GJAN030033012023	सत्यमेव जयते	Received on :	11/10/2023		
		Registered on :	11/10/2023		
		Decided on :	01/07/2026		
		Duration :	YY	MM	DD
			02	08	21

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE AT PETLAD.

CRIMINAL CASE NO.: 2286/2023

Exh. ______

Complainant :-

Gopalbhai Babubhai Patel

Prop. of Vandan Finance

Age : 50 years, Occupation : Business/Agriculture,

Address : Patel Market, Station Road,

Taluka Petlad, District Anand.

V/S

Accused :-

Kantibhai Mangalbhai Solanki

Age : 40 years, Occupation : Agriculture,

Address : Damecha Area, Rampur, at Kathana,

Taluka Borsad, District Anand.

Charge : Punishable under section 138 of The Negotiable Instruments Act, 1881.

Ld. Advocates :-

From Complainant side :- Mr. P. R. Patel

From Accused side :- Mr. V. M. Raval

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

(1) The facts emanating the present case is that, complainant is financier and running his business in the name of "Vandan Finance". Accused is residing at above mentioned address. Accused came to complainant's finance office and requested to sanction him a loan of Rs. 37,000/- (in words rupees Thirty Seven Thousand Only) on date 20/03/2023 and promised to repay the amount within 6 months. Further, accused had executed all the necessary documents in favour of the complainant's finance firm. Further, accused had due to pay Rs. 40,000/- (in words rupees Forty Thousand Only) to complainant finance firm. Therefore, complainant had demanded his due amount from accused so, accused has given cheque no. 015234 dated 14/07/2023 of "Bank of Baroda", Kathana branch, for Rs. 40,000/-(in word rupees Forty Thousand Only), to the complainant for his due amount. The accused had assured and promised to the complainant that the said cheque will get honoured as and when it will be deposited in the bank for clearance. Further, complainant had deposited this cheque in “Vandan Finance’s account in “Federal Bank”, Petlad Branch on date 14/07/2023 but the said cheque was dishonoured and returned back unpaid to complainant's bank on 17/07/2023 with the reason of “Fund Insufficient" therefore, complainant had filed a complaint U/s. 138 of the Negotiable Instrument Act against the accused.

(2) The complainant had issued legal notice on dated 24/07/2023 through his learned Advocate to the accused, and said notice was received by accused on 27/07/2023. Even on service of notice, the accused had not paid any amount towards the said dishonored cheque.

(3) Thus, the accused had committed an offence punishable under Section 138 of the Negotiable Instrument Act, 1881, within jurisdiction of this Court and in-spite of service of statutory notice, the accused failed to pay the amount of cheques in question, within stipulated period and therefore, the complainant had filed this complaint under Section 138 of the Negotiable Instruments Act, 1881.

(4) After verifying that, accused had received copies of papers, the plea was recorded against him vide **Exhibit 07** in which he denied and pleaded to face trial. Accused had appeared before the court through his Ld. Advocate. Hence, the evidence of the complainant was recorded. When the evidence recorded, neither the accused nor his pleader remain present and thus the right of the accused for cross-examination of complainant, has been closed. Further, neither accused nor his Ld. Advocate remain present before the court, so Ld. Advocate for the complainant had filed an application to close the right of producing evidence of accused, and said application is granted and on the basis of this application accused right of producing evidence was closed, but Further Statement of accused was recorded u/s. 313 Cr. P. C. Accused was not remain present in the court and trial of this complaint proceeded further in the absent of accused as per ratio laid down by Hon'ble Delhi High Court in ***Ambika Plastopack Pvt. Ltd & Anr. V/s. State & Anr. SCRL.M.C. No. 26980/11,***

Cri.M.A. Nos. 9619 of 2011 & 1468 of 2013 (2013 Supreme (Del) 1147.

