IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
TARAPUR TA. COURT, ANAND

(CC/ 113/2021)
Exh No.

Vohra Munafbhai Anwarbhai
Age: About 30 years, Occupation: Business
Resident of Tarapur, Aisha Park,
Near Shahadat Hospital, Taluka Tarapur, District Anand

…..Complainant

V/s

Kanubhai Rameshbhai Jadav
Age: About 40 years, Occupation: Sarpanch
Resident of Ambaliyara, Taluka Tarapur, District Anand

…..Accused

1. Complaint Case No.	:	113/2021
2. Offence complained of	:	U/s 138 of Negotiable Instrument Act, 1881
3. Plea of accused	:	Not guilty
4. Final Order	:	Aquittal
5. Date of Institution	:	17.02.2021
6. Date on which reserved for Judgment	:	22.05.2026
7. Date of Judgment	:	02.06.2026
8. Complainant represented by	:	Adv. Mr.M.D Makwana
9. Accused defense by	:	Adv. Mr. R.A Saiyed

::JUDGMENT::

Facts of the complaint

1. It is the case of the complainant that the complainant and the accused were known to each other since the accused was an old friend of the

complainant's late father. The complainant stated in his complaint that about one year prior to filing of the complaint, the accused represented that he intended to sell his land due to financial difficulties and, believing such representation, the complainant paid an amount of Rs.5,00,000/- in cash towards part sale consideration. However, despite repeated requests and readiness of the complainant to pay the remaining amount, the accused neither executed the sale deed nor returned the money. Thereafter, towards repayment of the said amount, the accused issued cheque bearing No.000066 dated 06/01/2021 for Rs.5,00,000/- drawn on ICICI Bank, Tarapur Branch, assuring its encashment. The complainant presented the cheque through his banker and the same was dishonoured on 11.01.2021 with the endorsement "Funds Insufficient". Thereafter, despite service of statutory legal notice dated 28/01/2021 the accused failed to make payment of the cheque amount within the prescribed period. The accused gave a false and evasive reply to the demand notice.Hence the present complaint with the prayer that the accused be summoned, tried and punished according to law.

2. On perusal of complaint and documents, prima facie case under Section 138 of NI Act, was made out against the accused and the accused was summoned. Thereafter, notice u/s 251 of Cr.P.C was framed against the accused on 07.01.2023 . The accused pleaded not guilty and claimed trial.

Evidence of the complainant

3. After framing of notice by the court. The complainant examined himself as a witness. No other witness was examined by the complainant. The complainant closed his evidence vide Exh. 27 on 25.04.2024.
4. In order to prove his case, the complainant had examined himself as witness and tender his evidence by way of affidavit as Exh-4. The complainant reproduced the facts of the complaint in his evidence. The complainant also relied upon the following documents:

Sr.No	Exh	Description of documents	Date
1	19	Original cheque in question, ICICI Bank Tarapur Branch, Sahjanand complex.Cheque No. 000084	06.01.2021
2.	20	Original Bank Return Memo	11.01.2021
3.	21	Postal receipt (Registered Post)	25.01.2021
4.	22	Office Copy of the legal demand notice given by Advocate to the Accused upon cheque	19.01.2021
5.	23	Registered AD	28.01.2021
5	24	Tracking Report	28.01.2021
6	25	Reply of complainant demand notice	05.03.2021

5. The complainant reproduced the facts of the complaint in his evidence as vide Exh.4.

    The complainant was cross examined by the accused. During cross-examination, the complainant stated that it is correct that earlier a complaint under Section 138 of the Negotiable Instruments Act had been filed against him and that he had also remained in jail in a land grabbing case. The complainant further stated that it is correct that the alleged payment was made in cash and no witness was present at the time of payment. He also stated that no written agreement was executed regarding the alleged land transaction or payment of Rs.5,00,000/-.

    The complainant stated that he does not remember the exact date on which he paid Rs.5,00,000/- to the accused and further stated that he does not remember the date on which the disputed cheque was issued or even the cheque number. However, he stated that the disputed cheque was already filled up and the accused had signed the cheque in Gujarati in his presence.

