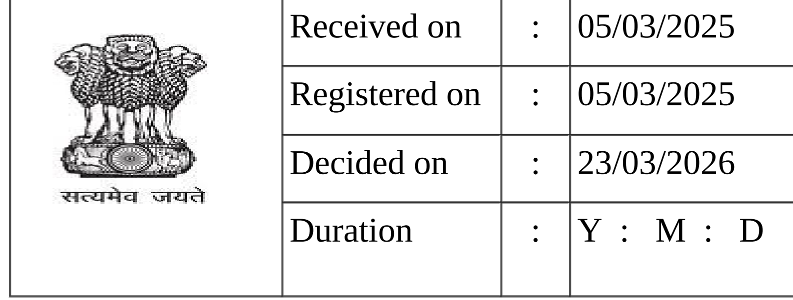

सत्यमेव जयते	Received on	:	05/03/2025
	Registered on	:	05/03/2025
	Decided on	:	23/03/2026
	Duration	:	Y : M : D

IN THE COURT OF 2ND ADDITIONAL CHIEF JUDICIAL MAGISTRATE, ANKLESHWAR.

CRIMINAL CASE NO. 1559/2025

EXH. _______

COMPLAINANT : **SATYAM INDUSTRIES THROUGH ITS PARTNER / AUTHORIZED PERSON JIVRAJBHAI BHIKHABHAI PATEL,**
AT : PLOT NO. C-1/7110, 7109, GIDC ESTATE,
ANKLESHWAR, DIST. BHARUCH.

VERSUS

ACCUSED : (1) TSC COLOUR CHEM,
AT : 1/A/6 GAYTRIKRUPA ESTATE,
B/H BHARAT PARTY PLOT, AMRAIWADI,
AHMEDABAD-380026.

(2) BIPINBHAI KANTIBHAI PATEL,
AT : 1/A/6 GAYTRIKRUPA ESTATE,
B/H BHARAT PARTY PLOT, AMRAIWADI,
AHMEDABAD-380026.

Offence : U/S 138 of the Negotiable Instrument Act, 1881.

APPEARANCE :

MR. P.J. BESANWALA........LD. ADV. FOR COMPLAINANT.

MR. K. R. RANA.........LD. ADV. FOR BOTH THE ACCUSED.

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

1. The complainant has filed this complaint u/s.138 of the Negotiable Instrument Act 1881. That the complainant carry on the business of manufacturing and selling pigments and dyes in the name of Satyam Industries at the above-mentioned address. The said firm is a partnership firm. Mr. Jivrajbhai Bhikhabhai Patel is a partner of the said firm and an authorized person. He is personally aware of the day-to-day transactions of the firm, the business dealings with the accused and the transactions forming the subject matter of the present complaint. The said firm holds a GST registration as per the prevailing rules and its GST No. is 24ACJFS6846D1ZZ. Accused No. 1 is a business firm operating under the name TSC Colour Chem. Accused No. 1 carries on the trade and business relating to dyes, pigments and chemical trading. The accused No. 2 is the proprietor/authorized person of the accused No. 1. Accused No. 1 also holds a GST registration and its GST No. is 24AIBPP2191C1ZO. It is further submitted that on behalf of Accused No. 1, Accused No. 2 contacted the complainant via mobile phone and came to Ankleshwar, where he referred to previous business acquaintance and held business discussions/meetings with the complainant. As the complainant manufactures pigment products, including Pigment Beta Blue, both accused agreed to purchase the said product and the terms and conditions were finalized between the parties. Thereafter, the accused placed the first purchase order for 275 kg of Pigment Beta Blue. As per the terms and conditions finalized between the complainant and the accused, it was agreed that the amount of the bills would be

paid within 35 days. However, Accused No. 2, on behalf of Accused No. 1, paid the amount for the goods purchased within 15 days instead of 35 days. Since the first transaction of the accused was satisfactory, the complainant developed trust and confidence in the accused. Thereafter, for their business requirements, the accused used to purchase goods from the complainant from time to time. Accordingly, the accused placed oral telephonic purchase orders on different dates as per their requirements and purchased Pigment Beta Blue goods from the complainant on various dates. The complainant sent the said goods to the accused through transport to their address. The GST-inclusive invoices for the goods sold on credit were provided by the complainant to the accused from time to time and along with the invoices, the complainant also issued the E-way bills as required under the rules. The complainant recorded these credit sales invoices in the books of accounts under the credit account of Accused No. 1. Accordingly, till today, the accused have purchased goods on credit from the complainant amounting to Rs.24,82,425/-. Against this, the accused have paid an amount of Rs.4,66,525/- to the complainant through bank payments, which has also been recorded by the complainant in their books of accounts under the credit side of Accused No. 1. Thus, after accounting for the total credit purchases of Rs.24,82,425/- and deducting the payments made of Rs.4,66,525/-, a balance amount of Rs.20,15,900/- (Rupees Twenty Lakh Fifteen Thousand Nine Hundred only) remains payable by the accused to the complainant. Upon repeated demands made by complainant for payment of the said outstanding amount, the Accused No. 2 on behalf of Accused

