partly in cash and partly through cheques. The defence of accused to this respect is that the complainant has not filed the bank entries. So, according to the Ld. Counsel for the accused, it is doubtful that the accused has received any loan from the complainant.

53. In respect of the above said defence of the accused, it is observed that it is admitted position that for the loan of Rs.2 Crores, no agreement was executed between the complainant and the accused. However, later on, the settlement has taken place between the complainant and the accused and an M.O.U. came to be executed between them. In view of that settlement M.O.U. the accused has admitted the debt amount and has become ready for payment of Rs.3,25,00,000/- as compensation for an amount of loan of Rs.2 Crores, which amount was including the earlier repayment of Rs.25,00,000/- by the accused on 10.04.2012. In such circumstances, without there being anything brought on record about the doubtfulness of the execution of the M.O.U., signatures

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threon, etc. the accused cannot take the benefit of the sentence in the evidence affidavit that the amount was paid by the complainant partly in cash and partly through cheques. Once the accused agreed to pay the amount and receipt of the amount by the execution of M.O.U., he is estopped by virtue of the principle of estoppel.

54. Further more, the defence taken on behalf of the accused is that the agreement is not a registered one. To this respect, it is observed that Law does not require that the agreement or the M.O.U. of the money lent must be registered one. Even oral transaction is proved maintainable in Law. Further more, the defence of accused is also about capacity of the complainant to advance loan of the exorbitant amount. To this respect also this Court do observe that no evidence is required from the complainant about his capacity if the accused himself by virtue of memorandum of understanding admitted receipt of the amount. The burden in the 138 proceeding is reverse. The accused must have to brought probable defence and create dent in the case of the complainant about its genuineness, to which the accused has miserably failed.

55. It is also one of the defence of the accused that source of information is not stated by the complainant in his evidence affidavit. However, this Court do observe that the accused has not been able to bring on record through cross-examination that which fact was not within the knowledge of the complainant and is stated by the complainant and its source not disclosed by him in his verification of the evidence affidavit. In such circumstances, the evidence affidavit of the complainant cannot be discarded nor can anything in it can be disbelieved.

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56. It is crucial to observe that in the instant matter the

accused has not adduced any evidence on his behalf. In his statement under section 313 of the Cr.P.C. also the accused is not able to explain the incriminating circumstances against him. He only stated the answers to the questions put forth in his statement under section 313 Cr.P.C. as 'it is false'. It is pertinent to note that the accused has not disputed his address on which the demand notice was issued. The demand notice issued to the accused is on correct address. As per section 27 of the General Clauses Act, if letter is dispatched on correct address, it is presumed to be duly served.

57. The accused has in his statement under section 313 of the Cr.P.C. has taken a defence that he has not received the demand notice. However, for the above said reason, his defence is not acceptable. To the contrary, on behalf of the complainant, the acknowledgment card of the demand notice is filed on record. Therefore, the service of demand notice upon the accused is very well proved by the complainant beyond reasonable doubt.

58. From the perusal of the record it becomes important to note that the accused has failed to give reply to the demand notice despite receipt of the demand notice. This is certainly an adverse fact against the accused. To this respect this Court would like to rely upon Judgment of the Hon'ble Apex Court in the case of **Kuntegowda V/s. Thurubaiah(Judgment dated 04.08.2026) in Special Leave Petition(Criminal) No.2247 of 2024,** wherein it is observed as under-

"The failure of the accused to respond to the statutory notice issued under section 138 of the N.I.Act gives rise to an inference that the complainant's version carries merit. The initial burden of raising a defence that the complainant lacked the financial capacity to advance the loan rests upon the accused and ought to

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have been specifically pleaded in reply to the demand notice. In absence of such a plea, the complainant cannot be expected, to adduce evidence establishing his financial capacity to pay the loan to the accused while leading his evidence."

59. In conclusion, for all the aforesaid reasons, it is observed that, in order to rebut the presumption under section 139 of the N.I.Act, accused has miserably failed. Per contra, the complainant has successfully proved his contentions that accused has issued cheque in his favour for discharge of legally enforceable liability. So, point No.2 is answered in the affirmative and point No.3 is answered in the negative.

AS TO POINT NO. 4 :-

60. As mentioned earlier, the complainant has proved that accused drawn disputed cheque(Exh.13) in his favour for the discharge of his legal liability and the same has been dishonoured. On the contrary, accused has failed to rebut the presumptions under section 118, 139 and 146 of the N.I.Act. The complainant has proved that accused has committed an offence punishable under section 138 of the N.I.Act. Therefore, accused is found guilty and liable to be convicted.

