MHMM120222172021	Presented on	: 10.08.2016
	Registered on	: 10.08.2016
	Decided on	: 15.04.2026
	Duration	: Y. M. D. 09 08 05

(Para 44(i) of Chapter VI of Criminal Manual)

IN THE COURT OF JUDICIAL MAGISTRATE (FIRST CLASS), SPECIAL COURT FOR ITPA, 54th COURT, MAZGAON, MUMBAI

(Presided over by Smt. N. B. Ghatage)
Date of the Judgment 15/04/2026

C.C.No. 5401793/SC/2021
(Old C.C No. 8042/SS/2016)

(Exhibit - 73)

	Offence punishable under Section 138 read with 141 of the Negotiable Instrument Act, 1881
Complainant	**Mrs. Rimpy Bhatia**, Address : 3A/1907 Samartha Angan, Oshiwara, Andheri (W), Mumbai 400 053.
Represented by	M/s. A & P Partners
Accused	**1. M/s. Protecta Inc**, Address : B-4 & 5, First Tax Free, Industrial Estate, Khanvi Road, Saily, Silvasa, Dadara & Nagar, Haveli, Gujrat – 396230. **2. Mr. Pankaj Vinod Bhatia**, (Proprietor and Authorized signatory) Address : 502, Maples, A-Park city, Amli Silvasa, Gujarat – 396230.
Represented by	Adv. J. J. Kanani

(Para 44(ii) of Chapter VI of Criminal Manual)

Date of offence	12.07.2016
Date of FIR/Complaint	10.08.2016
Date of Charge sheet	---
Date of Framing of Charge / Plea	13.02.2019
Date of commencement of evidence	29.08.2019
Date on which judgment is reserved	10.03.2026
Date of the Judgment	15.04.2026
Date of the Sentencing order, if any	---

Accused Details

Rank of Accused	Name of Accused	Date of Arrest	Date of Release on bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of Detention undergone during Trial for purpose of Section 428 Cr.P.C.
1 2	**M/s. Protecta Inc** **Mr. Pankaj Vinod Bhatia**	---	---	U/ s.138 r/w. 141 of N.I. Act	Acquitted	---	---

(Para 44(iii) of Chapter VI of Criminal Manual)
LIST OF PROSECUTION / DEFENCE / COURT WITNESSES

A. Prosecution:

Rank	Name	Nature of Evidence (Eyewitnesses, Police Witnesses, Expert Witnesses, Medical Witnesses, Panch witnesses, other witnesses)
1	Rimpy Vipin Bhatia	CW 1 complainant

B. Defence Witnesses, if any:

Rank	Name	Nature of Evidence (Eyewitnesses, Police Witnesses, Expert Witnesses, Medical Witnesses, Panch witnesses, other witnesses)
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C. Court Witnesses, if any:

Rank	Name	Nature of Evidence (Eyewitnesses, Police Witnesses, Expert Witnesses, Medical Witnesses, Panch witnesses, other witnesses)
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LIST OF PROSECUTION / DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr.No.	Exhibit No.	Description
1	09	Partnership Agreement dtd. 14.08.2014
2	10 to 16	Letter dtd. 24.06.2019 to 28.06.2019 alongwith the bank statement
3	17	Cheque bearing No. 136883 dtd. 20.05.2016
4	18	Dishonoured memo dtd. 24.05.2016
5	19	Legal Demand Notice dtd. 23.06.2016
6	20 to 23	Online Tracking Report of the Legal Notice and Postal Receipt
7	26	Bank Certificate dtd. 04.03.2021 issued by the HDFC Bank in respect of savings bank account No. 00011000077705 maintained in the name of Vipin Bhatia
8	27	Bank Certificate dtd. 04.03.2021 issued by the HDFC Bank in respect of savings bank account No. 50100036353261 maintained in the name of Rimpy Bhatia
9	28	Bank Certificate dtd. 04.03.2021 issued by the

		HDFC Bank in respect of savings bank account No. 01591000113572 maintained in the name of Vipin Bhatia

B. Defence:

Sr.No.	Exhibit No.	Description
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C. Court Exhibits:

Sr.No.	Exhibit No.	Description
1	06	Plea of accused
2	52	Statement U/s. 313 of Cr. P. C.

