



Received On	20/10/2022
Registered On	20/10/2022
Decided On	18/07/2026
Duration	03 Y 08 M 29 D

IN THE COURT OF JUDICIAL MAGISTRATE FIRST
CLASS, TAL. AMOD, DIST. BHARUCH
(Presided Over By : Mr. Ravikumar R. Parmar)

Criminal Case No. : 1437/2022

Exhibit No. :34

COMPLAINANT :

Ismail Mahammad Delawala

Address: Mehkuz Nagar, Bhimpura Road

Tal. Amod, Dist. Bharuch

V/S

ACCUSED :

Sikander Rahimbhai Khokhar

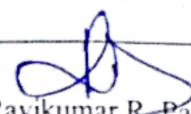
Address : Navi Nagri, Kava, Tal. Jambusar, Dist. Bharuch.

APPEARANCES :

COMPLAINANT :- Ld. Adv. M. S. Patel

ACCUSED :- Ld. Adv. W. S. Saiyed

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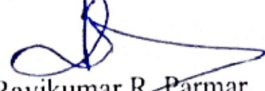

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Offence: U/s. 138 of Negotiable Instrument Act, 1881

Judgment

- (1) The complainant has filed a present complaint u/s 142(1)(b) of The Negotiable Act, 1882 (In short N.I. act) for an offence u/s 138 of N.I. Act against the accused herein. That brief fact of the present complaint is that **the Complainant and Accused are friend and they are known to each other. The accused had borrowed Rs. 1,00,000/- from complainant on 22.06.2022 and assured payment in thirty days.** In order to pay back said amount, the accused had drawn **cheque No. 000029 of Rs. 1,00,000/-, dtd. 06.08.2022** out of his bank account at HDFC Bank, Kavi Road, Jambusar Branch. The complainant under instruction of the accused deposited said cheque in his bank, but the same stood dishonored with an endorsement **"Funds Insufficient", on dt 16.08.2022.** The complainant herein issued a legal notice to the accused herein u/s 138 of N.I. Act through his Ld. Advocate on **dt. 03.09.2022**, the same was delivered to the accused on **09.09.2022**. But, in spite of being duly served with the statutory notice, the accused herein neither replied to the same nor complied therewith. For the said reason, the complainant has filed the present complaint u/s 142(1)(b) of the N.I. Act for an offence u/s 138 of N.I. Act on **dt. 20.10.2022**.
- (2) Under the present complaint, the court had taken the cognizance and issued process against the accused herein for an offence u/s 138 of N.I. Act. Wherein after being served with the summons and warrants, the accused herein remained present before this court. His plea was recorded vide **Exh. 11 on dt. 13.06.2023**. In

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order to prove the present case, the complainant has mainly produced the following evidence.

ORAL EVIDENCES

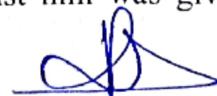
Sr. No.	Particulars	Exh. No.
1.	Examination-in-Chief of Complainant by way of affidavit	04

DOCUMENTARY EVIDENCES

Sr. No.	Particulars	Exh. No.
1.	Original disputed cheque vide cheque no. 000029.	26
2.	Original Return Memo.	27
3.	Notice sent to the Accused	28
4.	Original Postal Receipt of notice sent to the Accused through RPAD.	29
5.	Original Postal Acknowledgment.	30

(3) That, the complainant has been provided with sufficient opportunity to produce his part of evidence and after producing the above evidence the complainant herein declared that, they do not want to produce more evidence.

(4) It is pertinent to note here that the present complaint was filed in **October, 2022**. The process against the accused was duly served and later he appeared before this court and his plea was recorded and a copy of all evidence against him was given to



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him. Then the matter was kept for cross-examination of the complainant. Pertinent to note that, the accused had not even objected to any documentary evidence produced by the complainant. This court ordered that all the documentary evidence produced by the complainant be considered in evidence. The accused did not appear before the court nor his Ld. Adv. conducted cross-examination nor was any report sought. Therefore, the right of the accused to conduct cross-examination was struck off on **dt. 24.01.2025 vide an order made below Exh. 21** and matter was taken for Further Statement of accused. On **dt. 26.08.2025**, the accused remained absent. The complaint vide application filed vide **Exh. 32**, prayed to the court that, right of an accused to further statement be closed. Considering the conduct of the accused, this court was also constrained to dispense with the further statement of the accused. Later the matter was kept on final hearing, wherein Ld. Adv. for the complainant as well conducted their oral arguments, but the accused side did not argue. Then the matter was kept for final decision.

The Ld. Adv. for the complainant in brief argued that they have successfully proved essential elements for the offence u/s 138. No evidence was opposed or rebutted by the accused side during trial. Therefore, the accused to be punished at the fullest under section 138 of the act.

