Date of Registration	28/08/2024
Date of Filing	28/08/2024
Date of Decision	10/09/2025
Time Taken	Year–-Month–Days 01–00–13

IN THE COURT OF 07th ADDL. CIVIL JUDGE & J.M.F.C.
AT, MAHESANA
(Presided Over by Diksha Trivedi)

Criminal Case No.	11490/2024
Exhibit	**33**
Complainant	**Shri Sarvjanik Vidhyasankulan Employees Co. Op. Credit Society Ltd.** (On its behalf Manager of Shri J.M. Chowdhary School Mr. Ashokbhai D Panchal) Add: Mehsana.
Represented By	Ld. Adv Mr R.G.Nikam
Accused	**Sudhirbhai Saharbhai Desai,** Residing at: Randaala, Visnagar, Dis. Mahesana
Represented By	Ld. Adv. C.A.Agza
Act and Section	Judgment under Section-255 of Criminal Procedure Code in the matter filed under Section 138 of Negotiable of Instruments Act 1881(In short hereinafter referred as *NI Act*)

Particulars of Accused

Sr.No.	Name	Plea Recorded	Evidences Taken	Act and Section	Acquittal/Conviction	Sentence of Punishment	Total time period accused was kept in custody under Sec 428 of CrPC
1.	Sudhirbhai Saharbhai Desai	10/01/2024	10/01/2024	Section 138 of Negotiable of Instruments Act 1881	Acquittal	NA	NA

JUDGEMENT

1) **Cause of Complainant:**

This is a case instituted under section 138 of the Negotiable Instrument Act, 1881 (hereinafter called as N.I. Act) alleging therein that the accused had issued a cheque in favour of the complainant, which was dishonored by the drawee bank.

2) **Brief Facts of Case:**

The brief facts of the case of the complainant is that the organization is a registered organization under the Gujarat Co-operatives Act. The purpose of which is to provide loans to the members for business, employment, industries and other purposes and the complainant has filed the present

complaint in exercise of the power and authority received from the society. The accused obtained a loan of Rs. 4,30,000/- from the complainant society dated 15-09-2021 and in return, the loan application, surety bond, promissory note, etc. documents was provided with the loan application. On 15-09-2021, the loan amount given in favor of the society was not being recovered on time as per the regular installments. On the basis of this, on date 30-6-2024, the complainant society was owing Rs. 3,46,690/-along with interest. In order to recover the amount, the accused came to our complainant organization in person and gave a cheque of Rs. 3,46,690/ dated 11-07-2024, having cheque no. is 854159 issued by Syndicate Bank, Mehsana (now Canara Bank, Mehsana). The complainant society has applied for clearing the said cheque on 11-07-2024. The cheque sent to Mehsana Head Office Mehsana dated 12-07-2024 with the note "BANK CD 025 EXE WEF 010721" was returned without acceptance, which was brought to our notice on 12-07-2024. While giving the cheque, the accused stated that he had given faith and confidence that the said cheque would be accepted, but during the clearing of the cheque, the cheque was returned with the note "BANK CD 025 EXE WEF 010721". Thereafter complainant given the the legal notice dated 25-7-2024, which was served on the accused on 26-7-2024, but the accused has not made any arrangement to collect the amount as stated in the check due to society, and society has not recovered the money till date. hence we file the present complaint. Therefore, the complainant has filed a complaint against the accused for committing a punishable offence under Section 138 of the Negotiable Instruments Act.

3) The Court took cognizance of the offence on the basis of the complaint filed by the complainant under Section-142 of Negotiable Instrument act and after satisfying about the prima facie case against the accused, issued

summons against the accused under Section-204 of the Code of Criminal Procedure in order to answer the charge under section 138 of Negotiable Instrument Act.

4) Pursuant to the summons issued, the accused appeared in Court through Ld. Adv Mr C.A.Agza and plea was recorded vide Ex-8 on date 10/01/2024 the particulars of offence under Section-138 of the Negotiable Instruments Act, 1881 was explained to him to which he pleaded not guilty and thus the case was proceeded

5) **Evidence of Complainant:**

In support of the case, the Complainant has produced oral as well as documentary evidence.