No. 1 signed and issued five cheques drawn on the bank account of Accused No. 1 towards payment of the outstanding dues. At the time of issuing these cheques, Accused No. 2 assured and represented to the complainant that "the cheques would not be returned and the amounts would be realized." Accordingly, the complainant accepted the said five cheques. The details of the cheques are as under :

Sr. No.	**Cheque No.**	**Bank Name**	**Amount**	**Date**
1	000100	The Vijay Co-Op Bank Ltd. Vatva Branch, Ahmedabad.	1,57,400-00	06/01/2025
2	000101		2,65,500-00	06/01/2025
3	000102		5,31,000-00	16/01/2025
4	000103		5,31,000-00	20/01/2025
5	000104		5,31,000-00	27/01/2025
Total Amount			20,15,900-00	

2. After that Considering the trust and confidence placed upon the assurances given by the accused, the complainant presented the above-mentioned cheque bearing Cheque No. 000104 at Serial No. 5 for realization in the complainant's bank account at the State Bank of India, Ankleshwar. The above said cheque at Serial No. 5 bearing Cheque No. 000104 which had been issued by the accused No. 2 on behalf of accused No. 1 towards discharge of their legally enforceable debt and liability was dishonoured on 28/01/2025 with the remark "01 - Funds Insufficient." Thereafter, the complainant, through his advocate, sent a legal notice to the accused at their address by R.P.A.D. on 31/01/2025 demanding payment of the cheque amount within 15 days along with other details stated therein. The said notice was duly served on 03/02/2025. Despite this, the accused neither complied with

the notice nor paid the cheque amount nor replied to the notice. It is further submitted that the accused had issued the above-mentioned five cheques as stated in Para No. 3 and all the said cheques were presented in bank account of the complainant for realization on their respective due dates. When presented the same, all the said cheques were returned unpaid. Out of these, with regard to the dishonour of Cheques at Serial Nos. 1 and 2, a complaint has already been filed before this Court vide Criminal Case No. 551/2025. Similarly, regarding the dishonour of the cheque at Serial No. 3, a complaint has been filed before this Court and the same is presently registered as Criminal Inquiry No. 33/2025. With respect to the cheque at serial No. 4, a complaint has also been filed before this Court and is presently registered as Criminal Inquiry No. 54/2025. Further, since a separate cause of action has arisen regarding the dishonour of the cheque at Serial No. 5, the present complaint has been filed. Further, against the total outstanding amount of Rs.20,15,900/- payable to the complainant, the accused have deposited lump-sum amounts of Rs.17,000/- and Rs.20,000/-, totaling Rs.37,000/- (Rupees Thirty-Seven Thousand only) through bank payments. However, as the full amount of any of the cheques involved in the present complaint has not been realized and despite issuance of statutory notice the accused failed to comply, the accused have committed an offence under Section 138 of the Negotiable Instruments Act. Therefore, the complainant has filed the complaint u/s. 138 of the Negotiable Instrument Act.

3. After verification of the complaint, my predecessor judge has

issued process/summons to the accused u/s.204 of Cr.P.C. and complaint be registered as criminal case.

4. After service of process/summons, accused appeared and Plea were recorded at Ex.08 & 09, wherein the accused had pleaded not guilty therefore evidence is recorded. Then-after case was rested for the complainant's evidence.

5. The complainant has produced oral and documentary evidence which are as under :

: : Oral Evidence : :

Sr. No.	Exh.	Deposition	Date
1	04	Deposition of complainant.	05/03/2025

: : Documentary Evidence : :

Sr. No.	Exh.	Description
1.	09	GST Certificate of the complainant's firm.
2.	10	Authority Letter.
3.	11	GST Certificate of the accused firm.
4.	12	Ledger Account of the accused.
5.	13	Original Cheque No.000104.
6.	14	Original return memo.
7.	15	Office copy of legal notice.
8.	16	RPAD receipt.
9.	17	RPAD receipt.
10.	18	Online status report.
11.	19	Online status report.
12.	20	Ledger Account of the accused.
13	21	Closing Pursis.