(5) The complainant has produced the following oral as well as the documentary evidence :-

[A] <u>ORAL EVIDENCE</u> :-

Sr. No.	**Details**	**Exhibit Number**
1.	Affidavit of chief examination of Gopalbhai Babubhai Patel, Prop. of Vandan Finance	Exh.08

[B] <u>DOCUMENTARY EVIDENCE</u> :-

Sr. No.	**Details**	**Exhibit Number**
1.	Accused's loan application	10
2.	Registration certificate of Nagar Palika	11
3.	License for finance of business	12
4.	Promissory note	13
5.	Statement of account	14
6.	Original Cheque no. 015234	15
7.	Deposit pay in slip	16
8.	Return Memo	17
9.	Legal notice	18
10.	R. P. A. D. slip	19
11.	Online track report	20
12.	Closing pursis	41

(6) I have perused the entire evidence of the prosecution minutely. Moreover, the complainant has argued at length in support of his complaint, whereas accused has produced his Written Argument vide Exh. 44. The submissions made by the complainant and the accused are discussed hereinafter.

(7) Following issues are framed for the determination of the present case :-

[1] Whether the complainant proves that accused had issued cheque no. 015234 dated 14/07/2023 of "Bank of Baroda", Kathana branch, for Rs. 40,000/-(in word rupees Forty Thousand Only), and after receiving legal notice the accused failed to make the legal payment of cheque amount within permissible statutory period and thereby he committed an offence punishable under Section 138 of the Negotiable Instrument Act, 1881?

[2] What Order ?

(8) **<u>Findings</u> :-**

[1] In Affirmative,

[2] As per final order.

R E A S O N S

(9) Before going into the merits of the case, it is important to note that, complainant has been cross-examined by accused as under :-

=> **Cross examination of the complianant vide Exh. 8 by Ld. Advocate V. M. Raval the witness, Mr. V. M. Raval, having been duly sworn, stated as under :-**

=> He has completed graduation and also has been carrying business of financing to the needy person in the name of "Vandan Finance" since last nine years. Complainant admits that, he has maitained all accounts of income and expediture of his business. He states that, as per provisions of the Money Lending Act, he is required to maintain prescribed accounts. He does not know whether loans exceeding Rs. 20,000/- are required to be disbursed by cheque. He admits that, he has checked the financial condition of the borrower. He denied that, at the time of granting a loan, he obtains two blank post-dated cheques signed by the borrower. He also admits that, when borrower pay E.M.I.

he has issued a payment receipt of E.M.I. He denied that, he issued only a temporary acknowledgment of payments.

Question ***:-*** *Did he make endorsements on the reverse side of the loan card regarding payments deposited by the accused?*

Answer ***:-*** *In respect of the loan transaction involved in the present complaint, he did not make any endorsement on any loan card showing payments deposited by the accused.*

=> Prior to approximately the year 2019, his firm used to issue loan cards, and entries of accounts were made on the reverse side of such loan cards. However, with respect to the loan forming the subject matter of the present complaint, no loan card was issued. He denied that, loan cards were being issued even in the year 2021, that a loan card had been issued to the accused, and that entries of payments made by the accused had been recorded on the reverse side thereof. He admits that, without seeing the loan he cannot cay how many borrowers can contain in one loan card. He admits that, he maintain daily books of account and loan transaction. He admits that, he has given loan at the rate of 15% p.a. He has known the accused for approximately eight years. He contended that, he has advanced loans to the accused on two occasions and present complaint pertains to the cheque issued in respect of the second loan advanced in the year 2023. Upon being shown Exhibit-10, he states that it is the loan application form and the loan granted as "Personal Loan" is printed at the top near the photograph of the accused. He had granted a personal loan of Rs. 37,000/- to the accused on 20-03-2023 for a period of six months. He admits that, the said amount is not disbursed by cheque but by cash. Accused must repay the amount in 6 (six) installments. He admits that, in complaint there is rate of interest discussed.