6) **<u>Oral Evidence</u> :-**

Sr. No.	**Particular** **Ex.**	
1.	Deposition of complainant	**4**

<u>Documentary evidence :</u>

Sr. No	**Exhibit**	**Description**
1	**14**	Original Copy of Resolution
2	**15**	Loan Application

3	**16**	Bail Bond- Acceptance Letter
4	**17**	Demand Promissory Note
5	**18**	Record Slip
6	**19**	Savings Account Ledger Record of Complainant Society
7	**20**	Loan Account Statement of Accused
8	**21**	Original Cheque Dt. 11/07/2024
9	**22**	Account Slip
10	**23 and 24**	Return Memo
11	**25**	Legal Notice
12	**26**	RPAD Slip
13	**27**	Tracking Consignment

7) The right of the accused to cross examined the Complainant has been closed on date 11/06/2025 vide Ex-12.

8) The accused has filed the Further Statement on date 16/06/2025 electing not to lead any evidence and stated that the the cheque was given as the security along with the loan has been misappropriated by the complainant.

9) **Submission of Arguments by the parties:**

Heard the arguments of complainant counsel and right of the arguments of the accused has been closed on 14/08/2025 by Ex-32.

10) **Following points are framed for determination of this case:**

(1) Whether the cheque no.854159 of 11/07/2024 of Rs.3,46,690/- issued in favour of the complainant for the discharge of any legally enforceable debt or liability?

(2) Whether the cheque issued for legal debt is a valid negotiable Instrument?

(3) Whether the cheque was dishonored due to the fault of the accused?

(4) What order?

11) **My findings for the above issued are as follows :**

(1) Affirmative.

(2) Negative

(3) Negative

(4) As per the final order.

-:: <u>DISCUSSION, DECISION AND REASONS THERE OF</u>::-

12) Before venturing into merits of this case, it would be necessary to see the ingredients of the offence under sec 138 of N.I. Act. Scope and ambit of Sec. 138 and ingredients thereof are discussed in legion judgments. At the outset, I may refer to some of them. In the case **Rajesh Jain Versus Ajay Singh 2023 (10) SCC 148, <u>the Hon'ble Supreme Court</u>**, in regards to object of the N. I. Act, observed in para-26 as under :-

<u>Burden of Proof and Presumptions: Conceptual Underpinnings-</u> *There are two senses in which the phrase burden of proof is used in the Indian Evidence Act, 1872 (Evidence Act, hereinafter). One is the burden of proof arising* *as a matter of pleading and the other is the one which deals with the question as to who has first to prove a particular fact. The former is called the legal burden and it never shifts, the latter is called the evidential burden and it shifts from one side to the other.* ***[Kundanlal v. Custodian Evacuee Property (AIR 1961 SC 1316]***

29. *The legal burden is the burden of proof which remains constant throughout a trial. It is the burden of establishing the facts and contentions which will support a party's case. If, at the conclusion of the trial a party has failed to establish these to the appropriate standards, he would lose to stand. The incidence of the burden is usually clear from the pleadings and usually, it is incumbent on the plaintiff or complainant to prove what he pleaded or contends. On the other hand, the evidential burden may shift from one party to another as the trial progresses according to the balance of evidence given at any particular stage; the burden rests upon the party who would fail if no evidence at all, or no further evidence, as the case may be is adduced by either side (See Halsbury's Laws of England, 4th Edition para 13). While the former, the legal burden arising on the pleadings is mentioned in Section 101 of the Evidence Act, the latter, the evidential burden, is referred to in Section 102 thereof.* ***[G.Vasu V. Syed Yaseen (AIR 1987 AP139) affirmed in Bharat Barrel Vs. Amin Chand [(1999) 3 SCC 35]]***

30. ***Section 139 NI Act-Effect of Presumption and Shifting of Onus of Proof*** *The NI Act provides for two presumptions: Section 118 and Section*

139. Section 118 of the Act inter alia directs that it shall be presumed, until the contrary is proved, that every negotiable *instrument was made or drawn for consideration. Section 139 of the Act stipulates that 'unless the contrary is proved, it shall be presumed, that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liability'. It will be seen that the 'presumed fact' directly relates to one of the crucial ingredients necessary to sustain a conviction under Section 138. The rules discussed herein below is common to both the presumptions under Section 139 and Section 118 and is hence, not repeated-Reference to one can be taken as reference to another*

33. Section 139 of the NI Act, which takes the form of a shall presume clause is illustrative of a presumption of law. Because Section 139 requires that the Court shall presume the fact stated therein, it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. But this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary as is clear from the use of the phrase unless the contrary is proved.

