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		Decided on	:	22 – 07 – 2026
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				02 : 02 : 21

IN THE COURT OF ADDITIONAL CIVIL JUDGE & JMFC,

(Ms. K. S. RANA) AT AMRELI.

Criminal Case No. 878 of 2024

Exhibit No.– 58

Mr. Bhavinbhai Rajeshbhai Limbani - Legal Executive of Shree Ram Transport Finance Company Ltd. …. Complainant

Residence : Narayan Arcade, Opp. Bhidbhanjan Mahadev Temple, Amreli.

V E R S U S

Bilalbhai Peerbhai Selot …. Accused

Residence : Ghanchiwad, Holiya Hanuman, Rajula, Amreli.

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Subject:- Judgment Under Section–255 of Criminal Procedure Code in the matter filed under Section-138 of Negotiable of Instruments Act (herein after referred as "NI Act").

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APPEARANCE: -

For The Complainant : Learned Advocate Mr. Y. L. Palwar

For The Accused : Learned Advocate Mr. V. D. Gosai

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:: J U D G M E N T ::

Date: 22. 07. 2026

(1) **Introduction:**

The Complaint has been filed by Bhavinbhai Rajeshbhai Limbani in the capacity of Legal Executive of Shree Ram Transport *(hereinafter "complainant")* against Mr. Bilalbhai Peerbhai Selot *(hereinafter "accused")* under Section 138 of The Negotiable Instruments Act, 1881 *(hereinafter "NI Act").*

(2) **Brief Facts of The Complaint:-**

2.1 The complainant's company Shri Ram Transport Finance Co. Ltd. has located at the above mentioned address which is a company registered under The Companies Act-1956 and whose name is Shri Ram Transport Finance Co. Ltd. hereinafter referred to as Shri Ram Finance Ltd. as per the order of N.C.L.T. dated 09/11/2022, and the complainant company is engaged in the business of providing loans for the purchase of old and new three-wheelers, old and new cars, trucks, tractors, machinery and commercial vehicles and also engaged in providing loans on such vehicles in other ways. The complainant company has different branches of its business throughout the country. One of the branch is also located at the above address at Amreli.

2.2 The accused was in need of money to purchase TATA LPT 1109 FBT vehicle of TATA Company with RTO Reg. No. GJ-14-AX-4794 and he has contacted the Amreli branch of the complainant company and the complainant company gave the accused a loan as per his requirement and the accused accepted the loan on the condition of strictly following the conditions stated by the complainant company. The accused promised, gave faith and trust to repay the loan amount obtained by the complainant company in the prescribed time with the prescribed interest and interest in regular monthly installments of the prescribed amount and while giving the said trust, the accused also entered into a written agreement with the complainant company. The details of loan account of accused is mentioned as below.

No.	Loan Date	Type of loan	Loan A/c No.	Amount of loan
1	26/09/17	Vehicle loan	MHUVAO09	2,60,000/-

			260001	
2	06/10/18	WCL	MHUVAT10 060004	33,447/-

2.3 Later, due to non-payment of the above-mentioned loan amounts, the complainant company repeatedly informed the accused that he bound to pay the outstanding amount. Therefore, the accused gave the complainant company a cheque with the following details and description out of the outstanding amount of the loan including interest of Rs. 8,27,499-97 (in figures, eight lakh twenty-seven thousand four hundred and ninety-nine and seventy-seven paisa only). The details of cheque is mentioned as below.

Details of the cheque :

No.	**Rs.**	**Cheque number**	**Date of cheque**	**Account No.**	**Bank Name**
1.	2,60,000/-	016247	14/03/24	00866	The Rajula Nagrik Sahakari Bank Ltd., Rajula Branch.

2.4 The accused has assured the complainant that the cheque would be clear whenever he deposited it. The complainant deposited the cheque in his account maintained at Axis Bank, Amreli. However, the cheque was returned back with the endorsement “Funds Insufficient” on 16/03/2024. Thereby, the complainant sent a legal notice under section 138 of NI Act through his advocate on 03/04/2024 via RPAD and the said notice was duly served to the accused on 04/04/2024. Inspite of service of notice, the accused has failed to repay the amount of disputed cheque & also failed to reply of the demand notice.