***<u>Question</u> :-** Is it not correct that the complaint does not separately specify the amount of principal and the amount of interest allegedly remaining due from the accused?*

***<u>Answer</u> :-** The complaint mentions that a loan of Rs. 37,000/- was advanced and that a sum of Rs. 40,000/- remained outstanding inclusive of interest. However, it does not specifically clarify how much of the said Rs. 40,000/- represents principal and how much represents interest.*

He admits that, he has not taken any down payment at the time of advancing the loan. Complianant ready to produce the day-book/cash reflecting the loan transaction referred to in the complaint.

***<u>Question</u> :-** You have stated that you can produce the ledger/account statement reflecting the loan transaction referred to in the complaint. Have you brought the same with you today, and do you wish to produce it before this Hon'ble Court?*

***<u>Answer</u> :-** Yes, I have brought the same with me today, and I hereby produce it before the Court. The said document is taken on record and marked as Exhibit-40.*

Complainant denied that, since the accounts are computerized, he can make entries therein as he pleases. Complainant denied that there was no outstanding liability due from the accused equivalent to the amount mentioned in the cheque. Complainant denied that, the document produced at Exhibit-40 is false.

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

<u>On perusing the record the complainant argued at length in support of his complaint, where as the accused has filed his written argument at Exhibit 44, in support of his defence, wherein defence is stated by accused is as under</u> :-

=> Upon considering the facts of the complainant's complaint, it appears that the accused had obtained a loan of Rs. 37,000/- (Rupees Thirty-Seven Thousand only) from the complainant firm on 20/03/2023. On being demanded by complainant for repayment, the accused issued Cheque No. 015234 dated 14/07/2023, drawn on the “Bank of India”, Kathana Branch, towards discharge of the said liability. The complainant presented the said cheque for encashment with his banker on the very same day; however, the cheque was returned unpaid with the endorsement "Funds Insufficient." In the present proceedings, at Exhibit-14, the complainant has produced a copy of the statement of account. The said statement of account reflects that an amount of Rs. 37,000/- (In word of Rupees Thirty Seven Thousand Only) towards personal loan and Rs. 3,000/- (in word rupees Three Thousand Only) towards interest as on 20/07/2023, aggregating to Rs. 40,000/-(in word rupees Forty Thousand Only), was allegedly recoverable from the him.

=> The complainant has further admitted that the applicable rate of interest was 15% per annum. If the interest on the principal amount of Rs. 37,000/- is calculated at the rate of 15% per annum, the annual interest amounts to Rs. 5,550/-(in word rupees Five Thousand Five Hundred Fifty Only). Dividing the said amount by twelve months, the monthly interest works out to Rs. 462.50/-(in word Rupees Four Hundred Sixty Two and Fifty Paise Only). Accordingly, the interest for a period of four months comes to Rs. 1,850/-(in words rupees One Thousand Eight Hundred Fifty Only). On adding the said interest to the principal amount of Rs. 37,000/-(in word Thirty Seven Thousand Only), the total legally recoverable amount payable to the complainant would be Rs. 38,850/-(in words Rupees Thirty Eight Thousand Eight Hundred Fifty Only). However, the cheque in question is for an amount of Rs. 40,000/-(in words rupees Forty Thousand). The accused has contended that, the said cheque was issued only as a security cheque, which has subsequently been presented for encashment by the complainant. Thus, even otherwise, the complainant has failed to establish that a legally enforceable debt or liability of Rs. 40,000/- (in word rupees Forty Thousand Only) was due and payable by the accused. Under these circumstances, it is prayed by accused that, the he should be acquitted.

=> During the complainant's cross-examination, in response to the question as to the manner in which the accused was required to repay the loan amount, the complainant deposed that the loan was repayable in six equal instalments together with interest. However, no such averment has been made either in the complaint or in the examination-in-chief affidavit of the complainant. Furthermore, upon perusal of the loan application form produced at Exhibit-10, it is evident that Sr. No. 9 contains separate columns pertaining to the amount of each instalment and the tenure of repayment. However, both the said columns have been left blank, and no particulars whatsoever have been mentioned regarding either the amount of each instalment or the number of instalments in which the loan was to be repaid. The complainant has also admitted this fact during his cross-examination.

