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D M Y

IN THE SESSIONS COURT,
BANASKANTHA AT PALANPUR

Exh. _____

Criminal Appeal No. 17/2025

Appellant:
(Original accused):

Jyotindrabhai Motibhai Thakkar
Age: 50 Years, Occu.: Business,
R/o House No.1, Akshatam-2,
Near Gathaman Patiya, Ahmedabad Highway,
Tal. Palanpur, District: Banaskantha,
Office at Rich Creation, 26,
Gurusadan Complex, Gobari Road,
Palanpur, Tal. Palanpur, District: Banaskantha.

V E R S U S

Respondents:
(Respondent No.2-Original Complainant):

1. **The State of Gujarat**

2. **Salimuddin Nasuddin Shekh**
Age: 65 Years, Occu.: Doctor,
R/o 12, Ranibag Society, Rajgadhi,
Palanpur, Tal. Palanpur, District: Banaskantha.

Appearance:

Mr. S. M. Chaudhary,	L.A. for the Appellant-original accused.
Mr. R. P. Vaishnav,	Learned P.P. for the Respondent No.1.
Mr. N. R. Fosi,	L.A. for the Respondent No.2-original Complainant.

CRIMINAL APPEAL UNDER SECTION 415(3) OF THE BHARTIYA NAGARIK SURAKSHA SANHITA

J U D G M E N T

1. The present appeal arises out of an order and judgment dated 12.04.2024 passed by the learned 3rd Additional J.M.F.C., Palanpur in Criminal Case No.879/2023, which judgment (hereinafter referred to as the impugned judgment for the sake of convenience) had the effect of convicting the present appellant for Simple Imprisonment of 2 years and was ordered to pay compensation to the tune of Rs.17,00,000/- to the complainant on account of having been found guilty in connection with an offence punishable under Section 138 of the Negotiable Instrument Act. Being aggrieved by such order and judgment, present appeal has been filed by the accused under Section 415(3) of B.N.S.S.

2. Short facts of the present case are to the effect that the complainant is a doctor and owner of the hospital namely Medicare at Palanpur. The complainant has been practicing medicine for the last 35 years and the accused is running an aluminum fabrication and glass fabrication business called Reach Creation. The complainant and the brother of the accused namely Chandrakant Motilal Thakkar were studying together in college at Ahmedabad and the accused, being Chandrakantbhai's brother, had been known to each other for a long time and the accused used to come to the complainant's hospital for treatment from time to time, so that a close friendship of family doctor and patient was established between them. In the month of August-2022, the accused needed money for the development of his

business and the accused demanded Rs.17,00,000/- from the complainant. The complainant had withdrawn Rs.5,00,000/- from the Banaskantha Mercantile Co-operative Bank Ltd., Palanpur branch on 29/08/2022 and gave to the accused in cash. After that, the complainant had again withdrawn Rs.3,00,000/- and gave in cash to the accused on 30/09/2022. After that, the complainant had again withdrawn Rs.9,00,000/- from the Banaskantha Mercantile Co-operative Bank Ltd., Palanpur branch on 01/10/2022 and gave it to the accused. Thus, the complainant had given hand cash loan of Rs.17,00,000/- to the accused in his house in three installments. The accused promised to return the entire amount within a month. When the complainant demanded the borrowed amount from the accused, the accused gave him a cheque No.327817 of Rs.17,00,000/-, dated 09/11/2022 drawn on State Bank of India Palanpur branch. Thereafter, the complainant deposited the said cheque on 12/11/2022 in the Banaskantha Mercantile Co-operative Bank Ltd., Palanpur branch. But, the said cheque was dishonored on 14/11/2022 with an endorsement of “Insufficient Funds”. Thereafter, as per say of the accused, the said cheque was deposited by the complainant for the second time in the Banaskantha Mercantile Co-operative Bank Ltd., Palanpur branch, but returned with a return memo from the bank on 20/12/2022 with an endorsement of “Insufficient Funds”. After that, the complainant through his lawyer sent a legal notice to the accused on 12/01/2023 under the Negotiable Instruments Act by registered post A. D. to his residential address, which notice was returned on 13/01/2023 with an endorsement of “Not found”. While the notice sent to the accused to his official address on

12/01/2023 was returned on 13/01/2023 with an endorsement of "Refuse". Though notice was served to the accused however, accused neither paid any amount under the cheque nor filed any reply of the notice. Hence, complainant compelled to file the complaint under Section 138 of N.I. Act against the accused and case was registered as Criminal Case No.879/2023.