6. The accused had placed on record two documents vide pursis Exh.7 which were marked as Mark-7/1 & Mark-7/2, but the Ld. Advocate for the complainant made endorsement of "Received copy with objection" on the same as the same were not supported by any application to get the said documents exhibited. Accused have not produced any other any oral as well as documentary evidence.

7. Recording of further statement of accused:-

As complainant tendered closing pursis at Exh. 21 at the end of recording of evidence, this Court kept the matter for recording further statement of the accused, but the accused did not remain present before this Court for recording further statement. Thereafter, the complainant had produced an application vide Exh. 22 for closing rights for further statement as well as evidence of the accused which was allowed by this Court and closed the rights for further statement and evidence of the accused on 11/02/2026.

8. Heard Ld. Advocate Mr. P. J. Besanwala for the complainant whereas no one remain present for arguments on behalf of the accused.

Arguments on behalf of the complainant :

9. Advocate for the complainant side had orally argued before the court in which he has stated that all the necessary ingredients of Section-138 of N. I. Act is proved by the complainant. Reference is made to the exhibited documents produced by the complainant vide Exh. 09 to 20. It is also stated that despite of services of notice, the accused has not replied the same. Hence, it is stated that the complainant has

proved his case against the accused beyond reasonable doubt. It is also stated that there is no dispute as to contents and signature on the disputed cheque. It is also stated that accused's defence is not proved and hence, presumption under Section -139 of N.I. Act is not rebutted by the accused. He has also stated that all the necessary ingredients of 138 of N.I. Act is fully proved. Despite providing sufficient opportunities, the accused side had not conducted any cross examination of the complainant, hence the right of accused to cross examine the complainant was closed by this Court on 11/12/2025. It is also stated that as accused has not given any reply of the statutory notice of the complainant hence, adverse inference can be drawn against the accused i.e. defence is not probable and plausible. Furthermore, it is alleged that the accused purchased goods on credit from the complainant amounting in total Rs.24,82,425/- out of which Rs.20,15,900/- was not repaid and then-after the aforesaid disputed cheque of Exh.13 was dishonoured by the concern bank and thus, the accused had committed an offence punishable under Section 138. Moreover, the accused have failed to discharge their burden and thus stating all these facts it is argued that accused may be convicted.

10. The accused side had not remained present before the court regularly therefore, the arguments stage of accused was closed by this court on 23/03/2026.

11. Issues for judicial decision of the case:

1. Whether the complainant proves beyond all reasonable doubt that the accused had issued him cheque bearing No. "000104" drawn on The Vijay

Co-Operative Bank Ltd., Vatva Branch, Ahmedabad to discharge his legal debt or legal liability and same was dishonoured with endorsement of "Funds Insufficient" and despite the service of the demand notice accused did not make payment of the cheque amount and thus, the accused have committed offence under Section-138 of N. I. Act ?

2. What order?

12. My answer to the above issues are as under:-

1. In the Affirmative.

2. As per final order.

-:: R E A S O N S ::-

13. Before appreciation of evidence in the present case, it is appropriate herein to mention that to prove the commission and successful prosecution of an offence under Section 138 of N.I.Act, the following ingredients are required to be proved:

1. Cheque was drawn by the accused on a bank account maintained by him.

2. Cheque was issued in favour of the complainant for discharge of legal liability.

3. Cheque was returned for want of sufficient funds/arrangement exceeded upon presentation.

4. Cheque was presented during the period of its validity.

5. A demand notice is sent by the complainant to the accused within 30 days of receipt of information from the bank regarding dishonor of the cheque.

6. Notwithstanding the receipt of the demand notice, the accused fails to make payment of the cheque amount within 15 days. Section 142 of the Act further requires that

the complaint should be filed within one month from the date on which the cause of action arises.

14. Then after before deciding rival claims it is necessary herein to cull out some admitted facts which is not in dispute by either sides.

1. There is signature of the accused on the cheque in itself.
2. All the necessary pre-conditions provided in the N.I. Act is fulfilled by the complainant before filing complaint.
3. Accused did not stepped into witness box.
4. Accused did not reply to the statutory demand notice given by the complainant.