34. The Court will necessarily presume that the cheque had been issued towards discharge of a legally enforceable debt/liability in two circumstances. Firstly, when the drawer of the cheque admits issuance/execution of the cheque and secondly, in the event where the complainant proves that cheque was issued/executed in his favour by the drawer. The circumstances set out above form the fact(s) which bring about the activation of the presumptive clause. ***[Bharat Barrel Vs. Amin Chand] [(1999) 3 SCC 35]***

40. *In order to rebut the presumption and prove to the contrary, it is open to the accused to raise a probable defence*

wherein the existence of a legally enforceable debt or liability can be contested. The words until the contrary is proved occurring in Section 139 do not mean that accused must necessarily prove the negative that the instrument is not issued in discharge of any debt/liability but the accused has the option to ask the Court to consider the non-existence of debt/liability so probable that a prudent man ought, under the circumstances of the case, to act upon the supposition that debt/liability did not exist. ***[Basalingappa Vs. Mudibasappa (AIR 2019 SC 1983)]***

41. *In other words, the accused is left with two options. The first option-of proving that the debt/liability does not exist-is to lead defence evidence and conclusively establish with certainty that the cheque was not issued in discharge of a debt/liability. The second option is to prove the* non-existence of debt/liability by a preponderance of probabilities by referring to the particular circumstances of the case. The preponderance of probability in favour of the accused's case may be even fifty one to forty nine and arising out of the entire circumstances of the case, which includes: the complainant's version in the original complaint, the case in the legal/demand notice, complainant's case at the trial, as also the plea of the accused in the reply notice, his 313 statement or at the trial as to the circumstances under which the promissory note/cheque was executed. All of them can raise a preponderance of probabilities justifying a finding that there was no debt/liability. [Kumar Exports and Sharma Carpets, (2009) 2 SCC 513]

42. *The nature of evidence required to shift the evidential burden need not necessarily be direct evidence i.e.,* ***oral or***

documentary evidence or admissions made by the opposite party; it may comprise circumstantial evidence or presumption of law or fact.

43. *The accused may adduce direct evidence to prove that the instrument was not issued in discharge of a debt/liability and, if he adduces acceptable evidence, the burden again shifts to the complainant. At the same time, the accused may also rely upon circumstantial evidence and, if the circumstances so relied upon are compelling the burden may likewise shift to the complainant. It is open for him to also rely upon presumptions of fact, for instance those mentioned in Section 114 and other sections of the Evidence Act. The burden of proof may shift by presumptions of law or fact. In Kundanlal's case- (supra) when the creditor had failed to produce his account books, this Court raised a presumption of fact under Section 114, that the evidence, if produced, would have shown the non-existence of consideration. Though, in that case, this Court was dealing with the presumptive clause in Section 118 NI Act, since the nature of the presumptive clauses in Section 118 and 139 is the same, the analogy can be extended and applied in the context of Section 139 as well.*

44. *Therefore, in fine, it can be said that once the accused adduces evidence to the satisfaction of the Court that on a preponderance of probabilities there exists no debt/liability in the manner pleaded in the complaint or the demand notice or the affidavit-evidence, the burden shifts to the complainant and the presumption 'disappears' and does not haunt the accused any longer. The onus having now shifted to the complainant, he will be obliged to prove the existence of a debt/liability as a matter of fact and his failure to prove would*

result in dismissal of his complaint case. Thereafter, the presumption under Section 139 does not again come to the complainant's rescue. Once both parties have adduced evidence, the Court has to consider the same and the burden of proof loses all its importance. ***[Basalingappa vs. Mudibasappa, AIR 2019 SC 1983]***

13) Before determination of this case, it would be necessary to see the ingredients of the offence under sec 138 of NI.Act.