3. Upon registering the complaint, order had been passed for issuing process to the accused which was duly served to him and he appeared before the learned Trial Court through his learned advocate and the plea of accused was recorded vide Exh.6 whereby he denied to accept the charges and asserted to face the trial according to procedure of law.

4. The following oral as well as documentary evidence had been produced by the complainant before the lower Court:

Sr. No.	Description	Exh.
	Oral Evidence	
1.	Affidavit of Salimuddin Nasuddin Shekh (Complainant)	04
	Documentary Evidence	
1	Original Cheque given by the accused to the complainant	11
2	Cheque Return Memo	12
3	Cheque depositing slip	13
4	Cheque Return Memo	14
5	Copy of passbook of Palanpur Branch	15
6	Notice	16
7	Postal slip	17
8	Postal slip	18
9	A cover containing notice returned with an endorsement of "Not Found"	19

10	A cover containing notice returned with an endorsement of “Refuse”	20

5. Accused had not produced oral or documentary evidence on record. After scrutinizing facts of the case, appreciating the documentary and oral evidence made available on record produced by the complainant and considering the settled principles of law, the learned Trial Court allowed case of the complainant by sentencing the accused, i.e. the present appellant, to a term of 2 years simple imprisonment and appellant-accused was ordered to pay compensation to the tune of Rs.17,00,000/- to the complainant.

6. Being aggrieved and dissatisfied with the said impugned judgment and order, the appellant has filed the present Appeal on grounds that the impugned judgment and order of the learned Trial Court is illegal and unconstitutional; that the learned Trial Court has committed grave error in appreciation of the evidence; that the learned Trial Court has committed grave mistake in not considering the facts and settled principles of law in proper perspective; and that the learned Trial Court has not given enough opportunity and time to the accused to lead his defence. Therefore, the impugned judgment and order is required to be quashed and set aside by allowing the present Appeal.

7. The following points have arisen for determination by this Court:

(1) Whether the order of conviction against the accused, i.e. the appellant herein, dated 12.04.2024 passed in Criminal Case No.879/2023 by the learned Trial Court deserves

to be quashed and set aside?

(2) What order?

8. My findings on each of the points of determination are as follows:

(i) In negative.

(ii) As per final order.

REASONS

Points of determination No.1 and 2:

9. Since the arguments tendered and advanced on behalf of the appellant cover both the points of determination and the appreciation of the material and record is common and interwoven with both the points of determination, both the points are hereby decided and disposed of together for the sake of convenience.

10. L.A. Mr. S. M. Chaudhary, appearing for the appellant-accused has filed written arguments at Exh.34, wherein it is submitted that the respondent No.2-original complainant has filed his affidavit at Exh.4. The accused's right to cross-examination has been closed due to the application filed by the complainant's lawyer dated 06-02-2024, at Exh.30. In which the learned advocate for the accused did not appear despite repeated called out. Therefore, the court has closed the right of accused to cross-examine the complainant. Thus, the right to cross-examination is not closed due to the fault of the accused. But the right to cross-examination has been closed due to the absence of learned advocate for the accused. The accused went out for unforeseen reasons and he was not informed about the facts of

the said case by his representative. Therefore, his lawyer was not present and cross-examination cannot be conducted and when there is any mistake on the part of the lawyer, the client will not bear the consequences of that mistake. This is clear from the **judgment of the Hon'ble Gujarat High Court in Special Civil Application No.6547/2020 in case of Nimesh Dilipbhai Brahambhatt Vs. Hitesh Jayantilal Patel** wherein Hon'ble High Court at Para-12 held that "Party should not suffer due to the inaction on the part of the advocate and matter should be decided on merits rather than on technical ground." Thus, the order passed by the court is ex-parte and if the appellant's appeal is remanded and evidence of Exh.4 is taken, the principle of natural justice will not be violated and appellant has an opportunity to prove his defence, it is necessary to allow the present appeal and remand it. Furthermore, the burden of proof of the allegations made by the complainant lies with the complainant. Here, the complainant has not produced any evidence in support of his complaint, which casts doubt on the complainant's complaint, and therefore, the order passed by the learned Trial Court is liable to be quashed. It is also submitted that learned Trial Court passed the order without taking further statement of the accused under section 313 of Cr.P.C. Even if it is seen, the mandatory provision has been violated. Moreover, the learned Trial Court passed the order below Exh.33 and thereby closed the right of evidence of the accused. Moreover, learned Trial Court had also closed the right of further statement of the accused on 21.02.2024. Now the question arises whether any legal provision has been violated by not recording the further statement ? And whether the legal right of the accused to defend