61. This Court do not want to extend benefit of the provisions of the Probation of Offenders Act, 1958 to accused as the present is an economic offence. There is no question of reforming of accused, who are found guilty of the offence. This has very well been observed in the case of **M.V. Nalinakshan V/s. M.Rameshan, 2009 Cr.L.J. 1703.**

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<u>Hearing on the point of sentence</u>:

62. In spite of repeated calls accused remained absent. Ld. Advocate for accused Shri.K.R.Mehta present. He submitted that accused is old man, he is heart patient. Hence, he requested to show leniency while awarding sentence. None present on behalf of the complainant to make submissions. Record shows that the accused is avoiding to remain present in the matter without any justifiable reasons. Therefore, this Court is constrained and compelled to proceed with the Judgment in absence of the accused. By his conduct accused has waived off his chance to submit on the point of sentence.

63. After hearing on the point of sentence, this Court find it profitable to quote the observations of the Hon'ble Apex Court in the case of **Hari Kishan and State of Haryana V/s. Sukhbir Singh and Ors. (AIR(1988) SC 2127)** wherein it is observed that, *"It is well to remember that this Court has emphasized the need for making liberal use of that provision".*

64. Further, it is observed in the case of Hari Kishan(supra cited) that, *"The Court may enforce the order by imposing sentence in default".*

65. In the case of **Suganthi Sureshkumar Jagdishan (AIR 2002 SUPREME COURT 681)** wherein it is observed that, *"No drawer of the cheque can be allowed to take dishonour of the cheque issued by him light heartedly. The very object of enactment of provisions like Section 138 of the Act would stand defeated if the sentence is of the nature passed by the trial Magistrate. It is a different matter if the accused paid the amount atleast during the pendency of the case".*

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66. Question also needs to be determined whether Magistrate

Court can grant interest on the amount of cheque in a case filed for the offence punishable under section 138 of the N.I.Act. A useful reference can be made in this regard through the decision of the Hon'ble Apex Court, in the case of **R.Vijayan V/s. Baby and another (AIR 2012 SUPREME COURT 528)** wherein it is observed as follows, "*As the provisions of Chapter XVII of he Act strongly lean towards grant of reimbursement of the loss by way of compensation, the courts should, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine upto twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation".*

67. In Judgment reported in **Krishi Vikas Kendra V/s. Mukund Funde (2006 ALL MR (Cri) 416)** wherein it is observed that, *"Quantum of compensation shall also include interest, costs etc."*

68. Having regard to the above legal position, now quantum of punishment and of compensation is required to be decided. Case record clearly shows that, accused gave a cheque in question to the complainant for repayment of the amount. The cheque issued in the case is for discharging of his legal liability. Considering the nature of the offence and circumstances under which it is committed, it will be proper to convict accused and sentence him to suffer Simple Imprisonment for Six Months. The complainant has suffered loss due to illegal act of the accused. Therefore, it will be proper to direct accused to pay the compensation amount to the complainant i.e. an amount of Rs.70,00,000/-(Rupees Seventy Lakhs only) with simple interest @ 9% p.a. from the date of this order till realization of the entire amount towards the compensation within a period of one month from the date of this order vide section 357(3) of the Code of

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Criminal Procedure, 1973 and in default sentence him to suffer Simple Imprisonment for Three months. Considering all the above aspects, in answer to point No.4, the following order is passed-

O R D E R

1) The accused Mr.Mani C. Kappen is hereby convicted for the offence punishable under section 138 of the Negotiable Instrument Act, 1881 vide section 255(2) of the Code of Criminal Procedure, 1973.

2) Accused is sentenced to suffer simple imprisonment for period of Six Months and he shall pay compensation of Rs.70,00,000/- (Rupees Seventy Lakhs only) with simple interest @ 9% p.a. from the date of this order till realization of the entire amount towards the compensation within a period of one month from the date of this order vide section 357(3) of the Code of Criminal Procedure, 1973 in default of payment of compensation, the accused shall suffer further simple imprisonment for the period of Three Months.

3) The amount of compensation if realized from the accused, it shall be paid to the complainant, subject to expiry of the appeal period or the orders of Honourable Appellate Court (if any).

4) Accused to surrender his bail bonds.

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5) Today i.e. on the date of Judgment accused remained absent, hence issue standing Non-bailable warrant against him for his arrest through concerned police station for execution of sentence in view of Section 418 (2) of Cr.P.C.

6) The copy of this Judgment shall be provided to the convicted accused free of cost, in view of section 363(1) of the Code of Criminal Procedure, 1973.

(Dictated and pronounced in open Court)

SHIVAJI ARJUN KHALANE Digitally signed by SHIVAJI ARJUN KHALANE Date: 2026.09.01 17:45:09 +0530

(**S. A. KHALANE**)
Metropolitan Magistrate,
43rd Court, Borivali, Mumbai.

Date : 01.09.2026.

kdc

Dictated on : 01.09.2026.
Typed on : 01.09.2026.
Signed on : 01.09.2026.