D. Material Objects:

Sr.No.	Material Object Number	Description
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J U D G M E N T

(Delivered on 15/04/2026)

The accused are facing trial for the offence punishable under Section 138 read with 141 of the Negotiable Instrument Act, 1881 (in short ‘the N.I. Act').

2] The case of the complainant in nutshell is as under-

The complainant Rimpy Bhatia is daughter of Late Mr. Vipin Bhatia and surviving legal heir of Mr. Vipin Bhatia and partner of M/s. V. R. Marketing Co. Accused No. 1 is a company and accused No. 2 is the Proprietor of accused No. 1 carrying on business of manufacturing bags and supplying to Flipkart under its brand and also manufacturing for other brands as per orders. Accused No. 2 as the proprietor is looking after the day to day affairs of the firm and carrying out its operation therefrom. Accused No. 2 had approached Late Mr. Vipin Bhatia with a proposal to start a partnership firm by the name of M/s. V. R. Marketing (Partnership firm). As per the proposal, M/s. V. R. Marketing was to be given exclusive right to market Protecta brand on Filpkart portal. Further, M/s. V. R. Marketing was to setup an office in Mumbai and the operations were to be managed by Mr. Vinod Bhatia and Ms. Rimpy Bhatia.

3] The complainant further states that on representation of accused No. 2, the complainant accepted the proposal and a partnership agreement was signed between them. Mr. Vipin Bhatia paid Rs. 44,50,000/- as an understanding between the complainant's father and as an investment in M/s. Protecta Inc. The said principal amount was to be paid back to late Mr. Vipin Bhatia through mutually agreed dates, however, after receiving the said amount the accused changed the investment repayment date and the change was abrupt and was not discussed upon or consented by Mr. Vipin Bhatia and/or the complainant.

4] The complainant further states that Mr. Vipin Bhatia and complainant vigorously followed up with the accused for repayment of the said amount but in vain. Due to financial stress and in lieu of this transaction Late Mr. Vipin Bhatia suffered a stroke on 24.11.2014 and passed away on 16.09.2015. After the demise of Mr. Vipin Bhatia, the complainant followed up on daily basis with the accused for the refund of Principal Amount of Rs. 44,50,000/- alongwith interest owned by the accused to the complainant. Then after much discussion, the accused agreed to pay a part of the admitted liability principal amount of Rs. 25,00,000/- with the assurance that the balance payment will also be paid within a short period of time and gave cheque No. 152530 for the said amount. The complainant deposited the said cheque in the bank, but the cheque was returned dishonoured on 09.05.2016 with intimation “returned due to insufficient funds”. The complainant informed about the same to the accused, but the accused gave some excuse and promises, hence the complainant did not take any action on the accused.

5] The complainant further states that after much follow up and several calls and personal visit to Silvassa, the accused gave cheque No. 000000136883 dtd. 20.05.2016 of Rs. 44,50,000/- drawn on Corporation Bank, Silvassa Branch to the complainant in discharge of his liability towards the complainant. However, the said cheque was also returned unpaid and dishonoured with the remark “insufficient funds” vide return memo dtd. 24.05.2016. Hence, complainant issued statutory demand notice dtd. 23.06.2016 to the accused through Registered A.D./Courier and Speed Post. It is deemed to be served upon the accused on 27.06.2016. However, the accused did not pay the amount of the disputed cheque. This constrained the complainant to file this complaint against the accused.

6] On presentation of the complaint, my Ld. Predecessor has passed issue process order on 05/11/2016 against the accused. In response to same, the accused appeared in the court.

7] My Ld. Predecessor recorded the plea of accused on 13.02.2019 for the offence punishable under section 138 r/w 141 of the Negotiable Instruments Act and same was explained in vernacular to which accused pleaded not guilty and claimed to be tried. Statement under section 313 of the Code of Criminal Procedure recorded at Exh. 52 wherein defence of accused was of total denial.