(5) Considering the evidence produced on record as well as agreements submitted on both sides, following issues have been raised before this court in order to decide the present complaint.

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ISSUES

A) Whether prosecution proves beyond all reasonable doubt that the accused herein has committed an offence u/s 138 of N.I. Act?

B) What Order?

That answers of the above issues are given here under,

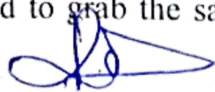
A) Affirmative,

B) As per final order.

(6) That, reasons for the answer of the above issues are discussed and determined in detail as under,

6.1) Issue No. A :-First of all, keeping in mind the provision of Sec. 138 of N.I. Act, it provides a presumption that, **the drawer has committed an offence provided condition No. (a) to (c) of the provisio part are complied with.** It is pertinent to note here that, accused has been provided with more than sufficient opportunities, initially to cross-examine the complainant herein and thereby contradict the complainant's version as stated in the chief-examination as well as documentary evidences produced by the complainant and also to put forward a specific defense as may be available with the accused. But, the accused herein neither availed an opportunity by conduction cross-examination of the complainant nor in getting his further statement recorded before this court. It is pertinent to note that, for that aspect this court had given the accused sufficient opportunities, but despite it, he remained failed to grab the said

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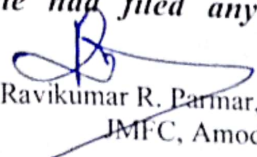

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opportunities. Accordingly, oral evidence in the form of chief-examination of the complainant as well as the documentary evidence produced by the complainant herein, neither been denied nor disputed nor even tried to contradict the same by the accused herein and thus remain untouched on record. For the said reason, no reason appears on record as to why and for what reason prosecution evidence should not be believed or should be discarded or should not be considered.

6.3) In case of MANOJ VASUDEV SOMPURA V/s STATE OF GUJARAT, 2023 (0) AIJEL-IIC 247313, before Hon'ble Gujarat High Court, the petitioner who was original accused in Criminal Case under The Negotiable Instrument Act, had filed petition u/s 482 of Cr.P.C. In said case, the petitioner, like the accused in present case, had not appeared before the trial to cross-examine the complainant nor for Further Statement, therefore, the trial court had closed the rights of accused and convicted the accused u/s 138 of N.I. act. The Hon'ble High Court has observed that,

"10. It is pertinent to note that the trial Court has recorded in the impugned judgment and order that the evidence of the complainant came to be closed vide closing pursis Exhibit-31. The Further Statement of the petitioner u/s. 313 of Cr.P.C. was recorded but, it could not be exhibited on the particular date. On the next date, neither the petitioner nor his advocate had remained present and therefore, his Further Statement, which was recorded on the earlier date and was also available on record, could not be exhibited. There is nothing on record to suggest that the petitioner or his advocate had filed any

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application before the trial Court seeking exemption from the trial proceeding on the date when his Further Statement recorded u/s. 313 of Cr.P.C. was to be exhibited or seeking any modification in the Further Statement recorded on the earlier date before it is exhibited.

11. Before the trial Court, sufficient opportunities were granted to the petitioner to conduct the cross-examination of the complainant. However, it appears that the petitioner had not availed of any of the opportunities provided by the trial Court to conduct cross-examination of the complainant. The trial Court had even imposed costs upon the petitioner for getting his right to conduct cross-examination of the complainant re-opened but, even thereafter, the petitioner had not availed of the opportunity to cross-examine the complainant for reasons best known to him. Further, the petitioner had not produced any evidence in his defence nor had submitted any oral / written arguments or had examined any witness in his defence.

12. From the above set of facts, it appears that the decision to not remain present on the next date after getting his Further Statement u/s. 313 of Cr.P.C. recorded on the earlier date and to not conduct cross-examination of the complainant in spite of being afforded with sufficient opportunities, was a deliberate or voluntary decision taken by the petitioner. In the interregnum, there is nothing to suggest that the petitioner or his advocate had filed any application requesting the trial Court to grant him an opportunity to record his Further Statement u/s. 313 of Cr.P.C. or to conduct cross-examination of the complainant. The petitioner went into oblivion after the date when his

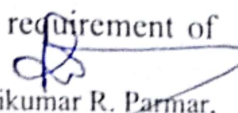
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Further Statement u/s. 313 of Cr.P.C. came to be recorded but before it could be exhibited. Therefore, the trial Court was left with no other option but to conduct the trial in the absence of the petitioner, who had deliberately or voluntarily chosen to evade the trial proceedings. Under these circumstances, there was no reason for the trial Court to issue any warrant against the petitioner, as contended by learned advocate for the petitioner. Moreover, the petitioner had not produced any evidence in his defence or had made any submissions either oral or in writing."

