

GJBK020072472024



**IN THE COURT OF 4th ADDITIONAL SENIOR CIVIL
JUDGE & ACJM, PALANPUR-BANASKANTHA**

Criminal Case No: 3720/2024

Ex.

Date of Institution : 29.06.2024

Date of pronouncement : 22.04.2026

Time Taken: DD 24 MM 09 YY 01

Complainant: Duke Pipes Private Limited, represented by Hitesh Shah,

Age: About 54 years, Occupation: Service (Zonal Manager),
Registered Office: Survey No. 365/1, Post: Chadotar, Gadh Road, Taluka: Palanpur, District: Banaskantha.

Vs.

Accused: Ajinkya Agro Agency, represented by Ajinkya Sudhakar Magar,

Address: Sonawane Complex, Market Yard, Kava Road,
City: Latur, State: Maharashtra

Offence Complained of: Under Section 138 of Negotiable Instrument Act 1881

Plea Of the Accused: Pleded not guilty

Final Order: Conviction

Date Of Final Order : 22.04.2026

LA of Complainant: C. B. Pujara

LA of Accused: D. J. Dharani

::JUDGEMENT::

1. The criminal complaint has been instituted in respect of a dishonoured cheque of Rs.3,87,127/- (Rupees Three lakh Eighty-seven Thousand One Hundred Twenty-seven Only), which was returned with remarks of 'Funds Insufficient'.

Brief facts as stated in the complaint

2. The Complainant, Mr. Hitesh Shah, has been employed since 2014 with Duke Pipes Private Limited, having its registered office at Survey No. 365/1, Post Chadotar, Gadh Road, Taluka Palanpur, District Banaskantha, and is presently serving as Zonal Manager. The said company is a duly registered private limited company under the Companies Act, 1956, maintaining regular accounts and audited financial records. The Complainant is duly authorized to file the present complaint.
3. The Complainant Company is engaged in the business of manufacturing, processing, trading, and dealing in UPVC

pipes, fittings, and allied products. The Accused, carrying on business under the name “Ajinkya Agro Agencies,” is a customer of the Complainant Company and has been purchasing goods for resale.

4. As per the oral agreement between the parties, the Accused was required to make payment for goods purchased within 30 days.
5. The Accused commenced transactions with the Complainant from September 2022 and maintained a running account wherein goods supplied and payments made were duly recorded.
6. During the financial years 2022–23 and 2023–24, the Accused purchased goods worth ₹50,87,017/-, returned goods worth ₹1,00,163/-, and made payments totaling ₹43,99,727/-. A sum of ₹5,87,127/- remains outstanding and unpaid despite repeated demands.
7. Upon persistent demands, the Accused issued a cheque bearing No. 791985 dated 04/05/2024 for ₹3,87,127/-, drawn on Punjab National Bank, Latur Branch, assuring encashment upon presentation.
8. The said cheque was presented by the Complainant through HDFC Bank, Palanpur, but was dishonoured on 08/05/2024 with the endorsement “Funds Insufficient.” Despite intimation, the Accused failed to make payment.

9. The Complainant issued a legal notice dated 16/05/2024, which was duly served on 22/05/2024. However, the Accused neither replied to the notice nor made payment.
10. The Accused, despite having knowledge of insufficient funds, deliberately issued the cheque and caused its dishonour, thereby committing an offence under Section 138 of the Negotiable Instruments Act.
11. The accused appeared before the court after serving of summons, and pleaded not guilty and claimed trial vide plea at Exh.8.