8] Heard Ld. Counsels for both parties at considerable length read the written arguments filed at Exh.71 and Exh. 61 by the complainant and the accused respectively. As per the complainant, accused is cousin brother and family member of the complainant and entire transaction was taken place on mutual trust between the parties. Accused never denied the execution of partnership deed. The amount was accepted by the accused into the account of accused no 1.Accused failed to give any justification about the issuance of alleged cheque and signed by accused no.2. Thus, the complainant has proved the case beyond reasonable doubt. So she prayed for conviction of accused.

Ld. Counsel for the accused argued that complaint was filed without any authority from complainant company, the demand notice was not received by the accused. As per accused complainant failed to remit the amount paid by accused from the amount of cheque. As per accused he is not liable for the payment of Rs. 44,50,000/- to the complainant, so he prayed for acquittal. They both produced oral as well as documentary evidence. After going through the evidence and arguments, following points arouse for my determination ,the findings alongwith the reasons are as stated below :

Sr. No.	POINTS	FINDINGS
1]	Whether technical requirement of section 138 of the Negotiable Instruments Act are complied by the complainant ?	In the negative
2]	Whether complainant proved that accused has committed the offence under section 138 of the Negotiable Instruments Act ?	In the Negative
3]	What order ?	Accused are acquitted as per final order.

<u>REASONS</u>

9] The complainant has filed evidence of herself at Exh. 07 and 24 for proving her case.

10] The complainant placed reliance on the following judgments,

i) *Oriental Bank of Commerce V/s. Prabhod Kumar Tewari, Criminal Appeal No. 1260/2022 arising out of SLP (CRL) No. 9836 of 2019, Hon'ble Supreme Court of India.* It is held that "Section 139 of the N.I. Act raises a presumption that a drawer handing over a cheque signed by him is liable unless it is proved by adducing evidence at the trial that the cheque was not in discharge of a debt or liability. The evidence of a handwriting expert on whether the respondent had filled in the details in the cheque would be immaterial for determining the purpose for which the cheque was handed over. Therefore, no purpose is served by allowing the application for adducing the evidence of the handwriting expert".

ii) *Rangappa V/s. Prabhod Sri Mohan, Criminal Appeal No. 1020 of 2010 arising out of SLP (CRL) No. 407 of 2006, Hon'ble Supreme Court and Kali Ram V/s. State of H.P., (1973) 2 SCC 808.* It is held that "<u>Section 139</u> of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While <u>Section 138</u> of the Act specifies strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under

Section 139 is a device to prevent undue delay in the course of litigation.

Presumption mandated by sec.139 includes existence of legally enforceable debt or liability. It is rebuttable presumption. Accused can raise the defence wherein the existence of legally enforceable debt or transaction can be contested. Standard of proof for accused is that of preponderance of probabilities. Is accused is able to create a doubt about the existence of legally enforceable debt or liability, prosecution can fail."

11] The accused placed reliance on the following judgments,

i) *Kishore Shankar Singapurkar V/s. State of Maharashtra & anr., 2004(1) Bom.C.R.(Cri.) 186, Hon'ble Bombay High Court.* It is held that "It is the bounded duty of the complainant to disclose the full details of the transaction including the past history .but if the complainant fails to do so he should suffer."

ii) *M/s. IVY Jewellery Pvt. Ltd. V/s. Shri Chandresh Sampat, Criminal Appeal No. 91 of 2012 D/d. 10.11.2023, Hon'ble Bombay High Court*. It is held that "There are certain cases where statutory presumptions arise regarding the guilt of the accused ,but the burden even in those cases is upon the prosecution to the existence of the fact which have to be present before the presumption can be deawn. Once those facts are shown by the prosecution to be existed the court can raise the statutory presumption it would be for the accused to rebut the presumption. If some material is brought on record consistent with the innocence of the accused which may reasonably be true ,even though it is not positively proved to be true,the accused would be entitled to be acquitted."