The complainant further stated that it is correct that after dishonour of the cheque, he directly approached his advocate and instructed him to issue legal notice. He also stated that it is correct that the accused had replied to the said notice vide reply dated 05/03/2021. The complainant deposed that he paid Rs.5,00,000/- in cash to the accused. The complainant further voluntarily deposed that he had paid a total amount of Rs.25,00,000/- to the accused on different occasions, including Rs.10,00,000/-, Rs.7,00,000/- and Rs.3,00,000/-,

He further deposed that it is not correct that the accused had taken Rs.15,00,000/- on the 10% interest from the complainant's father. The complainant denied the defence suggestion that the disputed cheque was a security cheque given in connection with a loan transaction or that the cheque given to his deceased father had been misused for filing the present complaint.

6. Thereafter, the accused was examined under Section- 313 of Cr.P.C. All the incriminating evidence was put to the accused and he denied his liability of the cheque amount. He stated that the accused had taken a loan from the father of the complainant of Rs.1,00,000/- and that his father took a three cheque no.83,66 and 84. The said payment was paid. The complainant has misused the said cheque after the death of the father of the complainant. The accused does not lead any defence evidence.

Argument Of The Parties

7. Final arguments were heard on behalf of both the parties.

Reasons

8. The burden to prove the case that there is a liability of Rs.5,0000/-towards cheque against the accused is to be proved by the

complainant. The complainant is also required to prove that there is due compliance to the provisions of NI Act.

9. The complainant has presented the complaint against the accused with the allegation that the accused was in financial need of money and the complainant gave Rs.5,00,000/- in cash towards sale of his land and on account of his failure to finalize the sale the accused gave him the cheque for which the present case has been filed. The same plea was taken in the legal demand notice. However, in the cross examination the complaint put a different story by saying that Rs. 25,00,000/- was paid on a different date. It is surprising to note that the complainant did not know the date on which date the amount was paid to the accused. The cash transaction of such a huge amount without any written agreement causes a suspicion. The suspicion becomes more strong when the complainant in his cross examination says that he was involved in the land grabbing case.

10. In NI act proceeding the presumption is that there is debt liability against the accused when the complainant is the holder of the cheque. However, the presumption is rebuttable and the accused put up a plausible defence by establishing that there is no debt liability. In the present complaint, the complainant has not brought on record any evidence to show that Rs.5,00,000/- was paid to the accused by showing any bank account statement or any other record including ITR to show that the amount was paid to the accused against which the cheque was issued and that there is debt liability. The material contradiction that amount was advanced to the accused in the complaint as well as the evidence further statement regarding the amount are not consonance with the fact of the complaint. In view of the above the complainant has failed to show that there is debt liability towards the cheque against the accused.

11. Another point in which the complainant is required to prove is that there is due compliance of statutory provisions required under the NI Act.

Section- 146 of the NI Act which requires that the bank return memo should have an official mark of the bank. For ready reference section-146 of NI Act is as under:

> "**Section-146 - Bank's Slip prima facie evidence of certain facts:-** The court,shall, in respect of every proceeding under this chapter, on production of bank's slip or memo having theron the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and unless such fact is disproved."

12. In the present case, the complainant has relied upon the bank return memo Exh.20 which does not denote any official mark of the bank i.e the stamp of the bank or signature of the bank official. The complainant has not examined any witness from the bank to prove the said bank return memo. In absence of bank official and stamp of the bank return memo, there is statutory violation of section -146 of the NI Act. Therefore, the bank return memo relied upon by the complainant can not be read as evidence against the accused.

The Hon'ble High Courts have held that in absence of a return memo bearing seal of the bank, presumption in relation to dishonor of cheques cannot be raised in favour of the complainant. The Judgment of Hon'ble High Court of Gujarat is referred below:

(a) **Rajendrakumar alias Rajeshkumar Balkishan Agrawal Vs State of Gujarat & Anr ACD(GUJ):: (2012) 1 CivilJ 274,** the Hon'ble High Court of Gujarat upheld an order of acquittal of the accused inter-alia on the ground memo and cheque returning memo brought on record by the complainant did not bear stamp of any bank and thus, as per section-146 of NI Act. The said documentary evidence can not be considered.