=> Under the aforesaid circumstances, the complainant would have become entitled to recover the loan amount only upon expiry of six months from the date of disbursement of the loan. It is, therefore, clearly established that the complainant has misused the cheque issued by the accused. Hence, on this ground also, the complaint deserves to be dismissed, and the accused deserves to be acquitted. He could not bring any such facts or circumstances on record, on basis of which court can acquited him. Further, the complainant relied upon the judgment as under :-

(1) Joesph Sartho v/s. G. Gopinathan and another 2008 before Division bench of Hon'ble High Court of Kerala.

(2) Krishna Janardhan Bhat v/s. Dattatraya G. Hegde 2008 before Division bench of Hon'ble Supreme Court of India.

<u>ISSUE NO. 1 & 2</u> :-

(11) Before going into the merits of the case, it is important to glance over the objectives of the Negotiable Instruments Act, 1881 (hereinafter as 'NI Act'). NI Act was introduced to enhance the acceptability of the cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to Funds Insufficient and other reasons with adequate safeguards to prevent harassment of honest drawers.

=> Also, the object of said provision of Section 138 NI Act has been well outlined in the case of ***Dalmia Cement (Bharat) Ltd. v. Galaxy Traders and Agencies Ltd. and Ors.*** AIR 2001 SC 676. It has been held in this case that <u>the object of the provision is to ensure both the credibility of cheque as negotiable instrument for use in commercial transaction as well as to ensure the commercial and mercantile activities are carried in a smooth and healthy manner.</u>

(12) Moreover, in the landmark judgment of ***Sanjay Mishra v. Ms. Kanishka Kapoor @ Nikki and Anr.*** 2009 CRI.L.J. 3777, the Hon'ble Apex Court has held that <u>the laws relating to the said Act are required to be interpreted in the light of the object intended to be achieved by it despite there being deviation from general law.</u>

=> Now, let us travel through the provision of Section 138 of NI Act to understand the offence punishable under Section 138 :-

=> **<u>Section 138 of Negotiable Instrument Act, 1881</u>** :-

=> **<u>Dishonour of cheque for insufficiency, etc., of funds in the account</u>** : 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 **<u>returned by the bank unpaid</u>** 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 a term which may extend to two year, 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, **<u>presented to the bank</u> <u>within a period of six months from the date on which it is drawn</u> 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**.

=> **<u>Clause (b) of Section 142 of Negotiable Instrument Act, 1881</u>** :-

(b). such complaint is made within one month of the date on which the cause of action arises under Clause (c) of the proviso to Section 138 of Negotiable Instrument Act, 1881.

(13) Therefore, perusing the bare section and the law laid down in ***Jugesh Sehgal Vs. Shamsher Singh Gogi***, (2009) 14 SCC 683, this court is of the view that in order to constitute an offence under section 138 of the N.I Act, following ingredients are required to be fulfilled :-

(i) *A person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from that account;*

(ii) *The cheque should have been issued for the discharge, in whole or in part, of any legal debt or other liability;*

(iii) *That the cheque has been presented to 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;*

(iv) *That the cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the 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 the bank;*

(v) *The payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing;*

(vi) *The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheques within 15 days of the receipt of the said notice.*