iii) *Angu Parameshwari Textiles V/s. Sri Rajam and Co., Criminal Original Petition 24075 of 2000 and Cri. Misc. Petition Nos. 9221 and 9222 of 2000 and 455 of 2001 D/d. 24.01.2001, Hon'ble Madras High Court.*

iv) *Hiten Sagar V/s. IMC Ltd., 2001 Law Suit (Bom) 445, Hon'ble Bombay High Court.*

v) *V.D. Jhingan V/s. State of Uttar Pradesh, AIR 1966 SC 1762.* It is held that "Where the burden of proof lies upon the accused it is not required to discharge that burden by leading evidence to prove his case beyond reasonable doubt."

vi) *M/s. Sai Auto Agencies V/s. Hemant Ambadas Bajad, 2022 SCC OnLine Bom. 1675, Hon'ble Bombay High Court.* It is held that "It is permissible for the holder of cheque to endorse of the balance amount upon receipt of part payment,on the back of the negotiable instrument or the separate slip of cheque to be annexed with the cheque. the cheque would not be valid for the original amount, but for the endorsed amount mentioned. Otherwise the holder of the cheque would be deprived of the remedy under section 138 of negotiable instrument act."

vii) *Dashrathbhai Trikambhai Patel V/s. Hitesh Mahendrabhai Patel, (2023) 1 SCC 578, Hon'ble Supreme Court.* It is held that "If the part payment of the debt is made after the cheque was drawn but before the cheque is encashed ,such payment must be endorsed on the cheque under sec .56 of the act. The cheque cannot be presented for encashment without recording the part payment. If the unendorsed cheque is dishonoured on presentation, the offence under 138 cannot be attracted since the cheque does not represent a legally enforceable debt at the time of encashment.

viii) *B. Krishna Reddy V/s. Syed Hafeez (Died) Per LR.Smt. Naseema Begum & anr., Criminal Appeal No. 1509 of 2019, Hon'ble Supreme Court of India.*

ix) *Satyanarayan Bhagatram Agarwal V/s. Vishwanath alias Rajan Pandurang Gadgil and anr., Criminal Application No. 1315 of 2012, Hon'ble Bombay High Court.*

12] The settled law is that dishonour of cheque by itself is not a crime punishable under Section 138 of the Act. To bring home the guilt of accused within the purview of the section 138 of the Negotiable Instruments Act following requirements should be fulfilled -

(1) The cheque has to be issued towards payment of money for the discharging whole or in part of any legally enforceable debt or other liability;

(2) the cheque has to be returned by the bank unpaid;

(3) the reason for nonpayment of cheque should be *insufficiency of funds or amount of cheque exceeding the amount arranged* to be paid from the account.

13] However, before dealing with the offence following facts should be confirmed whether :

(a) the cheque is or was 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;

(b) the payee or the holder in due course of the cheque makes a demand for the payment of the amount of money under the cheque within one month from date of receipt of information from the bank regarding dishonour of the cheque;

(c) the drawer of the cheque fails to make payment of the amount of money within fifteen days of the receipt of the notice. If these mandates are fulfilled then it can be said the case is within the ambit of section 138 of the Negotiable Instruments Act. In the scenario of above settled position of law, contention of the complainant should be quantified.

AS TO POINT NO. 1 :-

14] As far as presentation of cheques within its validity period and dishonour is concerned it has to be proved by complainant by giving proper evidence. Complainant in this case has placed on record original cheque at Exh. 17 and also filed the cheque return memo at Exh. 18. From this it is clear that cheque was given by accused no.1 in the name of complainant. The said cheque was dishonoured by the memo (Exh. 18) for reason “insufficient funds”. From the cheque it is is clear that the cheque is of date 20/05/2016 and returned on 24/05/2016 which means that cheque was presented in the bank within limitation. As per law the notice must be send to the drawer within one month of of receiving the knowledge of return of cheque. In this matter the cheque was returned unpaid by bank on 24/05/2016.As per complainant she send notice to the accused on 23/06/2016 through RPAD and speed post. Exh. 19 is the said notice. On perusal of this notice it is clear that the month in the said notice was originally written as May but later it was scratched and written as June. In her cross examination at Exh. 24 the complainant stated that originally the date printed on Exh.19 (legal notice) was 23 May 2016, but advocate of accused scratched it and written as June. She admitted that her Advocate prepared it on 23rd June 2016, on or after 23 June that draft was emailed to her and on the same day she approved it. Thus, from this it is clear that the demand notice was prepared on 23 /06/2026 and only after that the notice must have been send to accused. But, the postal slips at Exh. 20 and Exh. 21 reveals that the notice was send on 22/06/2016 i.e. one day before preparation of notice. If the notice was prepared on 23/06/2016 then how it can be send to the accused on 22/06/2016. This itself creates the doubt as to whether the notice was really send to the accused or not. Complainant failed here to prove properly that she had send the demand notice to the accused. So, I answer point no.1 in negative.