2.5 The accused failed to make payment of amount of the dishonored cheque, despite of services of demand notice. Thus, the accused committed offence under Section-138 of NI Act and hence the present complaint has initiated.

(3) <u>Case Proceedings:-</u>

3.1 Cognizance of offence was taken and process was issued against the accused by this court. Upon successful service of the summons accused has appeared before the Court. The court has after complying with provision of Section-207 of Cr.P.C., plea of accused has been recorded vide Exhibit – 12. In his plea, the accused has refused to plead guilty and claim to be tried in accordance with law.

(4) <u>Evidence Adduced by the Complainant in support of his Complaint:-</u>

(i) Oral Evidence:

Sr. No.	**Particulars**	**Exh.**
1.	Deposition of complainant	04

(ii) Documentary Evidence :

Sr. No.	**Particulars**	**Exh.**
1.	True copy of Power of Attorney	16
2.	Original cheque bearing no. 016247	17
3.	Original return memo	18
4.	Legal notice (office copy)	19
5.	Original Post slip	20
6.	Original acknowledgement	21
7.	Online Track report	22
8.	Complainant's loan account statement	23
9.	True copy of complainant's Aadhar card	24

(5) <u>Closure of Evidence:-</u>

5.1 The complainant has submitted his closing pursis vide

Exh. 52 and stated that he does not want to produced further oral or documentary evidences. Thereafter, before entering into defence evidence, in order to allow the accused to personally explain the circumstances appearing in evidence against him, his further statement under section 313 of Cr. P. C. was recorded without oath.

(6) **Further Statement of Accused under section 313 of CRPC.:-**

The accused has formally denied all the allegations against him. The accused submitted the following in his further statement.

1. The complainant has misused cheque which was executed by the accused at the time of loan procedure.
2. The complainant has not proved Power of Attorney.
3. The accused has not received any notice.
4. The accused has no legal debt.

(7) The accused did not want to produced any oral or documentary evidences. Hence, The matter was listed for final arguments.

(8) **Final Arguments :-**

8.1 **Arguments on behalf of Complainant:-**

The complainant has orally argued at length as per evidences placed on record.

8.2 **Arguments on behalf of Accused:-**

The accused has submitted his written-argument at Exh. 55, which is part and parcel of the order and to avoid repetition of facts, this court do not reiterate it as a whole.

(9) **Issues:-**

Having heed to the above mentioned facts and circumstances, evidence and arguments of either side following issues arise before me for just decision of the case.

No.	Issues
1	Whether the complainant proves that cheque at Exhibit 17 bearing no. 016247 of Rs. 2,60,000/- dtd. 14. 03. 2024 was issued by the accused in favour of complainant to discharge his legally enforceable debt, which was presented by the complainant in the bank and the same was

	dishonoured with the endorsement of “Funds Insufficient” and despite of demand notice served to the accused he has failed to repay the amount of the cheque and thus, accused has committed offence under Section-138 of Negotiable Instrument Act?
2	What Order?

My findings upon such issued are as under.

Issue No.1	In Negative
Issue No.2	As per final order

(10) <u>Reasons:-</u>

10.1 Before appreciating the facts of the case in detail for the purpose of decision, let relevant position of law be discussed first. Section 138, NI provides as under:

"Section 138.- Dishonour of cheque for insufficiency, etc., of funds in the account.- 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 provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:"

Provided that nothing contained in this section shall apply unless:

(A) The cheque has been presented to the bank within a period of six 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, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(C) 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.

Explanation -- for the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

10.2 In order to establish the offence under section 138 of NI Act, the complainant must have to fulfill all the essential ingredients of the offence as highlighted below.:

1. The cheque was drawn by a person on an account maintained by him for payment of money and the same is presented for payment within a period of 3 months from the date on which it is drawn or within the period of its validity;

2. The cheque was drawn by the drawer for discharge

of any legally enforceable debt or other liability;

3. The cheque was returned unpaid by the bank due to either insufficiency of funds in the account to honour the cheque or that it exceeds the amount arranged to be paid from that account on an agreement made with that bank;

4. A demand of the said amount has been made by the payee or holder in due course of the cheque by a notice in writing given to the drawer within thirty days of the receipt of information of the dishonour of cheque from the bank;

5. The drawer fails to make payment of the said amount of money within fifteen days from the date of receipt of notice.

In addition to the above, the conditions stipulated under section 142 of NI Act have to be fulfilled.