Sec: 138 Dishonour of cheque for Insufficiency:

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any other provision of this Act, be punished with imprisonment for or with the fine which may extend to twice the amount of the cheque or with both.The cheque has been presented to the bank within a period of three months from the date on which it is drawn or within the period of its validity whichever is earlier.

i. *The Payee or the holder in due course of the cheque, as the case be demanded for the payment of the said amount of money giving a notice in writing to the drawer of the cheque.*

ii. *The drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.*

14) The court shall presume certain facts against the accused upon proof of issuance of cheque by the accused to the complainant in view of Section:118 and Section 139 of NI Act. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by the reference to the circumstances upon which they rely which creates doubt on the prosecution story. It is also well settled that it is not necessary for the accused to come in the witness box in support of his defence in all the cases. It is also well settled that sec- 139 imposed an evidentiary burden and a persuasive burden. And if the accused is able to rebut the presumption, then the onus is again shifted to the complainant to prove his case beyond all reasonable doubt.

15) ***Point For Determination No.(i):***

Whether the cheque no.854159 of 11/07/2024 of Rs.3,46,690/- issued in favour of the complainant for the discharge of any legally enforceable debt or liability?

The complainant has alleged that the accused had issued the cheque- in-question for the discharge of legally enforceable debt; whereas the accused has contended in plea that he had issued the cheque as security and he does not have any direct legal liability towards the complainant.

After keeping in mind the above principle, I have gone through the evidence to find out whether the accused had rebutted the presumption that there was no any legal debt or liability? In the present case, the accused has not led any evidence to prove that there was no legal liability, therefore while deciding whether the accused has rebutted the presumption or not, the court has to rely only upon evidence of the complainant. The complainant has produced chief-examination vide Exh.04. wherein he has affirmed to the complaint filed by him. It is evident that nothing is rebutted by the accused which infers not with the guilt of the accused as to existence of legal debt. Therefore, as per the presumption under N. I. Act, it is to be presumed that was given by the accused to the complainant for discharge of legal debt.

At this juncture this Court can also recall judgment of Hon'ble Supreme Court in case of **M/s. Meters and Instruments Private Limited & Anr Vs. Kanchan Mehta reported as AIR 2017 SC 4594**. In this judgment in para-20 it was held that " The accused, who wants to contest the case, must be required to disclose specific defence for such a contest. It is open to the Court to ask specific questions at that stage." In this case the accused has not disclosed his specific defence. He has merely denied that he has not committed any such offence and there was no legal liability. Such a bald plea has no value in the eyes of law. Specially in cases filed under section-138 of N.I. Act, wherein there are statutory presumptions raised in favour of the complainant.

16) Per contra, Ld. Advocate on behalf of the complainant strenuously argued that the purpose of statutory notice Under sec. 138 of NI. Act is to give the opportunity to the accused to clear his stance on the legal debt enforceable. He would further submit that without adducing evidence, would never constitute the probable defence.

17) The court taken into consideration, that it is a well settled principle that the accused is not bound to step into the witness box to deposed as witness to rebut the said presumption accused can rebut the said presumption by cross-examination of the complainant and his witness or by bringing some material and some circumstances regarding facts of the case on record. This proposition is also very well settled by the Hon’ble Apex Court by series of judgment.

18) In a present case the complainant is a registered Society, looking to record the copy of power of attorney produced wherein the complainant Ashok D Panchal by Ex-14 had given an authority, the complainant is authorized for that purpose to produce the examination-in-chief and list of documents along with chief- examination. Looking at the whole documentary record, the accused took no defence related the loan transaction or the documents along with loan application produced vide Ex-15, 16, 17 and 18 or the Loan account statement produced vide EX-20 or the of the Accused or the existence of legal debt. The accused has not entered into witness box neither he has lead any evidence, therefore while deciding whether accused has rebutted the presumption or not court has to relied only upon evidence of complainant produced vide Ex-14 to 27.