15. After considering the above settled principle, this Court is under obligation to see that whether the complainant have proved their case and accused have rebutted the presumption as envisaged under Section 139 & 118 of the N.I. Act or not.

16. If we consider the evidence produced by the aforesaid complainant then it transpires that, in the case on hand the complainant have himself deposed vide Exh. 04 & no any other oral evidence is produced on record. Furthermore, it transpires from the record that, the complainant side have produced documents vide Exh. 09 to 20 & the accused side have not produced any documentary evidence. From the examination-in-chief of the complainant and the documentary evidence produced vide Exh. 09 to 20, it transpires that the complainant had complied with the mandatory provisions of Section 138 of the N.I. Act and that the demand notice with regards to return cheque was issued vide Exh. 15 by the complainant side and then after in prescribed time limit as

such the accused failed to pay the cheque amount to the complainant and had also not replied to the demand notice issued vide Exh. 15 the complainant within prescribed time limit had filed the aforesaid complaint before this Court. Thus, primarily, it transpires that presumptions as envisaged in Section 139 and 118 of the N. I. Act are in the favour of complainant side. As it is evident from the record that, the accused side had not stepped into the witness box and also that the accused side was provided ample of opportunity to cross-examine the complainant but neither the accused nor their pleader had remained present for conducting cross-examination of complainant and hence, this Court had allowed the application of complainant and had closed the rights of accused for cross-examining the complainant on 11/12/2025 and then-after as such due to constant absence of accused and their pleader, this Court had allowed application of the complainant for closing the rights of accused for furnishing further statement as well as evidence. From the record it is primarily shows that, the accused had admitted the claim of the complainant with regards to alleged disputed cheque worth Rs.5,31,000/- which was legal debt and hence considering the over all factual matrix, this Court is of the considered opinion that, when accused have admitted the claim of complainant with regards to legal debt and also considering the legal presumptions of Section 139 of the Negotiable Instruments Act, the complainant in the aforesaid case have succeeded in proving their legally recoverable debt from the accused side.

17. Under Section 138 of the Negotiable Instruments Act, once the cheque is issued by the drawer, a presumption under

Section 139 of the Negotiable Instruments Act in favour of holder would be attracted. Section 139 of the Negotiable Instruments Act in that a cheque received in the nature referred to under Section 138 of the Negotiable Instruments Act is for the discharge in whole or in part of any debt or other liability. The initial burden lies upon the complainant to prove the circumstances under which the cheque was issued in his favour and that the same was issued in discharge of legally enforceable debt. It is for the accused to adduce evidence of such facts and circumstances to rebut the presumption that such debt does not exist or that the cheques are not supported by consideration. Considering the scope of presumption to be raised under Section 139 of the Act and the nature of evidence to be adduced by the accused to rebut the presumption, in Kumar Export Vs. Shamra Carpets, the Hon'ble Supreme Court in Para No. 14, 15 and 18, 20 have held that "Section 139 of the Act provides that, it shall be presumed unless the contrary is proved, that the holder of cheque received the cheque of nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. Presumptions are devices by use of which the Courts are enabled and entitled to pronounce on an issue notwithstanding that there is no evidence or in sufficient evidence. Under the Evidence Act, all presumption must come under one or the other class of the three classes mentioned in the Act, namely (i) may presumed (rebuttable) (ii) shall presume (rebuttable) and (iii) conclusive presumption (irrebutable). The term presumption is used to designate an inference, affirmative or dis-affirmative of the existence of the fact, conveniently called the presumed fact

drawn by judicial tribunal, by a process of probably reasoning from the some matter of fact, either judicial notice or admitted or established by legal evidence to the satisfaction of the tribunal. Presumption literally means taking as true without examination or proof. Applying the definition of the word proved in Section 3 of the Evidence Act to the provision of Section 118 and 139 of the Act, it becomes evident that, in a trial under Section 138 of the Act, a presumption will have to be made that every Negotiable Instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of Negotiable Instrument is either proved or admitted. As soon as the complainant discharges the burden to prove that the instrument, say a note, was executed by the accused, the rules of presumption under Section 118 and 139 of the Act help him shift the burden on the accused. The presumptions will live, exist and survive and shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability. A presumption is not in itself evidence, but only makes a prima-facie case for a party for whose benefit it exists. The use of the phrase until the contrary is proved in Section 118 of the Act and use of the words unless the contrary is proved in Section 139 of the Act read with definitions of may presume and shall presume as given in Section 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 duties of going forward with evidence, on the facts 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 presumption is over. The accused in the trial under Section 138 of the Act has two options. He can either show that the consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration of debt is so probable that a prudent man ought to supposed that no consideration and debt existed. To rebut the statutory presumption and accused is not expected to prove his defence beyond reasonable doubt, as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that note in question was 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 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 be complainant. To disprove the presumption, the accused should bring on record such facts and circumstances, upon consideration on which, the Court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent men would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely on circumstantial evidence and if