himself has been violated by not recording it ? Now, looking to the provision under Section-313 (1) (B) of Cr.P.C. it appears that the word SHALL has been inserted in it, not MAY. In view of which, after the prosecution's evidence is complete, it becomes necessary to give the accused an opportunity to explain every circumstance that goes against him, linking him to the crime. But here in this case such an opportunity has not been given and if such an opportunity to explain has not been given, then the evidence going against him. That circumstance cannot be used against him. But here in this case, such evidence has been used against him and he has been punished. Further clarifying this issue, it has been held in the **judgment of the Hon'ble Supreme Court in case of State of U.P. V/s Mohd. Iqram & Anr, reported in AIR 2011 SC 2296** that, "Attention of the accused must specifically be drawn to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. Court is under legal obligation to put all incriminating circumstances before accused to solicit his response. This provision is mandatory in nature and casts an imperative duty on the court and confers a corresponding right on the accused. Circumstances not put to the accused in his examination under section 313, cannot be used against him." Further clarifying this, the **Hon'ble Supreme Court in case of Nar Singh V. State of Haryana, reported in AIR 2015 SC 310** has held that, any omission on the part of the Court to question the accused on any incriminating circumstance would not ipso facto vitiate the trial. unless some material prejudice is shown to have been caused to the accused. In so far as non-compliance of mandatory provisions of Section 313, it is an error essentially committed by the Trial

Court, the same has to be corrected or rectified in the appeal. Further clarifying this issue, **the Hon'ble Supreme Court in case of Samsul Haque Vs. The State of Assam, Dated 26 August, 2019 in CRIMINAL APPEAL NO.1905 OF 2009**, held that, " The most vital aspect, in our view, and what drives the nail in the coffin in the case of the prosecution is the manner in which the court put the case to accused No.9, and the statement recorded under Section 313 of the Cr. P.C. To say the least it is perfunctory. It is trite to say that, in view of the judgments referred to by the learned Senior Counsel, aforesaid. the incriminating material is to be put to the accused so that the accused gets a fair chance to defend himself. This is in recognition of the principles of audi alteram partem, Apart from the judgments referred to aforesaid the learned Senior Counsel, we may usefully refer to the judgment of this Court in Asraf Ali v. State of Axsam7, The relevant observations are in the following paragraphs: "21. Section 313 of the Code costs a duty on the Court to put in an enquiry or trial questions to the accused for the purpose of enabling hon to explain any of the circumstances appearing in the evidence against hien, It follows as necessary corollary therefrom 7 (2008) 16 SCC 328 that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial. if it is shown that the accused was prejudiced. The object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be

questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial Court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed similar view in S Harnam Singh v. The State (AIR 1976 SC 2140). while dealing with Section 342 of the Criminal Procedure Code. 1898 (corresponding to Section 313 of the Code). Non-Indication of inculpatory material in its relevant facets by the trial Court to the accused adds to vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise." While making the aforesaid observations, this Court also referred to its earlier judgment of the three State of Bench in Shivaji Sahabrao Bodade v. Maharashtra 8, which considered the fall out of the omission to put to the accused a question on a vital circumstance appearing against him in the prosecution. evidence, and the requirement 8 (1973) 2 SCC 793 that the accused's attention should be drawn to every inculpatory material so as to enable him to explain it. Ordinarily, in such a situation, such material as not put to the accused mist be eschewed. No doubt, it is recognised, that where there is a perfunctory examination under Section 313 of the Cr. P.C. the matter is capable of being remitted to the trial court, with the direction to retry from the stage at which the prosecution was closed." Further clarifying this issue, the **Hon’ble Supreme Court in case of Maheshwar Tigga Vs. The State of Jharkhand on 28.09.2020 in Criminal Appeal No. 635/2020 has held in para-9** that, “It stands well settled that circumstances not put to an accused under Section 313 Cr.P.C. cannot be used

