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D M Y

IN THE SESSIONS COURT, BANASKANTHA AT PALANPUR

Exh.______

Criminal Appeal No. 260/2025

Appellant:
(Original accused):

Jayantibhai D. Boka
Age: 50 Years, Occu.: Business,
R/o Khodla, Tal. Palanpur,
District: Banaskantha.

V E R S U S

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

1. **The State of Gujarat**

2. **Nareshbhai Dolabhai Bhutadiya**
Age: Adult, Occu.: Agriculture,
Originally resident of Patosan,
Tal. Palanpur, District: Banaskantha,
At present residing at Akshatam-6,
Bungalow No.51, Opp. Ramdev Hotel,
Ahmedabad Highway, Palanpur,
Tal. Palanpur, District: Banaskantha.

Appearance:

Mr. A. A. Manknojiya,	L.A. for the Appellant.
Mr. R. P. Vaishnav,	Learned P.P. for the Respondent No.1.
Mr. R. N. Chaudhary,	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 09.06.2025 passed by the learned 2nd Additional J.M.F.C., Palanpur in Criminal Case No.4007/2023, 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 1 year and was ordered to pay compensation to the tune of Rs.4,00,000/- 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 engaged in farming/animal husbandry and business. The accused is also engaged in farming/animal husbandry and runs a firm in the name of Radhe Shyam Trading company at APMC, Palanpur. The complainant used to supply farm produce to the firm of the accused and used to meet each other and were familiar with each other as they belong to the same community. The accused was in need of Rs.4,00,000/- for his business and asked for the aforesaid money from the complainant for six months. Therefore, the complainant gave Rs.4,00,000/- in cash to the accused and he assured to return the money in six months. After six months, the complainant demanded his money back from the accused. At that time, the

accused gave a duly signed cheque no. 677778 of IDBI Bank of Rs.4,00,000/- dated 07/07/2023 and assured that the cheque will be honoured by the bank. Accordingly, the complainant deposited the cheque in his bank account which was returned with the endorsement of "funds insufficient" on 14/07/2023. Thereafter, the complainant asked the accused about the return of cheque. But the accused did not pay the money. Hence, the complainant issued a statutory demand notice through RPAD on 25.07.2023 to the accused which was delivered to him on 26.07.2023. As no payment of the disputed cheque was made within stipulated period, the complainant filed the complaint under Section 138 of N.I. Act against the accused and case was registered as Criminal Case No.4007/2023.

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.7 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 learned Trial Court:

Sr. No.	Description	Exh.
	Oral Evidence	
1.	Affidavit of complainant Nareshbhai Dolabhai Bhutadiya	4
	Documentary Evidence	
1	Original Cheque given by the accused to the complainant	10

2	Cheque Return Memo	11
3	Demand Notice issued by the complainant to the accused.	12
4	Postal Slip	13
5	Track report	14
6	Reply given by the accused	15
7	Letterhead acknowledging the receipt of money	17
8	Form No. 8/A, 7	26

5. 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 1 year simple imprisonment and appellant-accused was ordered to pay compensation to the tune of Rs.4,00,000/- 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 09.06.2025 passed in Criminal Case No.4007/2023 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 both the contesting parties 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. A. A. Manknojiya, appearing for the appellant has filed written arguments at Exh.20 wherein it is submitted that the complainant has submitted an affidavit at Exh.4, in which all the facts are false and fabricated and although the identity of the accused as shown by the complainant in the affidavit and in the complaint has not been established. It is also submitted that during the cross-examination of the complainant, he himself admitted that he has 25 Vighas of jointly agricultural land. It is also admitted that the extracts of the agricultural land have not

been submitted. Later on the complainant submitted only extracts of land 8/A and 7/12, from which it appears that there are a total of 5 partners in it and has not submitted any bills or proof of income regarding the yield from this land. He has also admitted that no bills have been submitted with regard to supply of agriculture produce to the accused's firm. He has also admitted that bills are taken from the firm for the supply of agricultural produce, he will have these bills which he is happy to submit. The accused's firm has been supplying agricultural produce for the last ten to twelve years. But in the learned Trial Court, the complainant has not submitted any supporting evidence regarding the supply of agricultural produce, despite being happy to submit bills, no such bills have been submitted, nor has the appellant's firm presented any supporting evidence regarding the supply of agricultural produce for the last ten to twelve years. He has also admitted the fact that in the complaint and the chief-examination, the date on which and in whose presence the appellant was given Rs.4,00,000/- has not been stated, nor has the exact period of this amount been completed, nor has the fact from where Rs.4,00,000/- came has been stated. However, the learned trial court has passed a wrong order by accepting the fact of giving the money. It is also admitted that on 20/01/2022, the accused's firm had placed 16 sacks of mustard and 8 sacks of castor oil. It is also admitted that the accused had sold these goods and given him the amount in cash. Thus, as stated by complainant, the fact of giving the borrowed amount has been stated. But in fact, as per this admission of complainant, the transaction that was in progress was regarding mustard and castor oil and that transaction was completed as per the admission of complainant, despite the fact that the complainant had made a complaint by misusing the cheque held by him as security, the learned Trial Court passed a wrong and erroneous order. He has also admitted that at Exh.17 there is no mention of the writing on the letterhead in his complaint and chief-examination. It is also admitted that the amount was given to the accused before the writing of Exh.17. He stated that this writing was made as he found the transaction with the accused to be unfair. It is admitted that the writing of Exh.17 states that he is entitled to recover the amount under the cheque through court proceedings. It is also admitted that the cheque was given to him before this writing was made. Thus, the cheque that was given was not a cheque towards debt but a cheque towards security, despite its misuse, the learned Trial Court passed wrong order by assuming that the cheque was given towards debt. Therefore, on the aforesaid grounds, it is requested to allow the appeal and to set aside order of conviction and sentence passed by the learned Trial Court and finally he has requested to acquit the accused.