19) In the case of **Bir Singh vs. Mukesh Kumar, 2019 (4) SCC 197**, the Hon'ble Supreme Court addressed this issue. In para -37 to 42 are relevant which reads as :”*A meaningful reading of* *the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer."*

20) As per the above principle held that there was a legal debt and the accused was not paying the same the complainant can institute a complaint u/s. N.I. Act on the valid negotiable instrument. In the case of **Sunil Todi V/s. Gujarat State Criminal Appeal No.1446/2021** wherein **Hon'ble S.C**. held that just using a word security does not change the liability. Further *Hon'ble Supreme Court in case of **Triyambk S. Hegde Vs. Sripad reported as 2021(4) R.C.R.430** held thus. "11. From the facts arising in this case and the nature of the rival contentions, the record would disclose that the signature on the documents at Exhibits P-6 and P-2 is not disputed. Exhibit P-2 is the dishonoured cheque based on which the complaint was fled. From the evidence tendered before the JMFC, it is clear that the respondent has not disputed the signature on the cheque. If that be the position, as noted by the courts below a presumption would arise under Section- 139 in favour of the appellant who was the holder of the cheque.*

21) In the case of ***Hiten P. Dalal Vs. Bratindranath Banerjee; (supra)*** Hon'ble Apex Court has held that ***mere explanation given by the drawer, although plausible would not***

suffice. Hence, as already mentioned earlier, in the instant case the accused has not adduced any cogent prove to believe his plea and as such mere explanation by him will not suffice. In view of the above, it is held that the accused had issued the cheque in question, Exh.-21 for repayment of the liability of loan of Society as per the statement from the complainant.

Decision for point no (i):

There was legal liability of the loan on the accused.

Hence it is Affirmative.

22) ***Point For Determination No.*(ii)** **:-**

Whether the cheque issued for legal debt is a valid negotiable Instrument?

What follows from the catena of decisions on the subject is that, the word "debt or any other liability" in section-138 means legally enforceable debt or any other liability. Once the execution of the cheque is admitted and the accused did not raise any dispute about the cheque, the presumption u/sec. 139 of the N.I.Act would come into play and it would be presumed that cheque was for the discharge of any debt or liability. It is undoubted that when presumption is applied in the legal proceeding, it is always rebuttable and when it is applied in criminal proceeding against the accused, the accused need to unveil it by probable defence. The standard of proof for rebutting the presumption is that of preponderance of probability. It can further be held that, to rebut the presumption, the accused is not required to enter into witness-box and to depose on oath, he can either rely upon the material he has placed or can stand on the material submitted by the complainant in order to set the probable defence. In this case, The accused has not disputed the signature in the cheque or the legal enforceable debt or the legal notice related to the amount mentioned in the impugned cheque. The fact that the payment was not made within 15 days of the receipt of the legal notice is also not disputed accordingly this court should raise presumption under section 139 of NI Act that the impugned cheque was issued by the accused to the complainant in discharge of legally enforceable debt or liability. The accused in his Further statement has mentioned the cheque was given with the loan and same has been misused.

23) It is well settled law that even if the accused failed to appear, even if the accused did not produce the evidence to prove his plea or FS and failed to appear thereafter, the complainant ought to prove his case since the entire burden of proof is on the complainant to prove his case. Herein Complainant is to prove his case beyond reasonable doubt that the nature of instrument was as much valid as the legal debt. The complainant case holds the strong base to stand upon and while the accused need to only prove his defence to the standard of preponderance of probabilities. Section 139 NI Act and Section 118 NI Act read together mandate that upon the establishment of foundational facts, the Court shall raise a presumption that the negotiable instrument passed for consideration and the cheque was issued for discharging a legally enforceable debt. But not to mention that the presumption is rebuttable. [**Rangappa v. Sri Mohan (supra) and Hiten P. Dalal v. Bratindranath Banerjee, (2001) 6 SCC 16.**]

