


GJBK020029242023 	Received on	12/05/2023
	Registered on	12/05/2023
	Decided on	15/04/2026
	Duration	02 Y 11 M 03 D

**IN THE COURT OF 5TH ADDI. CHIEF JUDICIAL MAGISTRATE,
PALANPUR-BANASKANTHA**

Exhibit- 38

Present : Mr. Aatmadeep Sharma, Addi. Chief Judicial Magistrate
Date : 15th April, 2026

CRIMINAL CASE NO. 2293 OF 2023
[Private Complaint u/s 138 of Negotiable Instrument Act]

Complainant	Shriram Finance Co. Ltd. through POA Dilip Sampatlal Chauhan
Represented By	Mr. J.B. Goswami
Accused	Sikandarbhai Jamalbhai Musla
Represented By	Mr. D.J. Dharani

Date of offence	Cheque bounced on 07/03/2023
Date of complaint	Private complaint presented on 12/05/2023
Date of recording of plea	14/08/2023
Date of commencement of evidence	14/08/2023
Date on which judgement is reserved	02/04/2026
Date of the judgement	15/04/2026

Date of the sentencing order, if any	-NA-
--------------------------------------	------

Accused Detail

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for the purpose of section 428 Cr.P.C.
1.	Sikandar Jamalbhai Musla	-NA-	-NA-	S.138 NI Act	Acquitted	-NA-	-NA-

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

1. The brief facts of the present complaint is that the present complainant is a finance company doing business of extending vehicle loans. The accused obtained a loan to purchase Maruti swift VDI bearing registration no. GJ 02 BD 5141 from the complainant company and the loan number is PALAPT910150001. But, the accused failed to pay the installments in a timely manner. Hence, the complainant demanded an outstanding loan amount and the accused gave a duly signed cheque no. 032097 of his Indian Bank for Rs. 2,50,000/- dated 03/03/2023 to make payment of outstanding loan amount and assured that the cheque will be honoured by the bank. Accordingly, the complainant deposited this cheque in the bank which was returned with the endorsement of "other reasons/PPS not confirmed" on 07/03/2023.

2. Thereafter, the complainant issued statutory demand notice through RPAD on 28/03/2023 to the accused which was duly served to him on 29/03/2023.

3. As no payment of the aforesaid cheque in question was made within a stipulated period, the complainant filed this complaint under Section 138 of the Negotiable Instruments Act, 1881.

4. The present complaint was presented on 12/05/2023 and the process was issued to the accused which was duly served to him and he appeared before this Court through his Ld. Advocate and the plea of accused was recorded vide exhibit 7 on 14/08/2023 whereby he denied to accept the charges and asserted to face the trial according to procedure of law.

5. The following evidence are produced on the record of case during trial: -

A. Prosecution Witness-

Rank	Name and exhibit	Nature of evidence
PW-1	Dilip Sampatlal Chauhan vide exhibit 4	Complainant

B. List of Prosecution Exhibits-

Sr. No.	Exhibit No.	Description
1.	Exhibit 12/PW-1	Cheque no. 032097
2.	Exhibit 13/PW-1	Return memo
3.	Exhibit 14/PW-1	Demand notice
4.	Exhibit 15/PW-1	Postal slip
5.	Exhibit 16/PW-1	Track report
6.	Exhibit 17/PW-1	Reply to demand notice
7.	Exhibit 18/PW-1	Power of attorney

8.	Exhibit 19/PW-1	Hypothecation cum loan agreement
9.	Exhibit 20/PW-1	Loan account statement
10.	Exhibit 21/PW-1	Certificate
11.	Exhibit 26/PW-1	Copy of notice given prior to sell vehicle
12.	Exhibit 27/PW-1	Acknowledgement slip

6. The further statement of the accused as enumerated in section 313 of Cr.P.C. is recorded in which he stated that the cheque was not issued to discharge any legal debt. But, it was given for security of loan which was misused by the complainant to file this false case.

7. Arguments- I have perused the entire evidence minutely. Also heard learned advocate for the complainant. The learned Advocate of the complainant has argued that all the requirements of section 138 of NI Act is fulfilled by the complainant. He has argued that the accused has obtained a loan from the complainant bank and the cheque was given to make payment of outstanding loan amount. The loan account statement is produced on the record to show that the cheque amount is legally recoverable from the accused. Hence, the accused has failed to rebut the statutory presumptions and the present case is successfully proved. As the case is proved, he has prayed to convict the accused as per law.

On the contrary, the learned advocate of the accused has vehemently argued that the vehicle was seized by the complainant company and sold to recover the loan amount. The cheque was given for the security loan which is misused by the complainant. He has relied upon the judgement of Narpat Motisingh Purohit V. State of Gujarat in support of his argument that the accused cannot be held liable for the

offence after seizing the vehicle. He has also argued that the case is barred by law of limitation. Hence, he has prayed to acquit the accused from the case.

8. The Following issues are framed for determination of present case:

i. Whether the complainant proves that the accused issued a duly signed cheque of Indian Bank bearing no. 032097 worth Rs. 2,50,000/- dated 03/03/2023 for repayment of legally recoverable debt, which was dishonoured for the reason "other reason/pps not confirmed" and the statutory demand notice was issued to the accused but the accused failed to make payment of aforesaid cheque amount in due time and thereby committed an offence punishable under Section 138 of the Negotiable Instrument Act, 1881?

ii. What Order?

Findings:

i. Negative.

ii. As per the final order.