10.3 Herein the present case, the complainant has proved the original cheque vide Exh. 17. The accused has not denied his signature on the cheque. The cheque in question was returned unpaid vide Exh. 18. The same has also been proved by the complainant. As per

Section 146 of NI Act, bank's slip is prima facie evidence of proof of dishonour. Further, the complainant has proved legal notice on record vide Exh. 19 and the same has sent to the accused, which is transpires from a post slip vide Exh. 20, acknowledgement vide Exh. 21 & online tracking report produced vide Exh. 22. Further, he has produced loan account statement vide Exh. 23. As such, on the basis of the above discussion, the first ingredient of the offence under section 138 of NI Act stands proved against the accused. The controversy in the present case pertains to second, fourth and fifth ingredient.

10.4 In the present case at hand, for the proof of fourth and fifth ingredient is concerned, he accused has denied service of notice. For the same, the burden lies on the accused to prove it and he has failed to prove it. Further, This court has relied on ***C. C. Alavi Haji Vs. Palapetty Muhammed*** in which Hon'ble Supreme court has held that: "Para – 17 It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Sec. 138 of the Act, make payment within 15 days of receipt of summons from the court in respect of the complaint under Sec. 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Sec. 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Sec. 138, by ignoring statutory presumption to the contrary under Sec. 27 of the G. C. Act and Sec. 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskarans case, (supra) if the "giving of notice" in the context of Clause 9(b) of the proviso was the same as the "receipt of notice" a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of Sec. 138 of the Act." In the instant case, the accused has not take defence that the complainant has issued the notice on incorrect address. Therefore, when the notice is sent by registered post by correctly addressing the drawer of the cheque, the mandatory requirement of issue of notice in terms of Clause (b) of proviso to Sec. 138 of the Act stands complied with. Futher, the accused has not make payment even after service of summons by this court. Hence, the accused has failed to prove it and in that circumstances, his defence of non-service of demand notice is not tenable. As such, on the basis of the above discussion, fourth and fifth ingredient of the offence under section 138 of NI Act stands proved against the accused. The controversy in the present case pertains to second ingredient.

10.5 As far as the proof of second ingredient is concerned, the complainant is required to prove that the cheque in question was drawn by the drawer for discharging a legally enforceable debt. As per the scheme of NI Act once the accused admits signature on the cheque in question, certain presumptions are drawn, which result in shifting of onus on the accused. The combined effect of Section 118 (a) of NI Act and Section 139 of NI Act is that a presumption exist that the cheque was drawn for consideration and given by the accused for the discharge of debt or other liability.

118. Presumption as to the N.I. Act :- Until the contrary is proved, the following presumptions shall be made :-

(a) of consideration – that every negotiable instrument was made or

drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

139. Presumption in favour of the holder :- It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in section 138, for the discharge, in whole or in part, of any debt or other liability.

10.6 By virtue of these sections, the statute has imposed duty on court to presume that the cheque is drawn for consideration and the holder of the cheque has received the cheque for discharged in whole or in part of any debt or liability. Ordinarily the burden of proving the ingredients of section 138 would have following upon the complainant. However, by introduction of the said presumptive devices, the general norms stated in the evidence act is over come. The provision of section 118 and 139 of N.I. Act have fixed the onus of proving the same on the accused. These reverse onus clauses require the accused to prove the non-existence of consideration and debt and liability. The accused has to prove that cheque is not issued in discharge of debt-liability. These presumption though rebuttable however, until the contrary is proved, court has to presume that the cheque is drawn for consideration and holder of the cheque received the cheque in discharge of debt or liability. However, to raise the presumption it is incumbent on the part of the complainant to establish the ingredients of section 118 and 139 of NI Act, i.e. issuance of or drawing of cheque. Hence, first and foremost the complainant should have successfully brought on record the issuance of cheque or drawing of cheque by the accused.