24) Thus in short looking at the record of the case, the complainant has produced the return memo vide Ex-23 and 24 stating the return of the legal instrument I.e, The cheque produced vide Ex-21, which is the main ingredient of the Sec 138 of NI. The offence under Section 138 is tipped by the dishonour of the cheque when it is sought to be en-cashed. Though the cheque might be drawn to represent a legally enforceable debt at the time of its drawing, for the offence to be attracted, the cheque must represent to be valid and thus stands to be dishonoured. The return memo does not count upon the reason for dishonour to be linked to the intention of the accused rather it is the procedural and validity problem of instrument that lead to the return of the cheque. In the case in hand, the cheque was of Syndicate Bank and was issued on date 11/07/2024. Further the cheque when presented on date 12/07/2024 was returned dishonoured for another Reason "Bank CD025 EXC WEF 010721". The cheque was issued on 11/07/2024 from an account in the erstwhile Syndicate bank. On April 1, 2020, the Syndicate Bank merged with the Canara Bank. This cheque, presented to the Mehsana District Central CO-OP Bank on 12/07/2024 was returned, claiming to be invalid, with the endorsement "BANK CD 025 EXC WEF 010721". To emphasis upon that since the cheques of Syndicate Bank were valid only until June 31, 2020, post-merger, as per a circular issued by Canara Bank, the cheque presented was invalid and therefore could not attract liability under Section 138 of the NI Act. The court observes that the cheques from the erstwhile Syndicate Bank were invalid after June 30, 2021, following the bank's merger with Canara Bank on date 01/04/2020, and that cheques that are invalid due to institutional changes, such as bank mergers, therefore was returned and hence do not meet the criteria for dishonour of cheque alike that stated by the complainant in this case for offence under section 138 of NI Act. Therefore, The main point to consider here is the cheque was returned not because of insufficient fund or any reason that proves the malafide intent of the accused for dishonour but the reason in return memo mentioned “01072021” is the date from which by the public notice of the Canara Bank, all Syndicate Bank cheque MICR Code stands to be invalid w.e.f. 1/07/2021 as Syndicate Bank has been merged with Canara bank.

25) The Court further has relied on the case of **Smt. Archana Singh Gautam vs State of U.P. and Another (2024 All. HC Case App No. 9534 of 2024 decide on dt 05/06/2024** where Hon’ble Court has held that “*the cheque in question, which was issued from the account maintained in erstwhile Allahabad Bank after its merger with Indian Bank, was not the valid cheque on the date of presentation before the Indian Bank as required by proviso (a) of Section 138 of N.I. Act; therefore, dishonouring the same will not attract the liability u/s 138 N.I. Act. 12. This Court is also of the view that the above analogy will also be applicable to the cheques of all banks which had merged with other banks.*”

26) Further the Court has relied on the case of **Ganta Kavita Devi and Ors. vs State of AP and Anrs. (2024 SCC Online AP 5115)** where Hon’ble Court has held that *“the subject cheque, which was issued from the account maintained in erstwhile State Bank of Hyderabad after its merger with State Bank of India, was not a valid cheque on the date of its presentation before the ICICI Bank as required by proviso (a) of Section*

138. Hence, dishonoring the same will not attract liability under Section 138 of NI Act." The facts mentioned in the referred case is similar to that of the case in hand thus the court has relied on the view taken by the higher courts that since the cheque issued was from the erstwhile Syndicate Bank, it was invalid on the date of its presentation before the Mehsana District Central CO-OP Bank and therefore it cannot be set into the criteria that cheque was dishonoured and thus, the returning of such a cheque does not attract liability under Section 138 of the NI Act.

Decision for point no (ii):

The Cheque was not a valid instrument at the time of presentation thus not negotiable.

Hence it is Negative.

27) **Point For Determination (iii)**

Whether the cheque was dishonoured due to the fault of the accused?

Complainant has averred that the cheque-in-question was presented for en-cashment, but the same was dishonored because of other reasons and has accepted the same in his Chief examination. Complainant has produced the cheque return memo and the same is marked as exhibit-23, which shows that the said cheque was dishonored for "Bank CD025 EXC WEF 010721" on 12/07/2024. The accused has not disputed the legal enforceable liability but the cheque was dishonored not because of funds insufficient in the account maintained by the accused is prima-facie established on record. As per the above referred elements in section 138 of the NI Act makes it clear that it is not every return of a cheque return unpaid which leads to prosecution of an offence under the said provision of law. For such purposes, the cheque must have been returned 'unpaid' either because the amount of money standing to the credit of that account is insufficient to honor the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank. *In the instant case*, the impugned cheque has been returned dishonored on the ground that it is an ' Bank OD025 EXC WEF 010721' in brief declared invalid Cheque from 01/07/2021. Perusal of record shows that the cheque was returned because of being discontinue on the date of the presentation I.e, 12/07/2024 and not because the accused was not having sufficient balance in his account or cheque got dishonoured due to the other specific reasons like "exceed the arrangement" or "signature differ" or "account closed" etc. Thus the complainant could not discharge his burden that the cheque must have been returned 'unpaid' because the amount of money standing to the credit of that account is insufficient to honor the cheque. As the bank does not accept invalid cheque after 30/06/2021 and public notice is there by Canara Bank and the cheque in question was invalid cheque and did not come under the criteria of bounced or dihonoured cheque. Therefore, the accused has successfully raised the doubt that the cheque in question was the security cheque presented by the complainant. The return memo being the main crux to prove the intention of the accused here the reason as mention in return memo “Bank OD025 EXC WEF 010721” indicates that as the cheque is non existent being the nationalized merger of banks thus Canara Bank has declared all the Syndicate Bank cheque invalid after date 30/06/2021. Hence, it is held that the cheque was dishonoured due to invalidity of the instrument and not because of the action or intent of the accused. The complainant could not prove that there was action of the accused that led to dishonour rather there was ignorance on the part of the complainant that seems more probable that it shakes the basic foundation of valid instrument (Cheque) to bring the case under Section 138 of NI Act on dishonour of same.