11. On the other hand, Learned Advocate Mr. R. N. Chaudhary, appearing for the respondent No.2 has filed written arguments at Exh.22 wherein it is submitted that whatever the facts stated in the appeal which have not been proved on the basis of evidence by the appellant-accused before the learned Trial Court. It is also submitted that appellant-accused had given disputed cheque towards legally enforceable debt. It is also submitted that accused had not produced any oral or documentary evidence in his defense. It is also submitted that accused failed to prove that he had given disputed cheque

towards security. Moreover, accused admitted his signature in the disputed cheque. It is also submitted that there is no illegality or perverseness in the impugned judgment and order, and the learned Trial Court has rightly convicted the appellant under the provisions of the Negotiable Instrument Act. He submitted that the case against the appellant has been proved beyond reasonable doubt and the complainant has very well established guilt of the accused on record by leading cogent and convincing oral as well as documentary evidence. He, therefore, submitted that the present Appeal is devoid of merits, and therefore, requires to be dismissed by upholding the impugned judgment and order passed by the learned Trial Court.

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 Instrument Act in para 10 to 12 of the impugned judgment while coming to the conclusion that an offence is established to have been committed by the accused.

13. 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 23.08.2023 and the impugned judgment and order has been passed on 09.06.2025. Thus, it is apparent on record that the learned Trial Court had granted time of more than 1 year and 9 months to the accused to put up his case.

14. The another contention of the L.A. for the appellant is that it is not proved that accused had given disputed cheque towards legally enforceable debt however learned Trial Court convicted the accused. It is also contended by learned counsel appearing on behalf of the appellant is that the complainant had obtained a cheque in dispute from the appellant but he had not stated that as to when and where and in whose presence appellant had handed over the cheque to him. 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.

15. 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 accused appeared before the learned Trial Court but he has not adduced any oral or documentary evidence

before the learned Trial Court.

16. Another contention raised by learned counsel appearing on behalf of the appellant is that complainant has misused the cheque issued by the accused towards security. 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.

17. The complainant first needs to show that the disputed cheque was issued by the accused in his favour to return the money borrowed by him. Now, for the same, it is necessary to peruse oral and documentary evidence. The complainant has filed his affidavit at Exh.4 wherein he completely supported facts of complaint and asserted that the accused issued aforesaid cheque to return the money. But, the disputed cheque was dishonoured and returned back unpaid due to funds insufficient. Now, perusing the cheque produced vide Exh.10, an amount of Rs.4,00,000/- is mentioned and drawn to pay to Nareshbhai Dolabhai Bhutadiya dated 07/07/2023 along with the signature of the drawer with his printed name. Thereafter, perusing the letterhead produced vide Exh.17, it appears to have been written on the letterhead of the firm of the accused dated 11/04/2023 in which it is mentioned that the accused has borrowed Rs.4,00,000/- from the complainant on 07.01.2023 and he agreed to return to the complainant before 07.07.2023. The letterhead appears to have been signed by the parties of the case and other four persons as witnesses. Considering the defence taken by the accused, he has argued that there are three partners in the firm of the accused who are not joined by the complainant in the present case. In this regard, it is pertinent to note here that the disputed cheque is signed by the present accused only and it is settled law that the person signing the cheque has the liability in the cases under section 138 of NI Act. Hence, this defence cannot be accepted. Thereafter the accused has taken defence on the ground