"14. The trial court has after appreciating the oral as well as documentary evidence, observe that the appellate and the opponent no.2 to accused knew each other because of business relations between them. It is also observed by the learned trial judge that the prosecution has failed to prove ingredients of section 118 and 139 of the Act. It is also observed by the learned trial judge that the check return memo and the debit memo produced on record by the original complainant does not bear stamp of any Bank and therefore, as per section 146 of the Act, the said documentary evidence cannot be considered. It is also observed by the learned trial judge that the amount of Rs. 1,00,000/- given by the original complainant to Hastak Corporation was received by the original complainant-present appellant vide cheque No. 889014. Thus, the cheque No.999015 was towards the interest of the amount of in question. Looking to this fact, present opponent No.2-accused is proved his case. It is also observed by the learned judge that the prosecution has failed to prove beyond reasonable doubt the ingredients of Section-138 of the Negotiable Instruments Act. The learned trial judge has observed that there are serious lacuna in the oral as well as documentary evidence of prosecution. Nothing is produced on record of this appeal to rebut the concrete findings of the Trial Court."

(b) In another Judgment passed by the Hon'ble Bombay High Court in case of **Smt. Vandana Akhilesh Pandey Vs. Smt Abhilasha Anil Pande 2018 ACD 950 (BOM):: AIROnline 2018 Bom 928,** the Hon'ble High Court of Bombay has held that presumption of dishonor of cheque cannot be raised if the return memo does not bear the official seal of the bank and in such a scenario, the complainant would be required to lead the further cogent evidence, for example, by examining the official, in order to prove the factum of dishonour of cheque.

"13.*When the complainant (appellant in the present case) asserted that the cheque was returned or dishonoured, it was for her to prove this basic fact. Section 146 of the said Act provides that if the complainant places on record a slip or memo issued by the bank having official mark of the bank thereon, denoting that* *the cheque was dishonoured, it would be presumed that such cheque was dishonoured until such fact was disproved. Thus, if such a document was placed on record by the appellant in the present case, it would constitute prima facie evidence of dishonour of cheque and burden would have been entirely on the respondent to disprove such a fact. But, when the memo produced in the present case by the appellant did not bear official mark of the bank, there was no document as contemplated under Section 146 of the said Act to presume that the fact of dishonour of cheque had been proved by the appellant. The burden continued to lie on the appellant to prove the basic fact of dishonour of cheque, in the facts and circumstances of the present case.*

14. In such a situation, mere statement made in the statutory notice and the complaint filed before the Court would not constitute proof of dishonour of cheque, unless further evidence to corroborate the same was placed on record on behalf of the appellant. The appellant is not justified in claiming that such statements would suffice as proof of dishonour of cheque because the respondent failed to enter the witness box in support of her defence. As the complainant, it was for the appellant to prove the fact of dishonour of cheque by cogent evidence. The appellant could have examined the bank official to prove that the cheque had been indeed dishonored, but, she failed to do so."

13. In the present case, the bank returning memo as Exh- 24 does not bear any official bank stamp/seal or does not contain signature of any bank official. Even the complainant did not examine the bank official to prove the bank returning memo. Based on the aforesaid settled position of law, since the complainant has failed to call the bank official in this regard, the complainant has failed to prove on record that the cheque in question was dishonored/returned unpaid on presentation in accordance with the section 138 of the NI Act. In these circumstances, the complainant cannot take aid of presumptions contained in section-118, Section 139 or Section-146 of NI Act to fasten criminal liability under Section 138 of NI Act upon the accused.

14. Hence, in view of the above discussion that there is no statutory debt liability and there is statutory violation of Section-146 of NI Act. Therefore, the complainant has failed to prove his case beyond doubt. Hence, no offence under Section -138 of NI Act is made out against the accused.

ORDER

The accused **Kanubhai Rameshbhai Jadav,** is acquitted under the accusation of committing the offence u/s 138 N I Act. Bail bond and surety bond, if any, stand cancelled. The accused is directed to furnish personal bail bond of Rs. 10,000/- alongwith same amount of surety for his appearance before the appellate Court, if so required.

Any application pending in the present matter, if any, stands disposed of accordingly.

Pronounced in the open court on the 2^{th} day in the month June of 2026.

Digitally signed by
DEEPAK DUTTA
on 02/06/2026 15:55:24 IST.

Place- Tarapur
Date - 02.06.2026

Deepak Dutta
Principal Civil Judge & JMFC
Tarpur
GJ-01685