GJBK010045122025

सत्यमेव जयते

Presented on : 09-12-2025
Registered on : 09-12-2025
Decided on : 30-03-2026
Duration : 00 -03- 21
YY- MM-DD

IN THE 2ND ADDITIONAL SESSIONS COURT,
PALANPUR AT - BANASKANTHA

Criminal Appeal No.**396** of **2025**

Exhibit No.

Appellant: **Jayantibhai D. Boka**
Age : 50 years, Occupation : Business,
R/o. Khodla, Taluka : Palanpur,
District : Banaskantha

VERSUS

Respondents: 1] **Government of Gujarat**
(Notice served to the Public Prosecutor, Palanpur, Banaskantha)

2] **Babubhai Gopalbhai Nai**
Age : Major,
Occupation : Retired/Agriculture,
R/o. 127, Akshatam Saptam Society,
Gathaman Roaad, Opposite Sadhi Mata Temple, Taluka : Palanpur,
District : Banaskantha

Appearance:-
Ld. Advocate **Mr. A. A. Maknojiya** for Appellant - Accused
Ld. A.P.P. **Mr. D. H. Chappiya** for Opponent No.1 - State
Ld. Advocate **Mr. J. B. Gauswami** for Opponent No.2

Criminal Appeal u/s. 415(3) of B.N.S.S. 2023.

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

1] The present criminal appeal is filed by the appellant being aggrieved and dissatisfied by the Judgment and Order dated 20.11.2025 passed by the Learned Additional Judicial Magistrate First Class, Palanpur (hereinafter referred as ‘the learned Trial Court’) in Criminal Case No.1144/2024, whereby Ld. Trial Court convicted the appellant-accused under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred at as “N.I.Act”) and sentenced to suffer simple imprisonment for a period of ONE YEAR and also directed to pay the cheque amount as compensation to the complainant within 30 days and in default of payment of compensation, to further undergo simple imprisonment for a period of SIX MONTHS .

2] The appellant had also filed the application for suspension of the Judgment and Order passed by the Ld. Trial Court till the appeal period to approach the appellate Court. It is also on record that at the time of the filing appeal, a separate application for the bail and suspension of the sentence was filed and was granted accordingly by this Court till the final disposal of this Appeal.

3] Notice of this appeal has been served. Simultaneously, R&P has been summoned.

4] The brief facts of the case is that complainant/respondent no.2 had purchased mustard from the appellant/accused and the said mustard was purchased by the complainant by paying money through RTGS and rest was under the ledger of the accused and accused was keeping the mustard under his ledger but without informing the complainant, accused had sold the mustard and accused did not even cared to inform the complainant that the said mustard was sold by him to other person. Thereafter when the complainant came to know about the said transaction he questioned the accused that without informing him why did he sold the mustard to somebody else upon which accused told him that it is true that without informing him he had sold the mustard to someone else but he will give him the market price of the same and in a letter pad accused gave in writing that an estimate amount of the bill of Rs.18,80,985/- will be paid to the complainant and along with the same accused handed over a blank cheque bearing no.001292 of The Banaskantha Mercantile Co-operative Bank Ltd. and told the complainant that when he says, complainant can encash the cheque and collect the total amount and keeping faith in the words of the accused and believing him, complainant part by part encashed the cheque amount of Rs.18,80,985/-, from which Rs.12,20,000/- was paid to the complainant and the remaining amount was pending for which when the complainant approached the appellant/accused, he started making excuses and delaying the payment upon which complainant informed the Chairman of APMC on dt.17/10/2023 regarding the said dispute and in regards to the same the Chairman informed the complainant that the remaining amount of the said payment will be paid to him by Shri Radheshyam Trading Company and thereafter complainant took the said cheque with the pending amount of Rs.6,60,985/- and filled it up on dt.22/12/2023 and deposited the same for clearance in the account of the accused at Bank of Baroda, Palanpur Branch but the said cheque got dishonored and was returned with the endorsement of **“Funds Insufficient"** return memo dtd.26/12/2023. Hence the complainant issued demand notice through R.P.A.D. on dt.23/01/2024 and the same got served to the appellant/accused at his registered address on dt.24/01/2024. Though the accused was served with notice but he did not received the same nor paid the cheque amount within the prescribed period and, therefore, the complainant had filed the present complaint under Section 138 of the N.I.Act and same was registered as Criminal Case No.1144/2024. The accused was not pleaded guilty hence the evidence was recorded and after full fledged trial, learned Trial Court has passed the order, whereby Ld. Trial Court was pleased to convict the appellant for the offence U/s. 138 of the Negotiable

Instruments Act and sentenced to suffer simple imprisonment for a period of ONE YEAR and directed to pay the cheque amount as compensation to the complainant and in default of payment of compensation, to further undergo simple imprisonment for a period of SIX MONTHS.