against him, and must be excluded from consideration. In a criminal trial, the importance of the questions put to an accused are basic to the principles of natural justice as it provides him the opportunity not only to furnish his defence, but also to explain the incriminating circumstances against him. A probable defence raised by an accused is sufficient to rebut the accusation without the requirement of proof beyond reasonable doubt. This Court, time and again, has emphasised the importance of putting all relevant questions to an accused under Section 313 Cr. P.C." In the recent judgment, the accused was convicted by the learned Trial Court. But his record was not filed in the appellate court. Accordingly, due to non-availability of the record and non-obtainability of the further statement of the accused, the Hon'ble Supreme Court in the following has acquitted the accused keeping in view Section 313 of the Cr.P.C, the important paras of the judgment are as follows. **SP Leave petition (CKL) No. 2063 of 2023 (SC) Jitendrakumar Rode V/S. Union of India.** Para-19 Statement under section 313 Cr.P.C. are neither available nor have been able to reconstructed. Therefore upholding conviction in the absence of such document can not said to be in consonance with due process of law and fairness. Hence, in view of the principle laid down by the Hon'ble Supreme Court in the above mentioned judgments and the facts on record, the further statement of the accused has not been recorded by the court below after the completion of the prosecution evidence, which appears to be a clear and obvious violation of the mandatory provision of Cr.P.C. Section-313 (1) (b). The furtehr statement of the accused under Section 313 of Cr.P.C. regarding the evidence and circumstances against the accused has not been taken on

record. However, relying on that evidence and circumstances, using that evidence and circumstances against him, he has been convicted. Thus, learned Trial Court violated the mandatory provision of Section 313(1)(b) of Cr.P.C. It is also submitted that the return memo of Exh,14 has not been signed or stamped by any authorized officer which is violation of Notification issued by the Reserve Bank of India. The important words of the notification are as follows. "Certain instances of bank not signing the cheque return memos stating that the memos are computer generated and there fore no signature is necessary have been brought to our notice such practice are violation of instruction contain (URRBCH)". Thus, as per the notification of Reserve Bank of India, the said return memo does not come under the definition of Section-146 of the Negotiable Instruments Act. Moreover, **Hon'ble Gujarat High Court in case of Rajendrakumar @ Rajeshkumar Balkisan Agrawal V/S. State of Gujarat**, clearly stated that if there is no seal of the bank on the return memo, it does not come under Section-146 of the Negotiable Instruments Act. which is clear from the **judgment of Hon'ble Gujarat High Court reported in 2012 (1) Crimes Page. 500 (Guj.)**. Return memo produced by complainant not bear stamp of any bank and therefore as per sec. 146 of NI Act the said documentary evidence can not be considered. Thus, as per the above judgment, the return memo itself is not proved by the prosecution. Thus, the complainant has to prove his case from every angle but no document proving the source from which the amount was given. The supporting evidence has not been presented. Therefore, the complainant has failed to prove the details of his complaint. Therefore, the

accused cannot be punished, which becomes clear from the principle laid down in **2009 C 10 DCR 371 (Bom.)** "If the complainant not prove averment of the complaint accuse an title to be acquittal". Further, the important defence of the appellant is that his further statement has not been taken in this regard. Therefore, the sentence is not tenable. Further, in case of **Shrad Jethalal jail sarl V/S state of Gujarat & Others (2017(3) GLH 146)"**. Thus, if we look at the above judgment, it is not written anywhere in the said judgment that the accused can be punished without taking FS. Only in the absence of the accused, the court can order punishment. Moreover, punishment cannot be done without taking FS. Also, the judgment of Sharad Jethalal Savla will not be applicable in cases without taking FS. Moreover, if we look at the **judgment of the Supreme Court in the case of "Indian bank association"**, there is no discussion of Cr.P.C. section 313 in it either. It only deals with the direction has been given which has been discussed in detail in the following judgment. Also, it is clear from the following judgment that the accused cannot be tried without FS. It describes the judgment of "Indian Bank Association". It has given directions to conduct the trial. But no fact has been stated that the accused can be punished without FS. The important paragraphs of the judgment are as follows. **Mr. G.H. Abdul Kadar V/S. Mr. Mohammad Iqbal "CR. R. P. NO. 1323/19 Para 10, 12, 14, 16 & para 14 (Karnt. High Court)** Now if these decision are read Indian bank association does not discuss the aspect of examining the accused under Sec. 313 Cr.P.C. and it has given certain direction for the trial of the cases under Sec. 138." Further, looking to the judgment passed by learned Trial Court, on the day on which the