10.7 Before adverting to appreciation of evidence let's cull out some undisputed facts of the case.:-

1. All the necessary pre -conditions is fulfilled by complainant before filing of present complaint.

2. That accused did not stepped into witness-box to lead his defence evidence.

3. Beside evidence of complainant, there is no evidence by accused, hence, this Court has to look into evidence of complainant for purpose of rebuttal circumstances and evidence.

10.8 This case revolves around transaction between complainant and accused which is in tune of Rs. 2,60,000/-. Looking to the defences taken by the accused in cross-examination of the complainant and further-statement of the accused, it transpires that accused has take various defence which are as mentioned below.

A. Disputed amount of cheque and existence of legal debt

The accused has defended that the complainant has misused the cheque, which was executed by him during process of loan, the accused has already paid some installments of loan and the complainant has not disclosed it in the complaint. Considering relevant cross-examination of the complainant, he has stated that, "It is not true that i have not mentioned any details in my complaint about how many installments of the loan amount the accused has paid and how much is outstanding. The witness voluntarily stated that the details of how many installments the accused has paid is not mentioned in the complaint. Looking at the complaint, I would like to state that the total outstanding amount is mentioned in para-4 of the complaint. It is true that no details have been written in the complaint about how many installments of the accuser's loan were due. The total amount of loan given to the accused was Rs. 2,60,000/-. I can tell by looking at the record how much amount the accused has repaid. By looking at the record I can tell that the accused has repaid Rs. 1,82,743/-." Looking to the said defence of the accused, this court believes that the complainant has bound to disclose actual loan amount, installments paid by the accused, outstanding amount and actual bifurcation of legal debt. however, the complainant has failed to mentioned it. This court has relied on ***Suman Sethi v. Ajay K. Churiwal and Another, (2000) 2 SCC 380,*** in which Hon'ble SC held that, "It is a well settled principle of law that the notice has to be read as a whole. In the notice, demand has to be made for the "said amount" i.e. cheque amount. If no such demand is made the notice no doubt would fall short of its legal requirement. Where in addition to "said amount" there is also a claim by way of interest, cost etc. Whether the notice is bad would depend on the language of the notice. If in a notice while giving the breakup of the claim the cheque amount, interest, damages etc. are separately specified, other such claims for interest, cost etc. would be superfluous and these additional claims would be severable- and will not invalidate the notice. If, however, in the notice an omnibus demand is made without specifying what was due under the dishonored cheque, notice might well fail to meet the legal requirement and may be regarded as bad." In that circumstances, the complainant has failed to show that how the accused has liable to pay the said legal debt and whether it is in existence or not. Further, even after cross-examination of the complainant, he has not produced any evidence in support of his averments of the complaint.

B. Time Barred Debt

The accused has further, defended that the complainant has filed present complaint for time barred debt. During Cross-examination of the complainant, he has stated in his relevant cross-examination that, "It is true that the loan period given to the accused has ended in 2020. The witness voluntarily states that the last installment amount would have been paid in 2020, if the regular installment amount had been paid. It is true that the present complaint was filed in the year 2024. It is true that I do not remember when the accused has paid the last installment. The witness voluntarily states that I can tell by looking at the record. By looking at the record, the witness has stated that the accused paid the last installment in February 2019. It is true that the date of loan is stated as 26/9/2017." Complainant himself admitted that the loan transaction has commenced in the year of 2017, and ended in the year of 2020. Further, he has admitted that he has not produced any evidence to show that he has recovered his debt within period of three years and he is not even ready to produce such kind of document to show it. Thus, it is pertinent to note that complainant is also admitting the fact that present disputed cheque is given by accused in discharge of time barred debt or liability.