5] The following Oral and Documentary Evidences have been produced by the complainant side before the Ld. Trial Court, during the trial:-

ORAL EVIDENCE

Sr. No.	Particulars	Exh.
1.	Affidavit of complainant Babubhai Gopalbhai Nai	04

DOCUMENTARY EVIDENCE

Sr. No.	PARTICULARS	Exh.
1.	Estimate Bill of Rs.5,89,841/- for purchasing of mustard	18
2.	Estimate Bill of Rs.9,63,746/- for purchasing of mustard	19
3.	Estimate Bill of Rs.3,43,916/- for purchasing of mustard	20

4.	Estimate Bill of Rs.18,80,985/- for purchasing of mustard	21
5.	Written letter given by the accused on the letterpad of Shri Radheshyam Trading Company	22
6.	Disputed Cheque No.001292	29
7.	Return Memo	30
8.	Notice sent to the accused	31
9.	RPAD Slip of notice sent to accused no.1	32
10.	Post office letter showing notice sent to accused no.1	33
11.	RPAD Slip of notice sent to accused no.2	34
12.	Post office letter showing notice sent to accused no.2	35
13.	RPAD Slip of notice sent to accused no.3	36
14.	Post office letter showing notice sent to accused no.3	37
15.	RPAD Slip of notice sent to appellant/accused	38
16.	Post office letter showing notice sent to appellant/accused	39
17.	Details of land of complainant	46
18.	Details of barren land of complainant which he was cultivating	47
19.	Bill of goods delivered from Shri Radheshyam Trading Company by the complainant	48
20.	Estimate bill of goods from Shri Radheshyam Trading Company by the complainant	49
21.	Copy of application given by complainant to Chairman, APMC	50

22.	Details of payment made by complainant in the Shri Ram Trading Company of the accused	51

6] In **Rama and others vs. State of Rajasthan (2002) 4 SCC 571,** the Apex Court has stated about the duty of the appellate court in the following terms: "It is well settled that in a criminal appeal, a duty is enjoined upon the appellate Court to reappraise the evidence itself and it cannot proceed to dispose of the appeal upon appraisal of evidence by the trial court alone especially when the appeal has been already admitted and placed for final hearing Upholding such a procedure would amount to negation of valuable right of appeal of an accused, which cannot be permitted under law."

7] To assail the impugned judgment, Ld. counsel for the appellant argued that order under challenge is manifestly perverse and liable to be set aside. The Ld. Advocate for the appellant-accused has argued through written arguments produced vide Exh.18 wherein Ld. Advocate has argued out that the judgment and order passed by the Ld. Trial Court is illegal and perverse. It is further argued that the learned trial court has not taken into consideration the deposition of complainant vide Exh.4, that whether the complainant is actually entitled to receive the cheque amount from the appellant/accused. It is also argued that said judgment and order is illegal, perverse and bad in law and is against the principles of natural justice.

7.1] On the other hand Learned Advocate appearing for the Respondent No.2/complainant has also argued through written argument vide Exh.19 wherein Ld. Advocate has argued out that the judgment and order passed by the Ld. Trial Court is absolutely correct and requires no interference. It is further argued that Ld. Trial Court after briefly going through all the evidences and documents produced on record has passed the order against the appellant/accused. It is also argued that Ld. Trial Court has successfully proved the point that present appellant/accused has been booked under Section 138 of

The Negotiable Instruments Act and as per the complaint filed u/s. 139 of the Negotiable Instruments Act said Criminal Case No.1144/2024 was filed against him.

8] The Ld. A.P.P. for the State argued that all essentials of Section 138 is fully made out. He further submitted that the evidence brought on record is cogent and reliable.

9] This Court has considered the submissions of the learned counsel for the appellant and have perused the records. The following points of determination arises before this court:-

(1) Whether the Cheque No. 001292 of Rs.6,60,985/- dated 22.12.2023 was issued / drawn by the appellant-accused in favour of the complainant-respondent no.1 and it was dishonored on the ground of "**Funds Insufficient** "?

(2) Whether the conditions provided in proviso a, b and c of Section 138 of the N.I. Act read with section 142, have been complied with?

(3) Whether the accused issued the said Cheque in discharge of his legally enforceable debt or liability?