<u>AS TO POINT NO. 2</u> **:-**

15] Further, for holding the accused guilty under sec. 138 of N. I.

Act complainant has to prove that the alleged cheque was given by accused for payment of legally enforceable debt. In this matter accused nowhere denied his signature over the alleged cheque. So, presumption under sec 139 of N. I. Act comes into force. Thus, it is presumed that the alleged cheque was given by accused for the payment of legally enforceable debt. The presumption is of reversible onus so the accused needs to rebut the presumption. For rebutting this presumption accused need not prove his defence it beyond reasonable doubt and also he need not step into the witness box.

16] As per complainant she and her father late Vipin Bhatia invested in accused's company Protecta Inc. total amount of Rs. 44,50,000/-, for returning of which accused gave her the alleged cheque. But, complainant nowhere in her complaint, affidavit of examination of chief stated when and how they gave an amount to the accused. No documents regarding this is filed by complainant.

17] The bank statements filed by complainant at Exh.10 shows that Vipin Bhatia had paid Rs. 4.50 lakhs in between January 2014 to March 2014. Exh 12 shows that Vipin Bhatia gave Rs. 8 lakhs in July and August 2014 to accused i.e. Protecta Inc., Exh 16 shows that he paid Rs. 3.50 lakhs to Protecta, Exh.14 shows that Madhu Bhatia had given Rs.1,75,000/- to Protecta Inc., from Exh 11, Exh. 13 it clear that Complainant had given Rs. 2.25 Lakhs and Rs. 2 lakhs to Protecta Inc. Exh. 26 again shows that on 16.01.2014 Rs. 5,00,000/- were paid to accused No. 1 by Vipin Bhatia, on 17.01.2014 Rs. 4,50,000/-, on 03.03.2014 Rs. 2,50,000/-, on 15.03.2014 Rs. 2,50,000/- and on 26.05.2014 Rs. 5,00,000/- were paid. Exh. 28 shows that Vipin Bhatia paid to accused No. 1 Rs. 5,00,000/- and 3,00,000/- respectively on

04.07.2014 and 20.08.2014. But, from Exh. 10 and Exh. 26 it is revealed that those entries which are shown to be credit from accused No. 1 to Vipin Bhatia on 16.01.2014 and 17.01.2014, 03.03.2014 in Exh. 10 are the same entries which are shown to be debited from the account of Vipin Bhatia to the account of accused No. 1. Thus, it is not clear, which bank statement is correct. For proving the correct account statement no bank witness is examined by complainant. In her cross-examination, complainant admitted that the entries in the Exh. 10 were correct, besides the word “not” in that statement. It means as per complainant the account statement at Exh. 10 is as per complainant is correct. But, this creates the doubt about how much amount was paid to accused No. 1 by Vipin Bhatia and actually how much was received by him from accused No. 1. No other documents showing that more than this amount was given to accused by complainant and other two are filed by the complainant. It proves that complainant has no evidence to prove that complainant, Vipin Bhatia and Madhu Bhatia had paid Rs. 44.50 lakhs to the accused. From the cross examination of complainant it is clear that she was aware about the investment by Vipin Bhatia and Madhu Bhatia, but inspite this knowledge she failed to mention this fact in her complaint and affidavit of examination-in-chief. From the cross-examination of complainant it is also revealed that, she was having no knowledge about how much amount was invested by Vipin Bhatia and Madhu Bhatia in Protecta Inc. in the year 2014. Complainant failed to prove how much amount was paid by V. R. Marketing to Protecta Inc. during January 2014 to July 2014.