10.9 At this juncture, it is significant to consider relevant observation of judgment of Hon'ble Gujarat High Court in case of ***J.Chitranjan And Company Proprietor- C D Shah Versus State Of Gujarat***[1], which is produced herein below :

"17. xxx

17.1 The next question which falls for consideration of this court is with regard to the meaning to be assigned to the expression `legally enforceable debt or other liability' as contained in explanation to section 138 of the N.I. Act and whether the time barred debt is a legally enforceable debt. This issue may not detain this court for long in view of the decision in Sasseriyil Joseph v. Devassia (supra). The said legal position was reiterated by this court in Criminal Appeal No. 35 of 2008 decided on 14.12.2013 whereby the case under section 138 of the N.I. Act was dismissed on noticing the time barred debt. It must be held that for a time barred debt proceedings under section 138 of the N.I. Act are not maintainable. In the instant case, admittedly, loan was made in the year 1983/1986 as deposed by the complainant and in view of the limitation period prescribed in Article 19 of the Limitation Act for money payable for money lent being 3 years from the date the loan was made, the debt or other liability as indicated in explanation to section 138 of the N.I. Act was not legally enforceable beyond 1986/1989 and the proceedings under section 138 of the N.I. Act initiated in the year 1994 were not competent. No evidence was adduced to show that within the prescribed period of limitation debt was acknowledged by the accused in writing. The decision in A.V. Murthy (supra) is of no assistance to the complainant inasmuch as therein it was held that in view of presumption under section 118 and 138 of the N.I. Act; as also section 25 of the Indian Contract Act, the complaint could not have been thrown overboard at the threshold on the ground of limitation. Such a fact situation is not available in the instant case. The proposition of law indicated in Hindustan Apparel Industries v. Fair Deal Corporation (supra) which dealt with acknowledgement within the period of limitation also cannot be applied to the facts of the case inasmuch as according to the complainant, the cheque was issued in the year 1994 i.e. after expiry of the period of limitation and therefore, there was no question of acknowledgement of the debt within the meaning of section 18 of the Limitation Act. As noticed at paragraph No. 5.3 above, the Supreme Court in Sasseriyil Joseph v. Devassia (supra) had, in no uncertain terms, after perusing the decision of the Kerala High Court in Criminal Appeal No. 161 of 1994 and after finding that the language in section 138 of the N.I. Act was clear and unambiguous, confirmed the judgement of the Kerala High Court. In the said judgement of the Kerala High Court in paragraph No. 6 and 7, it is held as under:

"6. The only question that arises for consideration in this appeal is whether the respondent who issued the cheque in question in discharge of a time barred debt is liable under Section 138 of the Negotiable Instruments Act. In this case, the complainant had admitted that the loan was advanced to the accused in January, 1988 and the cheque was issued in February, 1991. Thus, by the time the cheque was issued, the debt was barred by limitation since there was no valid acknowledgement of the liability within the period of limitation. According to the learned counsel for the appellant, the promise made by the accused to repay the time barred debt would come within the purview of Section 25(3) of the Indian Contract Act. No doubt, the promise to pay a time barred cheque (debt) is valid and enforceable, if it is made in writing and signed by the person to be charged therewith. But, it is clear from Section 138 of the Negotiable Instruments Act that in order to attract the penal provisions in the bouncing of a cheque in Chapter XVII, it is essential that the dishonoured cheque should have been issued in discharge, wholly or in part, or any debt or other liability of the drawer to the payee. The explanation to Section 138 defines the expression debt or other liability as a legally enforceable debt or other liability. The explanation to Section 138 reads as under :

Explanation :- For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability.

Thus, Section 138 is attracted only if the cheque is issued for the discharge of a legally enforceable debt or other liability. In this case, admittedly, the cheque in question was issued in discharge of a time barred debt. It cannot be said that a time barred debt is a legally enforceable debt. In this connection, it is also relevant to note the decision of the Andhra Pradesh High Court reported in Girdhari Lal Rathi v. P.T.V. Ramanujachari 1997 (2) Crimes 658. It has been held in that case that if a cheque is issued for a time barred debt and it is dishonoured, the accused cannot be convicted under Section 138 of the Negotiable Instruments Act simply on the ground that the debt was not legally recoverable. I am fully in agreement with the view expressed by the learned Judge in the decision referred to above. 17.2 Thus, the above discussion would answer even the argument in relation to section 25(3) of the Indian Contract Act apart from the argument in relation to enforceability of the debt and maintainability of the complaint under section 138 of the N.I. Act."