right of the accused to argue at Exh.34 has been closed on 12-04-2024, the judgment has also been given by the trial court on the same day, and looking to the previous proceeding dated 26-03-2024, it has been said that an arrest warrant should be issued against the accused. But no process of arrest warrant has been issued. It is stated that the demand was made by the accused in August 2022, but no date has been stated by the complainant. It is also submitted that complainant had filed a complaint against the accused on 21.11.2022 which was culminated as Criminal Case No. 2351/2025 which is produced on record at Exh.25 wherein it is stated that Rs.66,00,000/- was given in black money, and the accused gave a cheque of H. D. F. C. Bank on 07-09-2022, which cheque was returned on 08-09-2022 with the remark "DOES NOT CONFIRMED BY THE". Informing the accused, he gave a rash reply. After that, through the lawyer, he gave a notice on 29-09-2022, which was returned on 01-10-2022. All these facts have been stated in his complaint, and on 21-11-2022, it has been filed in the court of learned Chief Judicial Magistrate. If in the present case the cheque of respondent No. 2 (original complainant) dated 08-09-2022 has been returned and on dated 01-10-2022 if it was given through the lawyer, then the question of giving the amount to the applicant-accused does not arise in the present case. If the original complainant (Respondent No. 2) has stated the fact of giving Rs.17,00,000/- (seventeen lakhs) in cash, then the respondent No. 2 has not stated the fact of taking the further Rs.66,00,000/- in present case and at the same time, the learned Trial Court has no reason to believe that he will lend money to the applicant-accused again even after the case has already been filed against him. The accused has not

been given any opportunity to defend himself by the learned Trial Court and the accused had engaged his lawyer who has also not been present in the case or has not defended accused. As his lawyer was not present, the right to argue was closed on 12-04-2024 and on the same day, the trial court has given ex-parte judgment against the accused. Further, on 26-03-2024, an application was filed to close the right of the accused to give evidence at Exh. 33. On the same day that the evidence was filed, order of issuance of arrest warrant against the accused was passed. But no arrest warrant was issued and the matter was put directly on the arguments. Thus, in the present case, the case filed by Respondent No. 2-original complainant against the appellant-accused has been filed in a wrong manner, and advance cheques have been taken from the appellant (accused) to whitewash black money in advance, and despite the fact that the money was not given to the appellant (accused), a wrong case has been filed, and due to the negligence of his lawyer, he has not been given any opportunity to defend himself, and ex-parte decision has been given by the learned Trial Court. Thus, having regard to the facts as stated above at the time of hearing as well as the written arguments and the judgments of the Hon'ble Supreme Court and the Honble High Court presented therewith, it is requested to pass order of the acquittal of the appellant. Alternatively, remand the case to the learned Trial Court.

11. L.A. Mr. N. R. Fosi, appearing for the respondent No.2-original complainant has filed written arguments at Exh.18 wherein it is submitted that the complainant (Respondent No.2) followed the legal procedure and complainant sent the notice on

both the addresses of the accused but the appellant-accused did not give any reply to the notice given by complainant. It is also submitted that respondent No.2-complainant has filed affidavit at Exh.4 and though sufficient opportunities were given to the accused to cross-examine the complainant but, no cross-examination has been conducted. Moreover, the accused had also given an application at Exh.24 in which he has given assurance to pay the dues amount upto 30.11.2023. Accused had also given two cheques at Exh.29 and said both the cheques were returned however complainant had not filed complaint against the accused. The accused has taken defense that complainant has given Rs.17,00,000/- to the accused but said amount has not been shown in the income tax. The complainant is a doctor and has been practicing medicine for the last 35 years, so naturally he has given that amount from his savings, i.e., he had deposited it in the Banaskantha Mercantile Co., Ltd. And he had withdrawn the amount which is the amount as shown in his complaint. The appellant has borrowed money and does not have to give the amount of loan given to complainant and for that the defence that he has taken that the money is not shown in the income tax return cannot escape from legal liability on the basis of which, taking into account the entire facts, learned Trial Court rightly convicted the accused hence, there is no need to interfere in the judgment of the learned Trial Court hence, it is requested to reject the appeal.