that the complainant has not examined any witness of the letterhead to prove the content. In this regard, it is pertinent to note here that the complainant has produced the original letterhead of the firm of the accused and admitted its execution in his cross-examination. Moreover, the defence has to rebut the statutory presumptions first. Hence, this defence is also not tenable. After that, the accused has taken defence on the ground that the complainant has admitted that the cheque was kept with him prior to execution of letterhead. In this regard, it is pertinent to note here that the alleged transaction took place on 07/01/2023 whereas the date of letterhead is 11/04/2023. Therefore, apparently it appears that the letterhead was prepared after the alleged transaction. Moreover, a post-dated cheque can also be given by the drawer. Hence, this defence is not tenable. Thereafter, the accused has taken defence on the ground that the complainant has not produced any bills to show that he had supplied agriculture produce to the firm of the accused. In this regard, it is pertinent to note here that the cheque was allegedly given to return the hand cash loan and not for making the payment of supplying the agriculture produce. Hence, the bills are not relevant in the facts of the case and the defence is also not tenable. As such, the defence has failed to rebut the statutory presumptions. Therefore, it is established that the accused issued the disputed cheque to return the money which was borrowed by him. On the basis of overall discussions, it apparently appears that the disputed cheque was duly issued by the accused to discharge his legal debt in favour of the complainant. It appears from the affidavit of the complainant that the cheque was presented in his bank account, but it was dishonoured and returned back unpaid on 14/07/2023 with the endorsement of "funds insufficient” and the aforesaid amount has not been paid. Perusing the documentary evidence in this regard, the return memo is produced vide Exh.11 which shows that the disputed cheque was returned on 14/07/2023 for the reason of "funds insufficient". Perusing the documentary and oral evidence, it is clearly apparent that the cheque was presented in bank within its limitation and the same was returned unpaid. The complainant stated in his affidavit that after return of cheque, he issued statutory demand notice on 25/07/2023 to the accused which was served to him. Perusing the documentary evidence in this regard, the statutory demand notice is produced vide Exh.12 which is addressed to accused and fact of demanding the cheque amount was mentioned in it. Further, the postal slip is produced vide Exh. 13 which shows that it was sent on 25/07/2023. The track report is produced vide Exh.14 which shows that the notice was delivered at the mentioned address. As such, the complainant has duly complied with the requirements of section 138 of NI Act and the statutory demand notice was issued to the accused within the time limit. In spite of that, the cheque amount is not paid by the accused to the complainant and the complaint is filed within limitation.

18. Now, looking to the oral evidence produced on record before the learned Trial Court, it appears that complainant has filed his affidavit at Exh.4. The evidence supporting the facts has been presented by him in his affidavit, in which he has presented oral evidence supporting the details of the transaction with the accused in this regard and the fact that the cheque was given to

him by the accused in this regard, as well as in this regard he has stated that the cheque of the accused was dishonoured when it was presented to the bank for clearing and that due to the return of the cheque, he has filed a complaint against the accused. The accused has been given notice and that notice has also been served on the accused. The complainant has also presented documentary evidence in support of his oral evidence, in which he has presented the original cheque, return memo, notice given to the accused by the complainant and the acknowledgment slip regarding the service of the notice. As such, the complainant has proved the entire fact of its complaint and has also presented all its evidence to prove all the essential elements of the offence as discussed above under Section-138 of the Negotiable Instruments Act. Also, according to the evidence presented by him, it is proved that although the notice of return of the cheque given to the accused in this case to repay the legal debt has been issued, the cheque amount has not been given to the complainant in this case. Thus, when the complainant has presented evidence fulfilling all the requirements for the crime under Section-138 of the Negotiable Instruments Act by his own evidence, then it can be assumed that the present accused has committed the alleged offence.

19. It also appears that complainant had been cross-examined by the accused but, looking to the cross-examination of the complainant, it apparently appears that the accused has not raised any objection regarding his signature on the disputed cheque, nor has he denied his signature on the disputed cheque. Hence, when the accused has not disputed his signature on the cheque and the

fact that the cheque was given to the complainant towards legally enforceable debt, then the presumption goes in favour of the complainant. Looking to the evidence produced by the complainant it appears that the complainant has proved all the facts of the complaint.

20. Now, it appears from the record that accused had not produced any oral evidence in his defense. 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. Therefore, in view of all the above evidence, when the accused has no dispute about his signature on the disputed cheque and the fact that the cheque was given by the accused to the complainant, then the presumption according to law goes in favor of the complainant. The accused has not been able to bring on record any facts which would help him in his defence during the cross-examination of the complainant. The evidence presented in his defence cannot rebut the evidence presented by the complainant. As per the above discussion, it apparently appears that the accused had given the disputed cheque to the complainant towards legally enforceable debt.

21. Looking to the whole evidence as well as defense and cross-examination of the complainant apparently it appears that the appellant-accused totally failed to prove the burden which lies upon him that the disputed cheque was not issued by him for legally enforceable debt. When the appellant-accused failed to prove that the disputed cheque was not issued for the legally enforceable debt then the evidence produced on record which indirectly proves that the complainant proved that the disputed

cheque of Exh.10 was given by the appellant-accused towards legally enforceable debt.

22. 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.

23. 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.

24. 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.

25. 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 Exh. 11, clearly establishes the funds to be insufficient, and the consequent Notice Exh. 12 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.

26. Looking to the record, it appears that 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 debt and he has not denied his signature in the disputed cheque. It is the submission of the appellant that complainant has misused the cheque given by him towards security but appellant failed to prove that his signature had been fraudulently taken by the complainant. 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 09.06.2025 passed by learned 2nd Additional J.M.F.C., Palanpur, in Criminal Case No.4007/2023 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. 4007/2023 be sent back to the learned Trial Court alongwith a copy of this order, forthwith.

Pronounced in open Court today this 29th day of April, 2026.

PALANPUR ***(Shubhada Krishnakant Baxi*)**

SESSIONS JUDGE,

Date: 29/04/2026 **B.K. DISTRICT, PALANPUR**

(Code-GJ00377)

Vishal