(4) Whether order and judgment passed by the learned Trial Court is illegal, perverse and erroneous, hence interference is necessary?

(5) What order?

10] My point / issue wise findings are as under:

1. In Affirmative.
2. In Affirmative.
3. In Affirmative.
4. In Negative.
5. As per final order.

// REASONS //

Point/Issue No.1:

11] The cheque was proved on record by the complainant and it appears that it was drawn from the Account of appellant-accused. It is evident from return memo that the cheque belongs to the account maintained by the appellant-accused. Moreover, name of the appellant-accused appears as drawer. Then the onus was on the accused to disprove that the cheque in question was not drawn from his account, which he failed to discharge. It is established on the case file that the Cheque has been returned from the bank with the endorsement of "**Funds Insufficient**" and this fact is evident from return memo. It is further borne out from the testimony of complainant at Exh.4 that the cheque was issued by the appellant-accused.

12] Thus, in view of the above, this court has no hesitation to conclude that the cheque was issued/drawn by the appellant-accused and had been dishonored due to insufficient funds.

Point/Issue No. 2:

13] In order to prove the case, the complainant appeared into witness box as PW-I at Exh.4 and deposed that he had presented the cheque for encashment in Bank of Baroda, Palanpur Branch and the same was dishonored and returned with the endorsement of **"Funds Insufficient"**.

On perusal of the cheque, it shows that it is dated 22.12.2023. As per the complainant, it was presented for encashment and was dishonored, that is within the period of validity. Hence, from this observation, it has been proved that the condition of proviso 'a' of Section 138 is fulfilled.

14] It is proved on the case file that the cheque was dishonored and legal demand notice has been issued and the postal receipt is produced at Exh: 38. As such, it was issued within 30 days from the receipt of the information of dishonor from the bank and hence, it can safely be concluded that the conditions of proviso 'b' of Section 138 of the Act has been fulfilled in this case. Admittedly, the appellant- accused failed to make the payment within stipulated time. The complaint has been filed and thereafter got registered as Criminal Case No.1144/2024, thus, within the period stipulated under section 142 of the N.I. Act. Therefore, the conditions of section 138 proviso (a), (b) and (c) alongwith section 142 have been proved on the case file.

Point/ Issue No. 3:

15] One of the conditions under section 138 is that the cheque in question must be drawn by the accused to discharge his legal enforceable debt or liability. Presumption under section 139 is in favour of the holder of the cheque. A perusal of the cheque, shows that it bears the name of the complainant as 'payee' so, as per Section 8 of the Act, the complainant is the holder of the cheque and presumption is in favour of the complainant in term of Section 139, which is hereby reproduced as under-

Section 139: Presumption in favour of holder:

"It shall be presumed unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharged, in whole or in part, or any debt of other liability."

16] Bare perusal of the above said provision shows that it is a presumption of law but such presumption is a rebuttable presumption. It was held by the Hon'ble Apex Court in case Vijay Ys. Laxman and another 2013 RCR (Cria 1028, and M.S.Narayana Menon Vs. State of Kerala 2006(6) SCC 39 that the presumption can be rebutted by the accused either by leading specific evidence or from the preponderance of probabilities as demonstrated from the material available on the file. Statement of accused under section 313 Cr.PC has been recorded wherein all the incriminating evidence has been put to the appellant-accused which have been denied by the accused as incorrect.

17] Perusing above factual aspects of the case, it is crystal clear that the cheque no. 001292 produced vide exhibit 29 was presented by the complainant in bank for clearance but returned unpaid due to '**Funds Insufficient**'. So, the complainant filed this criminal complaint. Further, it also appears that the cheque was duly signed by the accused and the accused has failed to rebut the presumption raised by law in favour of the complainant. Hence, it can be said that the complainant had established all ingredients as per section 138 of NI Act in light of the law laid down in the case of ***Jugesh Sehgal Vs. Shamsher Singh Gogi.***

18] Further, by considering the evidence on record and the deposition of the complainant, that complainant/respondent no.2 had purchased mustard from the appellant/accused and the said mustard was purchased by the complainant by paying money through RTGS and rest was under the ledger of the accused and accused was keeping the mustard under his ledger but without informing the complainant, accused had sold the mustard and accused did not even cared to inform the complainant that the said mustard was sold by him to other person. Thereafter when the complainant came to know about the said transaction he questioned the accused that without informing him why did he sold the mustard to somebody else upon which accused told him that it is true that without informing him he had sold the mustard to someone else but he will give him the market price of the same and in a letter pad accused gave in writing that an estimate amount of the bill of