12. In the circumstances, I am required to consider the merits of the impugned judgment and consider the records and proceedings of the learned Trial Court where the learned Trial Court has come to a conclusion with regard to the guilt of the

present appellant in an offence punishable under Section 138 of the Negotiable Instrument Act. The protracted proceeding before the Trial Court clearly indicates that the cheque has been dishonoured due to "Funds Insufficient". The provisions with regard to the statutory Notice and the time frame for filing the proceedings are established to have been satisfactorily complied with. The learned Trial Court has comprehensively discussed the relevant provisions of the Negotiable Instruments Act in para 10 of the impugned judgment while coming to the conclusion that an offence is established to have been committed by the accused.

13. It is clear on perusal of the proceedings that the defence is almost non-existent and the accused has not set up any valid defence, neither oral nor documentary evidence is produced on record by the accused. The factum of the accused having signed the cheque and the cheque being issued for a valid consideration is clearly established in the course of the trial.

14. The main contention raised in the present Appeal by the learned counsel for the appellant is that the accused has not been given sufficient time and opportunity to lead evidence. But, I do not find any substance in such argument. The present complaint has been registered on 27.02.2023 and the impugned judgment and order has been passed on 12.04.2024. Thus, it is apparent on record that the learned Trial Court had granted time of more than 1 Year and 1 Month to the accused to put up his case.

15. Further, upon perusal of Trial Court record, it reveals that the accused/appellant had taken the entire trial Court proceedings very lightly.

16. Another contention raised by learned counsel appearing on behalf of the appellant is that learned Trial Court has not taken into consideration the fact came on record and learned Trial Court has misinterpreted the evidence on record. But, it appears from the record that upon service of summons, accused remained present before the learned Trial Court but he has not filed any reply in his defense. Further, accused has not adduced any oral or documentary evidence before the learned Trial Court. Though sufficient opportunities were given to the accused, however he had not made any efforts for compromise. Even at the time of cross-examination of the complainant, accused and his learned advocate remained absent. Though sufficient opportunities were given to the accused to cross-examine the complainant but accused remained absent. Hence, on 06.02.2024, complainant had filed an application at Exh.30 to close the right of accused for cross-examination of the complainant hence, learned Trial Court has closed the right of the accused for cross-examination of the complainant and a Closing Pursis was filed by the complainant at Exh.31.

17. Another contention raised by learned counsel appearing on behalf of the appellant is that complainant has misused the cheque issued by the accused. In the present case, the accused has admitted his signature on the cheque. Once, he has admitted the signature, then Court has left no any option except to draw the presumption under Section 139 of the N.I. Act. It is not required that accused himself to enter in the witness box, but by leading the evidence based on the preponderance of probabilities accused may rebut the presumption. But, herein, no such

evidence of rebuttal based on preponderance of probabilities has been led by the accused to rebut the Statutory presumption under Section 139 of the Act. Accused has to prove that, there was no any legally enforceable liability or debt to pay. Even Hon'ble Supreme Court has been pleased to held in the case of **M/s.Kalamani Tex & Anr. Vs. P. Balasubramanian reported in 2021 (5) SCC Page No. 283**, that once effect of admission regarding signature on cheque, in such situation, court is required to presume that the cheque was issued as consideration for a legally enforceable debt. Once Presumption in case of voluntarily signed blank cheque leaf, presumption as to legally enforceable debt, held, available against the accused even in case when he voluntarily signed and handed over a blank cheque leaf towards some payment. Even Hon'ble Supreme Court has considered the case of **Basalingapa Vs. Mudibasappa, reported in 2019(5) SCC 418** also. Herein, when the accused failed to file his reply in his defence then it can be presumed that cheque had been issued by the accused towards legally debt. Thus learned Trial Court has not committed any error in drawing the presumption.