(14) It is pertinent to note that the NI Act is a special enactment and it provides certain presumptions which court has to keep in mind while appreciating the evidence. Therefore, to have a clarity on the point, the presumptions which are raised in NI Act are important to be discussed at hand. The NI Act raises two presumptions; According to **Section 118** (a) it shall be presumed that every negotiable instrument was made or drawn for consideration. By virtue of this clause, the Court is obliged to presume that the instrument was made for consideration or until the contrary is proved. According to **Section 139** of NI Act, "it shall be presumed, unless the contrary is proved that the holder of a cheque received the cheque for discharge in whole or in part, of any debt or other liability." Thus, under Section 139 of NI Act, there is a legal presumption that the cheque was issued for discharging an antecedent liability and that presumption can be rebutted only by the person who draw the cheque. Presumptions, both under Sections 118(a) and 139 of the Act, are rebuttable in nature. In case of K.N. Beena Hon'ble Supreme Court held that " in complaints U/s. 138 of the N.I. Act, the Court has to presume that the cheque had been issued for debt of a liability. This presumption is rebutable. However, the burden of proving that cheque had not been issued for debt or a liability is on the accused. The burden is squarely upon the accused to rebut the presumptions and discharge the onus placed upon him to show that the cheque was not against any liability. It is a settled law that for this purpose that the accused is not required to enter the witness box in order to discharge the burden of proof that the law places upon him. In the case reported as ***Rangappa vs. Sri Mohan*** 2010(5) SCALE 340 (Full Bench), it has been held by a three Judge bench of the Apex Court that consideration attached to a cheque is a matter of presumption and the complainant is not required to prove it beyond reasonable doubt. The question that naturally arises is as to what is the standard of proof that the law requires and which the accused is expected to discharge in order to rebut the presumptions. The aforesaid presumption therefore can be rebutted by the accused. The said rebuttal need not to be in the form of defence evidence. If the case of complainant fails, at it end on the basis of probabilities raised by the accused during course of cross examination, then the aforesaid presumptions, stands rebutted.

(15) However, the accused in order to rebut the presumption(s) against him is not required to conclusively establish his case.

The burden of proof on accused in rebutting the presumption(s) is not as high as that of the prosecution (***Hiten P. Dalal vs. Bratindranath Banerjee*** 2001 CriLJ 4647). It is also a settled principle that where the accused has discharged the initial burden of rebutting the presumptions; the burden of proof shifts to the complainant and whether or not the accused has discharged the onus of proof placed upon him would depend entirely on the facts and circumstances of the case. Although the Court is under an obligation to raise the presumption contemplated under sections 118, 138 and 139 in every case, where the factual basis for raising the presumption has been established by the complainant, <u>the accused is required to raise a probable defence or rebut such a presumption by leading evidence or bringing such facts on record in the cross examination of the complainant that could make the latter's case improbable.</u> The standard of proof has been held to be preponderance of probabilities and the inference of preponderance of probabilities can be drawn not only from the materials that have been placed on record, but also by reference to the circumstances upon which the accused relies (***Bharat Barrel and Drum Manufacturing Company Vs. Amin Chand Payrelal***). If the accused is proved to have discharged the initial onus of proof placed on him by showing that the existence of consideration was improbable or doubtful or illegal, then the onus will shift back to the complainant who will then be under an obligation to prove its as matter of fact and failure to do so will dis-entitle him to any relief on the basis of the negotiable instrument.

=> In this regard, it is pertinent to go through the judgment of the **Honourable High Court of Gujarat** delivered in the case of ***Ishwarbhai Hirabhai Chunara V/s State of Gujarat***, **Special Criminal Application (Quashing) No. 9113/2016 dated 27/02/2017**, wherein the Honourable High Court of Gujarat has held that the judgment holding the accused guilty can be passed in the absence of the accused and in view of Section 418(2), non-bailable warrant can be issued under the Code of Criminal Procedure to the accused to undergo the sentence.

Therefore, this Court is of the very humbly opinion that the cited case is helpful to the complainant side.

(16) The net result is against the aforesaid presumptions, which lied in favour of complainant, accused has the option to rebut them which he can do, not only in the form of defence evidence but also on the basis of probabilities, which can result in failure of the case of complainant. The said probabilities can be raised by accused, in the course of cross examination of complainant witness. It is not mandatory that accused should, in every such case, lead evidence in his defence.

(17) Taking into account the discussion made above, it seems important to this Court to peruse the evidence with the ingredients of the offence under section 138 of NI Act. The complainant had been examined vide **Exh. 08** wherein he has affirmed to the complaint filed by him.