Rs.18,80,985/- will be paid to the complainant and along with the same accused handed over a blank cheque bearing no.001292 of The Banaskantha Mercantile Co-operative Bank Ltd. and told the complainant that when he says, complainant can encash the cheque and collect the total amount and keeping faith in the words of the accused and believing him, complainant part by part encashed the cheque amount of Rs.18,80,985/-, from which Rs.12,20,000/- was paid to the complainant and the remaining amount was pending for which when the complainant approached the appellant/accused, he started making excuses and delaying the payment upon which complainant informed the Chairman of APMC on dt.17/10/2023 regarding the said dispute and in regards to the same the Chairman informed the complainant that the remaining amount of the said payment will be paid to him by Shri Radheshyam Trading Company and thereafter complainant took the said cheque with the pending amount of Rs.6,60,985/- and filled it up on dt.22/12/2023 and deposited the same for clearance in the account of the accused at Bank of Baroda, Palanpur Branch but the said cheque got dishonored and was returned with the endorsement of **“Funds Insufficient"** return memo dtd.26/12/2023. It also transpires that the appellant-accused issued the cheque in favour of the complainant and the same has been referred during the examination-in-chief and looking to the same, it transpires that the said cheque bears signature of the appellant-accused and present applicant/accused has failed to create any doubt regarding this document by establishing his probable defence on the basis of preponderance of circumstances or events or evidence. This Court is of the considered view that mere denial is not sufficient to escape the liability. Reliance is placed on the judgment in **K.N. Beena Vs. Muniyappan 2001(4) RCR (Criminal) 545 (S.C.)**, wherein it has been held by the Hon'ble Apex court that mere denial by accused is not sufficient to shift the burden on the complainant. Accused has to prove by leading cogent evidence, that there was no debt or liability. However, in this case, the accused failed to prove his defence. Moreover, after going through the testimony of the complainant and other materials on the case file, this court is of a considered opinion that the accused has failed to make hole in the prosecution story or in the presumption envisaged by the law for Negotiable Instruments Act.

19] Herein, it is equally important to see the presumption provided under section 118 and 139 of N.I. Act. Presumptions given under Section 118 and 139 of Negotiable Instrument Act states that it shall presumed that there is an existence of legal debt when the complainant produces a cheque. The rebuttal of a presumptions lies on the accused. It is only when the accused rebut this presumption the burden of proving the legal debt shifts on the complainant. The accused herein did not ask even a single question in the cross-examination of the complainant challenging his financial capacity or ability. Neither, did he produce any documentary roof which could create or raise a doubt on the financial soundness of the accused. Merely stating that the accused had not produced any evidence to justify his financial capacity is not enough. The burden to raise doubt on financial capacity lies on accused. It could be by way of producing documentary evidence or by asking question in the cross-examination. But none of above was opted by the accused. At this juncture, it is pertinent to mention the case of **Basalingappa vs Mudibasappa on 9 April, 2019 Criminal Appeal No.636 of 2019** submitted by the LA of the accused himself wherein, Hon'ble Supreme Court while dealing with aspect of financial capacity of the complainant, laid down guidelines in Para 23, in the following words:

"23. We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarize the principles enumerated by this Court in following manner:-

(i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to

raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

(v) It is not necessary for the accused to come in the witness box to support his defence."

20] Thus the Ld. Trial Court has elaborated and has reasoned that the accused has failed to raise any cogent doubt regarding financial capacity and ability of the complainant and therefore the defence of the accused is not proper and relevant at all and the judgments produced by the Ld. Advocate for the appellant is also not useful in the present case.

21] The disputed cheque produced vide Exh. 29 has been issued by the appellant/accused and the same was returned due to insufficient funds, vide Exh. 30 is the cheque return memo of the disputed cheque, as the said cheque got dishonored and was returned back which was duly informed by the complainant bank to the appellant/accused and vide Exh. 38 is the notice which was sent to the appellant/accused and which was duly served to his registered address on dt.24/01/2024 but despite that appellant/accused has not given any reply for the notice. Thereafter complaint was filed against the appellant/accused and after service of notice, maximum time limit of 15 days is given for giving reply of the notice and thereafter as per law within 30 days complaint was filed and the matter was brought before the court, hence complainant has followed **Proviso A, B & C of Section 138 of The Negotiable Instruments Act.**