18. The another contention raised by the appellant is that further statement of the appellant had not been recorded and as such he is deprived of his right to defend his case by not recording his further statement. In this regard, it appears from the record that after completion of evidence of the complainant accused remained absent hence non-bailable warrant had been issued upon accused. Though matter was fixed for recording of the further statement of the accused and though frequently called out, accused remained absent. Hence, on 21.02.2024, learned

advocate for the complainant has filed an application at Exh.32 to close the right of the accused for further statement. Hence, learned Trial Court has closed the right of the accused for further statement of accused. Not only that but at the time of hearing of arguments also accused remained absent and on 12.04.2024, learned advocate for the complainant has filed an application at Exh.34 to close the right of the arguments of the accused. Hence, right of the arguments of the accused had also been closed by the learned Trial Court. Hence, in these circumstances, arguments advanced by the L.A. for the appellant-accused are not taken into consideration.

19. The another contention of the L.A. for the appellant is that it is not proved that accused had given disputed cheque toward legally enforceable debt however learned Trial Court convicted the accused. It is settled law that even a blank cheque leaf, validly signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the N.I. Act, in absence of any cogent evidence to show that the cheque was not issued in discharge of a debt. In the case on hand, it is proved on record that the cheque was issued in discharge of a valid debt, and hence, this contention is also not acceptable.

20. It is also argued by learned advocate for the appellant that the learned Trial Court has completely disregarded the mandatory provisions of Section 138 of the Negotiable Instrument Act while convicting the accused.

21. In the background of such contention, let us examine the

mandatory provisions of Section 138 of the Negotiable Instrument Act. Section 138 of the N.I. Act is a penal provision that deals with the punishment for dishonour of cheque. Dishonour of cheque is not an offence in itself but to become an offence, the following ingredients should be there:

1. There should be a drawer that draws the cheque.
2. The cheque drawn should be in discharge of some liability.
3. Presentation of the cheque to the drawee bank.
4. The cheque returned by the bank unpaid on account of Account blocked.
5. The cheque should be presented within six months from the date on which it was drawn or within the period of its validity, whichever is earlier.
6. Within thirty days of receiving a memo of return from the bank, a notice should be served to demand the payment of the said money.
7. The drawer fails to pay the said money within 15 days of the receipt of the said notice.

22. It is to be noted here that if the drawer pays the debt within 15 days, there would be no offence. The offence is said to be committed under Section 138 of the N.I. Act, only when he fails to pay the debt within 15 days and such person shall be punishable with imprisonment for a term which may be extended to two years, or with a fine which may extend to twice the amount of the cheque, or with both.

23. On perusal of record of the learned Trial Court, it is

clearly established that all the aforesaid essential ingredients existed and mandatory provisions related thereto have been complied with by the complainant. The cheque return memo Exhs. 12 & 14, clearly establishes the funds to be insufficient, and the consequent Notice Exh. 16 are proved in the course of the trial. The testimony of the complainant at Exh. 4 also makes out a good case hence, I come to the conclusion that the proceedings have been properly conducted by the learned Trial Court.

24. Looking to the record, it appears that accused had admitted that he had taken loan from the complainant but accused failed to show that he had paid all dues before issuance of cheque. It apparently appears that the appellant had given cheque towards legally enforceable debt and he has not denied his signature in the disputed cheque. Appellant failed to prove that, there was no any legally enforceable liability or debt to pay. Thus, having considered the trial proceedings and also the impugned judgment, it is clear that nothing emerges which would warrant interference with regard to the impugned judgment by exercising appellate jurisdiction. The appellant has failed to set up a valid defence in the trial. In the circumstances, I find the appeal completely devoid of merits, and deliver the following final judgment and order:

ORDER

(1) The Appeal is dismissed.

(2) The impugned judgment and order dated 12.04.2024 passed by learned 3rd Additional J.M.F.C., Palanpur, in Criminal

Case No.879/2023 is hereby confirmed.

(3) As the appellant-accused is not present before this Court, issue a conviction warrant for his arrest as per provision of section 418(2) of Cr.P.C. and to be forwarded to the Nodal officer for execution.

(4) Record & Proceedings of Criminal Case No. 879/2023 be sent back to the learned Trial Court alongwith a copy of this order, forthwith.

Pronounced in open Court today this 17th day of March, 2026.

PALANPUR *(Shubhada Krishnakant Baxi)*
SESSIONS JUDGE,
Date: 17/03/2026 **B.K. DISTRICT, PALANPUR**
(Code-GJ00377)

Vishal