=> Upon a careful appreciation of the oral as well as documentary evidence available on record, it is evident that the complainant has produced cogent and reliable evidence in support of the complaint. At Exhibit 10, the complainant has produced the original loan application form submitted by the accused to the complainant's finance firm. At Exhibit 11, the complainant has produced documentary proof showing that the finance establishment is duly registered with the concerned Municipal Authority. At Exhibit 12, the valid licence of the complainant's finance establishment has been placed on record. Further, at Exhibit 13, the complainant has produced the original Promissory Note dated 20/03/2023, executed by the accused, acknowledging his liability in the sum of Rs.37,000/-(in word rupees Thirty Seven Thousand Only).

=> The complainant has also produced, at Exhibit 14, the statement of account pertaining to the accused. At Exhibit 15, the cheque for Rs.40,000/-(in word rupees Forty Thousand Only), drawn by the accused in favour of the complainant's finance firm on “Bank of India”, has been produced. Exhibit 16 is the bank deposit slip evidencing presentation of the cheque, while Exhibit 17 is the cheque return memo issued by the “Federal Bank”, establishing that the cheque was dishonoured. Further, the statutory demand notice is produced at Exhibit 18, and the postal receipt evidencing its dispatch is produced at Exhibit 19, and the online postal tracking report showing its transmission is produced at Exhibit 20.

=> The oral testimony of the complainant fully supports the documentary evidence and has remained substantially unshaken during cross-examination. The documentary evidence produced by the complainant forms a complete and consistent chain establishing the transaction, the legally enforceable liability, issuance of the cheque by the accused, its presentation within the prescribed period, its dishonour, and due compliance with the mandatory requirements under Section 138 of the Negotiable Instruments Act, 1881.

(18) It is a settled principle of law that once the execution of the cheque is admitted or proved, the statutory presumptions under Sections 118(a) and 139 of the Negotiable Instruments

Act arise in favour of the complainant that the cheque was issued for consideration and in discharge of a legally enforceable debt or liability. These presumptions are rebuttable; however, the burden lies upon the accused to rebut the same on the touchstone of the preponderance of probabilities.

=> In the present case, although the accused has raised certain defences during the course of the trial, no cogent, reliable or convincing evidence has been adduced to probabilise such defence or to rebut the statutory presumptions available in favour of the complainant. The defence taken by the accused remains unsupported by any independent evidence and is insufficient to displace the legal presumptions arising under Sections 118(a) and 139 of the Negotiable Instruments Act.

=> Accordingly, this Court is satisfied that the complainant has successfully proved all the essential ingredients of the offence punishable under Section 138 of the Negotiable Instruments Act beyond reasonable doubt, whereas the accused has failed to discharge the burden cast upon him to rebut the statutory presumptions. Consequently, the defence raised by the accused deserves to be rejected, and the case of the complainant stands duly proved in accordance with law.

(19) It is evident that nothing is rebutted by the accused which infers the guilt of the accused. Therefore, as per the presumption under NI Act, it is to be presumed that the cheque was given with all information duly filled in. The burden to rebut the said issue lies on the accused. No cogent evidence is led by the accused to prove anything contrary about the cheque. Thus, this Court is of the view that the burden is not discharged by the accused and hence it can be easily presumed that the cheque was given by the accused to the complainant for discharge of legal debt.

(20) Moving ahead with the appreciating of evidence for rest of the requisite under Section 138 of NI Act, it transpires that the cheque was deposited by the complainant within three months as required by the NI Act. The said cheque was dishonored and was returned with the acknowledgment of “Fund Insufficient” on 17/07/2023. The relevant documents are produced vide **Exhibit 10 to 20** which are contested by the defense, making them are not admissible in evidence. Moreover, the complainant had demand for the payment of the said amount of money by giving notice dated 17/07/2023 which is produced vide **Exh. 18**. It is evident that the said payment was not made by the accused within 15 days of the receipt of notice and hence it seems that all the ingredients of offence under Section 138 of NI Act are duly proved by the complainant.

(21) For the reason stated above, this Court is of the considered view that with the help of the circumstances brought on record, the evidences adduced and the discussion on both the issues, the complainant had established all ingredients as per section 138 of NI Act and the law laid down in the case of ***Jugesh Sehgal Vs. Shamsher Singh Gogi*** and this court find the accused guilty of the offence punishable under section 138 of NI Act. The matter is kept for hearing for quantum of sentence.