6.4) Keeping in mind the same, it appears that the documentary evidence produced by the complainant has neither been contradicted nor any endeavor was made by the accused to prove otherwise. Essential requirements as envisaged by Sec. 138 (a) to (c) appeared to have been duly complied with by the complainant and then after the complainant herein appears to have filed the present complainant within period of limitation as envisaged u/s 142(1)(b) of N.I.Act. The accused herein neither denied any facts touching a debt, an impugned cheque, its presentation within the period of limitation, its dishonored due to reason mentioned in return memo, and then after within the period of limitation issuance of the statutory notice, nor made any endeavor to prove the contrary. All the documentary evidence is corroborated by the complainant's unrebutted examination-in-chief. Looking at the present record, the factual aspect with which complainant herein has filed the present complaint appears to have been duly established on record. Accordingly, considering the present record, complainant herein clearly appears to remain succeeded to comply with the requirement of

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law as envisaged by clause No.(a) to (c) of Sec. 138 of N.I. Act. Accordingly offence u/s 138 of N. I. Act stands proved to have been committed by the accused herein. Along with the same presumption as envisaged by Sec. 118 read with Sec. 139 of N.I.Act with reference to an impugned cheque also benefited to the complainant herein and which is against the accused herein not made any endeavor to prove the contrary to the said presumptions of law and thereby remained failed to rebut the said presumptions of law. Nothing appears on record which may be beneficial to the accused and against the case of the prosecution, which may rebut the above presumptions of law. Hence, considering the same, this court is of the certain view to answer the present issue No.A in "Affirmative".

6.5) Issue No. B :- That, considering the discussion as made in issue No.A it is proved on record that, the complainant herein remains to prove his case and guilt against the accused beyond all reasonable doubt. Even during the trial accused herein did not co-operated with to conduct the trial smoothly and conclude the same as envisaged by Ec. 143(3) of N.I. Act. Hence, looking to the conduct on the part of the accused as well as merits of the present complaint, if for the present offence accused herein be imposed with two year simple imprisonment, than it appears to be just, proper and justifiable and this court is of the certain view that, by doing so justice would be seen to have been done to the complainant herein. Further, the complainant vide pursis filed vide Exh. 34 has declared that, the accused during trial has paid Rs. 30,000/- towards total amount mentioned in cheque. Therefore, this court considers it proper to impose fine for rest amount,

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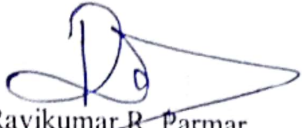
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Accordingly, this court is of the certain view to pass the final order in the present Issue No. B as under :

-:: FINAL ORDER ::-

- 1) The accused namely **Sikander Rahimbhai Khokhar** Address : Navi Nagri, Kava, Tal. Jambusar, Dist. **Bharuch.** is hereby **Convicted** u/s 278(2) of The Bhartiya Nyaya Suraksha Sanhita, 2023, for an offence **u/s 138 of The Negotiable Instrument Act, 1881** and sentenced to undergo a **simple imprisonment for term of two years** and **to pay fine of Rs. 70,000/- in words Seventy Thousand.**
- 2) In failure to deposit the amount of fine, the accused shall undergo simple imprisonment of 30 days, which shall be in addition to imprisonment stated above.
- 3) The amount of fine to be paid to the complainant as compensation u/s 395(b) of The Bhartiya Nyaya Suraksha Sanhita, 2023.
- 4) Since the accused herein not remained present before this court without lawful excuse, for the said reason, it is hereby directed to issue non-bailable warrant u/s 458(2) of The Bhartiya Nyaya Suraksha Sanhita, 2023, against the accused in order to secure his presence before this court and to send him to undergo the sentence imposed upon

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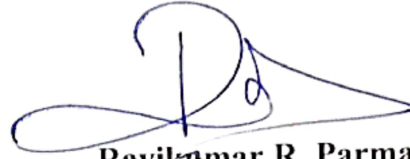
him. The said warrant shall be forwarded to The office of Concerned Superintendent of Police for service.

- 5) On production of accused before this court, the registry is directed to provide a copy of the present judgement free of cost to the accused immediately in view of Sec. 404 of The Bhartiya Nyaya Suraksha Sanhita, 2023.

Pronounced and signed in the open court on Day 18th Month of July Year 2026.

Date : 18/07/2026

Place : Amod



Ravikumar R. Parmar

Judicial Magistrate First Class,

Tal. Amod, Dist. Bharuch

(Judge Code : GJ 01603)

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