10.10 Considering the observations made by Hon'ble High Court as produced above, it is pertinent to note that when a cheque is issued for time barred debt, in such case dishonour of such cheque does not attract liability u/s 138 of NI Act. In the present case, as discussed above, alleged transactions was taken place in year of 2017 and 2020 as per facts of complaint itself. The complainant has admitted in his cross-examination that the last transaction has made in the year of 2019. As per Section 25(3) of Indian Contract Act, a promise to pay time barred debt is legal and valid, provided such promise must be in writing and signed by the party making it. As in the present case, complainant has not produced any such evidence pertaining to legal liability of accused, in such case, it is very much clear that disputed cheque was issued for the time barred debt, and hence, dishonour of such cheque does not attract liability u/s Section 138 of NI Act.

10.11 At this juncture, this court has relied upon ***M/s Kumar exports Vs. Vinod Sharma*** in which Hon'ble Supreme Court has held in **para : 11.** The use of the phrase "until the contrary is proved" in Sec. 118 of the Act and use of the words "unless the contrary is proved" in Sec. 139 of the Act read with definitions of " may presume" and "shall presume" as given in Sec. 4 of the Evidence

Act, makes it at once clear that presumptions to be raised under both the provisions are rebuttable. When a presumption is rebuttable, it only points out that the party on whom lies the duty of going forward with evidence, on the fact presumed and **when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of the presumption is over.** The accused in a trial under Sec. 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. **To rebut the statutory presumptions an accused is not expected to prove his defense beyond reasonable doubt as is expected of the complainant in a criminal trial.** The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the Court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. **To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the Court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant.** The accused may also rely upon presumptions of fact, for instance, those mentioned in Sec. 114 of the Evidence Act to rebut the presumptions arising under Secs. 118 and 139 of the Act. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once, such rebuttal evidence is adduced and accepted by the Court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant.

10.12 The presumption under section 139 is rebuttable presumption and the onus is on the accused to raised a probable defence. The standard of proof for rebutting the presumption is that preponderance of probabilities. To rebut the presumption it is open for the accused to rely upon evidence put by him or the accused can also rely on the materials submitted by the complainant in order to raise probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely. That it is not necessary for the accused to come in the witness box in support of his defence, section 139 imposed an evidentiary burden and not a persuasive burden. The standard of proof for rebutting the presumption is that of preponderance of probabilities. In the present case the accused has from the cross-examination of the complainant raised question on the legally enforceable debt. Further, he has replied to the notice of the complainant. The complainant has not produced reply of the accused which draws adverse inference against him and also shows that the complainant has not come with clean hands before the court.

10.13 At this jucture, this court has relied upon ***Basalingappa vs. Mudibasappa 2019 (5) SCC 418,*** in which Hon'ble Supreme Court has held that, "The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist."

10.14 The presumption contemplated under Section 139 of NI Act includes the presumption of existence of a legally enforceable debt. Once the execution of cheque is admitted section 139 of NI Act mandates a presumption that the cheque was for the discharge of any debt or other liability. The presumption under section 139 is a rebuttable presumption and the onus is on the accused to raise probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities. The accused has successfully rebut the presumption.

10.15 For foregoing reasons I am of the opinion that complainant has miserably failed to prove case against the accused beyond reasonable doubt. Thus, this court find no substance in the complaint. Per contra, defence of accused has proved by corroborated evidence and cross-examination of the complainant. Thus, this court answering issue no. 1 in negative. In consolation with issue no.2, following order is passed.

: : FINAL ORDER : :

1. Accused **Bilalbhai Peerbhai Selot,** Residence : Ghanchiwad, Holiya Hanuman, Rajula, Amreli is

hereby acquitted under section-255(1) of Code of Criminal Procedure for offence committed under section-138 of N.I.Act.

2. Accused shall furnish personal bond of Rs. 15,000/- (Rupees Fifteen Thousand Only) and surety of likewise amount for the purpose of Section 437A of the CRPC as to appear before higher court, if challenge to this judgment is made. However, life of this bail and bond would be of six month.

Signed and pronounced today on the day of 22^{nd} July, 2026 in the open Court.

Date : 22. 07. 2026
Amreli.

(Ms. Kajal Sureshbhai Rana)
Additional Civil Judge and
Judicial Magistrate First Class,
U. I. C. Code – GJ 01642
Amreli.