Decision for point no (iii):

The cheque issued was not dishonored due to the fault of the accused.

Hence it is negative.

28) **Point For Determination**

(iv) What order?

In view of the discussions made above and the decisions reached in the foregoing points for determinations it is held that Undoubtedly, the accused has a liability to pay the debt but the cheque being invalid the instrument is not negotiable due to its invalidity at the time of presentation. Therefore, this does not attract the liability under Section 138 of the Negotiable Instrument Act. That being the position and to mention that the cheque was never dishonored due to fund insufficient and evidences are produced to support the same, other assertions made in the complaint itself are not maintainable being the instrument invalid *per se*. As the bank does not accept invalid cheque after 30/06/2021 and public notice is there by Canara Bank. Therefore the cheque in question was invalid cheque and did not come under a bounced cheque. Admittedly, the complainant has not n\examined the official of the bank to show that the dishonour was due to fault of the accused in account thus it is fatal to the case of the complainant. Therefore, the contention of the complainant that the cheque was dishonoured cannot be acceptable. It is a criminal case and the complainant has to prove its case by leading cogent evidence. He cannot take the benefit of any defect in the defence version. Thus no doubt, there was a legal debt on accused but the instrument lost its validity due to national merger after date 30/06/2021. The cheque was presented on date 12/07/2024 and as per public notice the Cheque of Syndicate Bank stands invalid from date 30.06.2021 and such instrument cannot be claimed to have been dishonnoured and was returned being declared by the bank as invalid WEF 01072021. It proves that the cheque was returned because of being invalid on the date of the presentation and not because the accused was not having sufficient balance in his account or cheque got dishonoured due to the other reasons like "exceed the arrangement" or "signature differ" or "account closed" etc. Thus the complainant could not discharge his burden of dishonour of cheque. Therefore, the basic requirement of the case that the cheque should be dishonoured under Section 138 of NI Act stands unfulfilled and as such the accused is not liable to be convicted under section 138 of the Negotiable Instruments Act,1881 though legal debt can be claimed by any other lawful methods. Hence, as per the settled legal position and circumstances of the case I hereby pass the final order as follows −

:: Order ::

(1) The accused Sudhirbhai Saharbhai Desai, Residing at: Randaala,

Visnagar, Dis. Mahesana is held not guilty in view of Section 255(2) of Criminal Procedure Code, 1973 for the offence punishable under Section-138 of Negotiable Instrument Act.

(2) Bail bond of accused is canceled and surety stands discharged.

(3) The accused shall furnish bail of Rs. 25,000/- As per Section-437(A) of the Criminal Procedure Code till the appeal time.

(4) In view of judgment of Hon’ble Apex Court in case of Rajesh Pondda V/s Satyanaranay Sirangam Reported as 2019(1) ACJ(SC) 478, if the accused does not remain present in the court on date of Judgment right of accused to have free copy of this judgment will hereby be forfeited.

Order signed and pronounced in the open court on this day of 10, September 2025

Place: Mahesana **Date: 10/09/2025**	**Diksha Trivedi** **07th Add. Judicial Magistrate First Class** **Mahesana** **Judge Code: GJ01726**