18] Now it is important to prove that accused No. 2 is the proprietor and authorized signatory of Protecta inc. and cheque was given by the accused no.2 in the name of Protecta Inc. No such document showing that accused is proprietor and authorized signatory of Protecta

Inc. is filed by complainant. She even stated in her cross examination that her father Vipin Bhatia told her that Accused no.1 is proprietor firm and accused no.2 is proprietor and signatory of the accused no.1. Thus, it is clear that complainant failed to file any documents and to prove that accused no.2 is proprietor and signatory of accused no.1.

19] Complainant admitted in cross-examination that she and her father had received Rs. 9,77,200/- and Rs.12,00,000/- respectively from the accused. Exh 10 shows that Rs. 17 lakh were credited to the account of Vipin Bhatia by Protecta Inc. between January 2014 to March 2014. She admitted that all these amounts were not adjusted in the alleged cheque. She also admitted that she failed to adjust the amount of Rs. 21000/- received by her son from accused.

i) *M/s. Sai Auto Agencies V/s. Hemant Ambadas Bajad, 2022 SCC OnLine Bom. 1675, Hon'ble Bombay High Court.* It is held that "It is permissible for the holder of cheque to endorse of the balance amount upon receipt of part payment,on the back of the negotiable instrument or the separate slip of cheque to be annexed with the cheque. The cheque would not be valid for the original amount ,but for the endorsed amount mentioned. Otherwise the holder of the cheque would be deprived of the remedy under section 138 of negotiable instrument act.

ii) *Dashrathbhai Trikambhai Patel V/s. Hitesh Mahendrabhai Patel, (2023) 1 SCC 578, Hon'ble Supreme Court.* It is held that "If the part payment of the debt is made after the cheque was drawn but before the cheque is encashed, such

> payment must be endorsed on the cheque under sec. 56 of the act. The cheque cannot be presented for encashment without recording the part payment. If the unendorsed cheque is dishounored on presentation, the offence under 138 cannot be attracted since the cheque does not represent a legally enforceable debt at the time of encashment.

20] Thus, it is clear that if the part payment amount is not endorsed and adjusted on the negotiable instrument at the time of its presentation of encashment then the offence under section 138 of negotiable instrument Act is not attracted. In this matter it is clear that inspite of receiving Rs. 17 Lakhs from the accused, complainant failed to endorse this on the alleged cheque and adjust with the cheque amount. Thus, complainant failed to prove that accused was liable to pay total Rs. 44.50 lakhs to the complainant, so, she is deprived of the remedy under sec.138 of N. I. Act as held in above cited judgments.

21] Thus, from above all the reasons it is clear that complainant failed to prove any legal liability of payment of Rs. 44.50 lakhs of the accused. Hence, I answer Point No. 2 in the negative.

22] Thus, considering all the reasons stated above, complainant in this case failed to prove that the accused has committed the offence U/s. 138 of N.T. Act. So, I hold that complainant failed to prove the case against accused. Hence, I answer point no. 2 in the negative.

AS TO POINT NO. 3:-

23] Thus, considering the discussion supra and the observations to the point Nos. 1 and 2, I am of the opinion that accused is entitled for acquittal. Hence, proceeds to pass following order.

ORDER

1) Accused **No. 1 M/s. Protecta Inc and No. 2 Mr. Pankaj Vinod Bhatia** are hereby acquitted of the offence punishable under Section 138 r/w. 141 of Negotiable Instrument Act vide section 255(1) of Code of Criminal Procedure.

2) The bail bond of accused stands cancelled.

3) The accused shall execute PR bond of Rs. 15,000/- to appear before next appellate Court as per section 437(A) of Code of Criminal Procedure.

Judgment pronounced in open court.

Digitally signed by NANDA BAPUSO GHATAGE
Date: 2026.04.15 17:18:52 +0530

(N. B. Ghatage)
Judicial Magistrate (First Class),
Special Court for ITPA,
54th Court at Mazgaon, Mumbai.

Date : 15/04/2026
SVP

Dictated on : 15/04/2026
Typed on : 15/04/2026
Signed on : 15/04/2026