Place : Petlad
Date : 01/07/2026

(D. B. Gohil)
Additional Chief Judicial Magistrate,
Petlad,
UIC No. GJ00757

ON QUANTUM OF SENTENCE

(22) Heard the learned Advocate for the complainant. The accused is not present and thus right of hearing for quantum is closed for accused. The learned Advocate for the complainant has submitted before this Court that the prosecution has proved the case beyond all reasonable doubts and therefore prayed for harsh punishment as per the law. He has also prayed for compensation to the complainant and reliance has been placed on the landmark case of ***R. Vijayan Vs. Baby GLR 2012(2) 1353***. In view of judgment of Hon'ble Apex Court in case of ***Rajesh Ponadda V/s Satyanarayan Strirangam reported as 2019(1) ACJ (SC) 478***, right of the accused to have free copy of this judgment is hereby forfeited.

(23) I have heard the complainant at length for deciding the quantum of punishment. It seems to this court that the offence under section 138 of NI Act is a serious offence and is of the nature that it may gradually increase disbelieve in the society about commercial transactions. It is very important for the growth of a society that the commercial transactions should take place easily and with the credibility of negotiable instruments. While for accused, no one has chosen to appear before the Court. Repeatedly, Hon'ble Supreme Court as well as Hon'ble Gujarat High Court has issued directions to disposed off such type of cases in expeditious manner. In this circumstance, it would be not appropriate to delay the case in absent of accused. Recently, Hon'ble Gujarat High Court in case of ***Sharad J. Savla V/s. State of Gujarat reported in 2017(3) GLR 2352*** held that judgment of conviction can be pronounced in absence of accused. So, complainant was successfully prove issue no. 1 in his favour, hence, I answer issue no. 1 in affirmative and for issue no. 2, I pass the following final order in the greater interest of justice.

-:: O R D E R ::-

(1) Accused Mr. **Kantibhai Mangalbhai Solanki** is hereby convicted under Section 255(2) of the Criminal Procedure code, 1973 for the charge levied under section 138 of NI Act. The accused is hereby sentenced for simple imprisonment for One Year.

(2) Accused is hereby ordered to pay an amount of Rs.64,000/- (in words Rupees Sixty Four Thousand Only) as compensation to the complainant u/s. 357(3) of Cr. P. C. within 60 days. For non-payment of compensation the accused have to undergo further simple imprisonment of 6 (six) months separately.

(3) As the accused did not remain present before this Court, a Non Bailable Warrant is to be issued for execution of sentence.

(4) One copy of this judgment to be given free of cost to the accused as per section 363(1) of the Criminal Procedure Code, 1973, as and when brought before the Court.

Signed and pronounced in the open Court on this **01st** day of the Month of **July** of the Year **2026**.

Place : Petlad
Date : 01/07/2026

(D. B. Gohil)
Additional Chief Judicial Magistrate,
Petlad,
UIC No. GJ00757

<u>Order Regarding Duties to be performed by Court Staff</u> :-

(1) The Staff member handling the uploading work in this court shall, after duly verifying the present order as pronounced by the Court, immediately carry out the uploading procedure.

(2) The Board Clerk/concerned staff shall thoroughly examine and verify the entire case/application with due care. If any error or defect is found, it shall be rectified or necessary action shall be taken immediately in accordance with the office procedure.

(3) The Registry shall, in accordance with the rules and as per the order undertake further necessary procedure and thereafter sent the present case to the Record Room.

Place : Petlad
Date : 01/07/2026

(D. B. Gohil)
Additional Chief Judicial Magistrate,
Petlad,
UIC No. GJ00757

Sr. No.	Description	Signature of staff
1	The Instruction No.1 has been complied. Uploaded by Stenographer / Competent Staff	
2	The Instruction No.2 has been complied. Board Clerk / concerned Staff	
3	The Instruction No.3 has been complied. Registry / Competent Staff	