22] It was held by the Hon'ble Apex Court in case titled as **Hiten Dalal Vs. Brathindranath AIR 2001 Supreme Court 3897** that:- "Section 139 provides that it shall be presumed unless the contrary is proved, that the holder of a cheque received the cheque, of the nature referred to in Section 138 of the discharge, in whole or in part of any debt or other liability the effect of these presumptions is to place the evidential burden on the accused, of proving that the cheque was not received by the complainant towards the discharge of any liability. Because both sections 138 and 139 require that the Court shall presume the liability of the drawer of the cheque for the amount for which the cheque is drawn, as noted in it obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. It is introduced as exception to the general rule as to the burden of proof in criminal cases and shifts the onus on the accused. Such a presumption is a presumption of law, as distinguished from a presumptions of fact which describes provisions by which the court 'may presume' a certain state of affairs. Presumptions are rules of evidence and do not conflict with the presumptions of innocence, because by the latter all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged, with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non existence of the presumed fact, the distinction between the two kinds of presumptions lay not only in the mandate to the court, but also in the nature of the evidence required to rebut the two. In the case of discretionary presumption, the presumptions if drawn may be rebutted by an explanation which might reasonably be true and which is consistent with the innocence of the accused. On the other hand, in the case of mandatory presumptions, the burden resting on the accused persons in such a case, would not be as light as it is where a presumption is raised under section 114 of the Evidence Act and cannot be held to be discharged merely by reason of fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words "unless the contrary is proved" which occur in this provision make it clear that the presumption has to be rebutted by proof and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the court finds its existence to be so probable that a reasonable man would act on the supposition that it exist. Unless therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted."

23] In this manner, under section 139 of the N.I. Act, it is mandatory for the Court to presume that the cheque has been issued for discharging of legally enforceable debt or liability. The view of this Court is supported by the judgment in case **C. Keshavamurthy Vs. H.K.Abdul**

Zabbar 2013(4) Recent Apex Judgments (RAJ) 591, wherein Hon'ble Apex Court pleased to hold that presumption under section 139 of the Negotiable Instrument Act, 1881 includes the existence of a legally enforceable debt or liability. The said presumption is required to be honored, and if it is not so done, the object of these provisions will be lost.

24] This court also places reliance on the law laid down by the **Apex Court in Rangappa Vs. Sri Mohan 2010 AIR SC 1898,** wherein it was held that once the cheque relates to the account of the accused and he accepts and admits the signatures on the said cheque, then initial presumption as contemplated under section 139 of the Negotiable Instruments Act has to be raised by the Court in favour of the complainant. The presumption referred to in section 139 of the N.I. Act is a mandatory presumption and not a general presumption, but the accused is entitled to rebut the said presumption. What is required to be established by the accused in order to rebut the presumption is different from each case under given circumstances. But the fact remains that a mere plausible explanation is not expected from the accused and it must be more than a plausible explanation by way of rebuttal evidence. In other words, the defence raised by way of rebuttal evidence must be probable and capable of being accepted by the court. Recently, same view has been reiterated by the Apex Court in case **Kalamani Tex and another VS P. Balasubramanian 2021 SCC Online SC 75.**

25] In view of the facts and circumstances of the case, as discussed above and case laws (supra) as quoted above, this court is of the considered opinion that the appellant-accused has committed offence u/s 138 of the N.I.Act. The all ingredients of Section 138 are fully satisfied from the material available on the file. Hence, the trial court has rightly convicted the appellant/ accused u/s 138 and did not commit any error. Hence, I reply Issue No.1 to 3 in Affirmative and Issue No.4 in Negative and pass following final order for Issue No.5:-

:: O R D E R ::

(1) The present Criminal Appeal No. 396 of 2025 is hereby dismissed and judgment of conviction u/s 138 of the N.I. Act and order of sentence to suffer simple imprisonment for a period of period of ONE YEAR and direction to pay cheque amount as compensation to the complainant, in default of payment of compensation, to further undergo simple imprisonment for a period of SIX MONTHS is hereby upheld.

(2) The 20% of the amount paid by the appellant/accused at the time of filing of this appeal is directed to be given to the complainant through Account Payee Cheque.

(3) The present matter be consigned in the record room as per rule, simultaneously, the R & P, if any, be sent back along with copy of this order.

(A. J. Kanani)
2nd Addl. Sessions Judge,
Palanpur.

(4) Any pending application is deemed to be disposed off.

(5) The Ld. Trial Court is directed to issue jail warrant accordingly.

Pronounced in the open Court today on this
March 30th, 2026.

Date :- 30-03-2026
Place :- Palanpur.

[Amitkumar J. Kanani]
2nd Additional Sessions Judge,
Palanpur At- Banaskantha
(Unique I.D. Code No.GJ00662)

(K.A.)