

RECEIVED ON : 03-10-2025
REGISTERED ON: 03-10-2025

DECIDED ON : 15-07-2026
DURATION : Y – M- D

IN THE COURT OF 3rd ADDITIONAL SESSIONS JUDGE,
ANAND @ KHAMBHAT.

CRIMINAL APPEAL No. 204 of 2025

EX. __

APPELLANT/ORIGINAL ACCUSED :-

Mohsinsha Ibrahimsha Diwan
Resi.at. Vadva, Nr.Ashram,
At. Metpur, Ta.Khambhat,
Dist.Anand.

Versus

OPPONENT / COMPLAINANT :-

1. Imrankhan Inayatkhan Pathan
Resi.at. Akbarpura, At Khambhat,
Ta. Khambhat, Dist.Anand.

2. The State of Gujarat.

**APPEAL AGAINST THE JUDGMENT Dt. 04.09.2025
DELIVERED BY ACJM., KHAMBHAT, IN CRIMINAL
CASE No.1532 OF 2024.**

Present:-

Ld. Advocate Mr. N.M.Ali for the Appellant.
Ld.Advocate Mr. A.J.Jadav for the Opponent No.1.
Ld. APP Mr. J.S.Gadhvi, for the Opponent No.2/State.

J U D G M E N T

1. The appellant-original accused, has filed this appeal, being aggrieved and dissatisfied with the judgment and order, as

detailed above, vide which the appellant- original accused has been held guilty and punished for the offence punishable under Section 138 of The Negotiable Instruments Act, to undergo simple imprisonment for **01** Year and fine of **Rs.10,000/-** alongwith **compensation** of **Rs.75,000/-** to be paid to the complainant and in default of the same, to further undergo simple imprisonment of two months.

2. The appellant, herein is the original accused-convict and the Respondent No.1 herein is the original complainant, hence, for the sake of convenience, they will be referred to as 'the convict' and the 'complainant' respectively in this judgment.
3. The brief facts, giving rise to this appeal, are that the complainant, filed Criminal Complaint stating therein that convict took loan of Rs.75,000/- from the complainant and in discharge of the same he had given **cheque bearing No.000001**, dtd. **13-05-2024**, of **Fincare Small Finance Bank, Borsad Branch**, which was dishonored with endorsement of **Funds Insufficient**. Thereafter, legal notice was issued but accused neither replied nor paid the money hence complaint was filed by the complainant against the convict.
4. The learned trial court recorded the statement of the accused under Section 251 of the Criminal Procedure Code, the accused did not admit the charge and preferred to undergo trial.
5. The learned trial court recorded evidence of the complainant, at Exh.4. The complainant also produced documentary evidence in the shape of original cheque,

Cheque return memo, legal notice, AD slip, post acknowledgment etc., exhibited as **Exhs.11 to 15**. On closure of evidence of both the sides, the ld. trial court heard arguments of advocates of the parties and vide impugned judgment, the ld. trial court held the accused guilty of offence under Section 138 of The Negotiable Instruments Act and convicted him as described above.

6. Heard the parties and perused the record.
7. Learned counsel for appellant has stated that; *accused has paid the entire loan amount and nothing is due towards the accused; complainant has submitted a Purshis to the effect that he has received the entire amount and nothing is due towards the accused; In the changed circumstances, leniency deserves to be exercised in favour of the convict*. In the end, Ld. counsel for accused has prayed to allow the appeal. On the other hand, other parties have prayed to pass necessary order in the interest of justice.
8. After hearing both the parties, the following points arise for determination : -
 - 1) Whether the judgment of the trial court holding the accused guilty of offense under Section 138 of the N. I. Act and convicting him is within four corners of law ?
 - 2) Whether the judgment of the trial court requires to be modified in view of changed circumstances ?
 - 3) What order ?
9. My findings to above points are :-
 - 1) In the Affirmative.

- 2) In the Affirmative.
- 3) As per final order below.

REASONS

Issue No.1 :-

10. From the deposition of complainant and supportive evidence, it is proved on record that the appellant/convict had issued a cheque to the defacto complainant regarding a legally enforceable debt and he been convicted under section 138 of the NI Act vide impugned judgment of conviction. Hence, judgment of conviction does not require any interference by this Court.

Issue No.2 :-

11. It is added here that convict has not moved application for compounding of offence rather prayer has been made for lessor punishment for which, complainant party has also nothing to say. Record indicates that convict has paid the entire outstanding amount to the complainant and no amount is pending between the parties; defacto complainant and the accused. The amount of cheque is not bigger one. Therefore considering the changed circumstances and ratio of the case laws titled as **Murali V/s State Represented by Inspector of Police, 2021 0 Supreme (SC) 20 and State of M.P. V/s Mahetaab, 2015 0 Supreme (SC) 123 and Manish Jalan V/s State of Karnataka, 2008 Supreme (SC) 1038**, the sentence awarded by Id. learned trial court, requires to be modified, and regarding point number-3 the following order is passed in the interest of justice:-

: O R D E R :

1. This appeal is allowed **in-part**. The impugned judgment is confirmed but, the sentence imposed by Ld.Trial Court for the said offence, is hereby set aside and the fine earlier imposed by the Ld.Trial Court upon the accused is hereby waived.
2. The copy of this order alongwith the record and proceedings of Ld.Trial Court Record, if summoned, be sent back alongwith copy of this order.
3. Application/applications pending if any stand disposed of, accordingly.

Signed and pronounced in open Court, today on this
15th day of July, 2026.

Date: 15/07/2026
Place : Khambhat

(Pravinkumar Harishchandra Sharma)
3rd Additional Sessions Judge,
Anand @ Khambhat.
JUDGE CODE - GJ00701

JALimbachiya-P.S.