the circumstances so relied upon are compelling, the burden may likewise shift again on the complainant. The accused may also rely on presumption of fact for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumption arising under Sections 118 & 139 of the Act.

18. In the case on hand, as it is an undisputed fact that, the accused have produced the documents Mark-7/1 & Mark-7/2 are not considered as part and parcel of the documentary evidence in favour of the accused at this stage as the accused have not produced any application to get the said documents exhibited. Accused have not produced any oral as well as documentary evidence in spite of sufficient opportunities provided to the accused and also they had not conducted any cross-examination of the complainant and hence the right of the accused to cross examine the complainant was closed by this Court on 11/12/2025. This Court is of the considered opinion that, the accused was supposed to create suspicion on the case of the complainant by raising preponderance of probabilities but the accused have failed to create the same. Furthermore, due to constant absence of the accused, the stage of further statement and evidence of the accused was closed by this Court on dated 11/02/2026 and hence the conduct of the accused if considered on prima-facie base, then also, it transpires that the accused have taken a very lenient approach in the aforesaid proceedings and when the accused have failed to bring the fact on record that how did the disputed cheque of Exh. 13 came in the hands of the complainant and hence of all the above, the accused have failed to raise suspicion on the case of complainant and hence when the aforesaid disputed

cheque of Exh. 13 was returned unpaid and after following the procedure prescribed by law, the complainant had initiated the aforesaid proceedings in which the complainant have succeeded in proving the case against the accused, thus of all the above, the accused side have failed in rebutting the evidence of the complainant side. At this juncture, this Court is of the considered opinion to reiterate the principle laid down in :

> "***Rohit Bhai Jivanlal Patel .Vs. State of Gujarat & Another*** "*Once the presumption under* Section 139 *of N.I. Act is drawn, complainant need not prove source of fund till accused discharges his burden. When such a presumption is a drawn, the factors relating to want of documentary evidence in the form of receipts or accounts or want of evidence as regard source of funds, were not of relevant consideration while examining if the accused has been able to rebut presumption or not".*

19. Thus, in the case on hand when the accused side have failed to rebut the evidence of complainant and that the complainant have proved their case and accused have failed to raise preponderance of probabilities on the case on complainant side then, this Court is left with no option but rather convict the accused and hence resultantly of all the above my answer to Issue No. 1 is in Affirmative and hence with regards to Issue No. 2, this Court passes the following order in the interest of justice.

-:: ORDER ::-

1. The accused No. (1) **TSC Colour Chem and the accused No. (2)** Mr. **Bipinbhai Kantibhai Patel** are hereby convicted under the provisions of Section 255(2) of the Criminal Procedure Code for offence punishable u/s 138 and on behalf of the accused No.1, the accused No.2 is hereby sentenced to simple imprisonment of 01 year.

2. Further, as per the Section 357(3) of Cr.P.C., the accused is hereby directed to pay the cheque amount i.e. Rs.5,31,000/- (Rupees Five Lakh Thirty-One Thousand only) to the complainant towards compensation within 60 days from the date of this order and if the accused fails, then a sentence of further 06 months simple imprisonment be imposed on the accused.

3. The period of detention undergone by the accused to be set off against the sentence of imprisonment as per section 428 of Cr.P.C.

4. The accused is absent, hence conviction warrant be issued against the accused.

5. The copy of this judgment be delivered to the accused free of cost as per section 363 (1) of Cr.P.C. as and when he remains present before this Court.

6. The bail bond of the accused be treated as canceled.

[Pronounced in the open court on 23/03/2026]

Date : 23/03/2026
Place : Ankleshwar

MITESHKUMAR KIRITKUMAR MEHTA
2ND ADDL. SR. CIVIL JUDGE & A.C.J.M.
ANKLESHWAR
JUDGE CODE : GJ01225

A.R. Patel
English Steno, Gr.-II,
2nd Addl. Sr. Civil Court & ACJM,
Ankleshwar, Bharuch.