REASONS

DISCUSSIONS AND CONCLUSION OF ISSUE NO. 1 & 2:

9. Perusing the bare section and the law laid down in **Jugesh Sehgal Vs. Shamsheer Singh Gogi, (2009) 14 SCC 683**, this court is of the view that in order to constitute an offence under section 138 of the N.I. Act, following ingredients are required to be fulfilled:

(i) A person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from that account;

(ii) The cheque should have been issued for the discharge, in whole or in part, of any legal debt or other liability;

(iii) That the cheque has been presented to bank within a period of three

months from the date on which it is drawn or within the period of its validity whichever is earlier;

(iv) That the cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank or if payment is stopped;

(v) The payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing;

(vi) The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

Taking into account the discussion made above, let us peruse the evidence led by the complainant and the defence of the accused through cross-examination. For the sake of convenience, this court will take the guidelines led down in **Jugesh Sehgal Vs. Shamsheer Singh Gogi (Supra)** into consideration while discussing the evidence. As per the guidelines, it is must to discuss each and every ingredient elaborately connecting the same with the facts of the case, the first point which is to be taken into consideration for determining a case under section 138 of NI Act, the prosecution has to prove:-

9.1 Issuance of cheque by accused in favour of complainant to discharge legal debt:

- There are various essentials for the alleged offence out of which the complainant first needs to show that the cheque of exhibit 12 was issued by the accused in his favour to make payment of outstanding vehicle loan which was borrowed by him. Now, for the same, it is must to peruse oral and documentary evidence. The

PW-1 has produced his deposition wherein he completely supported facts of complaint. But, the aforesaid cheque was dishonoured and returned back unpaid due to other reasons/pps not confirmed.

- Perusing the cheque produced vide exhibit 12, it is drawn for Rs. 2,50,000/- to pay to shriram transport finance company ltd dated 03/03/2023 along with signature of drawer with his printed name. The complainant has also produced a loan agreement and account statement on record to show that the accused obtained a loan from the complainant bank.
- Considering the defence taken by the accused, he has argued that the complainant company has seized the vehicle of the accused and sold it. Thereafter, the cheque, which was given for security of loan, is produced in the bank which was bounced. He has argued that the accused cannot be held liable for the offence. In this regard, The Hon'ble Gujarat High Court in case of **Narpat Motisingh Purohit Vs State of Gujarat, R/SCR.A/1355/2020** has held that,

“8.3 After repossession of the vehicle, Shriram Transport Finance Company Ltd. had sold the vehicle and the sale proceeds admittedly would be no doubt adjusted towards loan repayment, the complainant/owner has already initiated steps to recover the liability from the hirer.

8.4 The basic ingredients for a complaint under Section 138 of the N.I. Act, would be that the cheque ought to have been issued for discharge in whole and in part of any debt or other liabilities, which are legally enforceable. The said fact does not get establish in view of act of finance Company, since the vehicle was repossessed on 28.12.2018 and was subsequently sold to third party. The Hire Purchase Agreement between the owner and the

hirer stood determined by act of parties, the cheques accepted by the owner in advance for repayment of the hire would become instruments without consideration as the consideration has failed. In such circumstances, the remedy available to the owner is to realise the balance hire due from the hirer or to sue for damages for the breach of the agreement."

Perusing the facts of the present case in light of aforesaid judgement, it is an undisputed fact that the vehicle was seized by the complainant company from the accused due to non-payment of instalments. Therefore, in the light of judgement of Narpat's case, the hire purchase agreement between the parties is determined and the disputed cheque is without consideration. Therefore, the complainant has failed to prove that the cheque was drawn by the accused for consideration.

On the basis of overall discussions, this Court comes to the conclusion that the complainant has failed to establish that the cheque was issued by the accused to discharge his legal debt.

9.2 Presentation of cheque and its return:

- Moving ahead with the appreciation of evidence for rest of the requisite under section 138 of NI Act, the PW-1 has stated in his deposition that the cheque was presented in his bank account, but it was dishonoured and returned back unpaid on 07/03/2023 with the endorsement of "other reason/pps not confirmed" and the aforesaid amount has not been paid.
- Perusing the documentary evidence in this regard, the return memo is produced vide exhibit 13 which shows that the cheque no. 032097 was returned on 07/03/2023 for the reason of "other reason/pps not confirmed".

- **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.**

9.3 Service of Statutory Notice and Failure to make payment on demand:

- In this regard, the PW-1 has stated in his deposition that after return of cheque, he issued statutory demand notice on 28/03/2023 to the accused which was served to him.
- Perusing the documentary evidence in this regard, the statutory demand notice is produced vide exhibit 14 which is addressed to the accused and the fact of demanding the cheque amount was mentioned in it. Further, the postal slip and track report are produced vide exhibit 15 and 16 which shows that the demand notice was sent on 28/03/2023 and it was served at given address. Thereafter, the present case is filed within the limitation period as enumerated under section 138 of NI Act.

10. On the basis of overall discussions, this Court comes to the conclusion that the complainant has not complied with the requirements of section 138 of NI Act and he has failed to prove that the cheque in question was drawn for consideration to discharge legal debt as discussed in paragraph 9.1. Hence, this Court hereby gives answer to issue no. 1 in negative and hereby passes following final order to secure ends of justice:

-:: O R D E R ::-

1. The accused **Sikandarbai Jamalbai Musla**, address Muslavas, Iqbalgadh, Takula Amirgadh, District Banaskantha is hereby acquitted under section 255(1) of Criminal Procedure Code, 1973 from the offence punishable under section 138 of Negotiable Instrument Act, 1881.

2. The accused shall furnish a personal bond of Rs. 10,000/- (ten thousand only) along with one surety of the same amount in terms of section 437A of Cr.P.C. for the appeal period.

This judgement is pronounced in open Court today on the 15th day of April of this year 2026 under my seal and signature.

Place: Palanpur

(Aatmadeep Sharma)

Date: 15/04/2026

5th Addi. Sr. Civil Judge & ACJM,
Palanpur.

UIC Code:- GJ01355