Evidence Rendered:

12. The complainant has submitted the following evidence to prove his case:
 - (a) Exhibit- 4: Chief examination of the complainant.
 - (b) Exhibit- 9: Cheque No.791985.
 - (c) Exhibit- 10: Return Memo
 - (d) Exhibit- 11: Copy of Legal Notice
 - (e) Exhibit- 12: R.P.A.D. Receipt
 - (f) Exhibit- 13: Track Consignment
 - (g) Exhibit- 14: Authority letter
 - (h) Exhibit- 15: GST Certificate

- (i) Exhibit- 16: Ledger account, invoices, and e-way bills carried out with the accused
- (j) Exhibit- 17: Audit Report

13. The accused did not remain present before the court for cross-examination of the complainant, and hence his right to cross-examine the complainant was closed vide making an order dated 02.09.2025 below Exh.34. Thereafter, the complainant had given closing pursis at Exh.35. The matter was taken for the further statement of the accused. F.S. under Section CrPC-313 was ready but the accused did not come before this court to record his statement. Hence, the recording of further statement under section 351 of BNSS is dispensed with in light of judgement of Hon'ble Bombay High Court in case of **Navneet Singh Gogia and another V. State of Maharashtra and another, 2025(0) AIJEL-MH 2502426.**

14. I have heard L.A. for the complainant. Despite being provided with enough opportunities, neither accused nor L.A. for the accused have bothered to argue out the matter and therefore his right of arguments was closed and then the matter is taken-up for judgment.

Reasons for decision

15. I have gone through the records as well as testimony of witnesses. The evidence is to be read in the light of arguments advanced by the L.A. for the complainant.

16. It is to be noted that the accused had neither disputed his signature over the cheque, nor disputed time frame in which the criminal complaint has been filed. The accused in fact did not raise any specific defence/argument.
17. In a case under Negotiable act, the Presumptions given under Section 118 and 139 of Negotiable Instrument Act states that it shall presume that there is an existence of legal debt when the complainant produces a cheque. The rebuttal of a presumption lies on the accused. It is only when the accused rebuts this presumption the burden of proving the legal debt shifts on the complainant.
18. The burden at this juncture to prove that there was no legal debt of liability is on the accused. Once a cheque is given to the complainant with the signature, it would be presumed as per section 118 and 139 that every negotiable instrument was made or drawn for consideration and that the holder of the cheque received the cheque, for the discharge of, whole or part of any debt or liability. This burden is rebuttable and can be shifted on the complainant, if the accused adduces his evidence to either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the cheque in question was not supported by consideration and that there was no debt or liability to be discharged by him. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a

prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under section 118 and 139 of the Act. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, thereafter, the presumptions under section 118 and 139 of the Act will not again come to the complainant's rescue."

19. In the instant case, the accused had neither discharged his burden nor produced any direct or indirect evidence to rebut this presumption. In fact he did not even remained present to even cross-examine the present complainant or to rebut the evidence produced by the complainant in his support.
20. Section 118 and 139 of the Act provides presumptions as to Negotiable Instruments. Presumption under section 118 is one of law and it provides that a court shall presume inter-alia that the Negotiable Instrument or the endorsement was made or endorsed for consideration. In effect, this presumption throws the burden of proof of failure of consideration on the maker of the note/cheque or the endorser, as the case may be.
21. Similarly, under Section 139 of the Act, there is a legal presumption that the cheque was issued for discharging an antecedent liability and this presumption can be rebutted only by the person who drew the cheque. The presumption can be rebutted by the accused by adducing evidence. So, the burden of proof is on the accused and the evidence available or record will have to be appreciated by bearing

in mind the above fact regarding presumption. Reference in this regard can be made to the judgment of the Apex Court in “ **Punjab & Sind Bank Vs Vinker Sahakari Bank Ltd.**” **2001 VIII AD (SC)**. Thus, Section 118 of the Act mandates that until the contrary is proved, the holder of negotiable instrument shall be presumed to be a holder in due course. The accused can rebut the presumptions provided under Section 139 and 118 of the Act and establish his case by preponderance of probabilities by relying upon the shortcomings in the complainant’s case and for this, the evidence led by the complainant can be appreciated to see whether the accused has been able to rebut the presumptions. However, in case, the defence sets up a plea of defence then the burden is upon accused to prove it, and if he fails to prove, then the case of complainant stands proved.

22. Record shows that the complainant stepped into the witness box and supported the contents of his complaint in his evidence by way of affidavit. Although, he remained present on every occasion before the court, he was not cross-examined by the accused. Therefore, the testimony of the complainant remained unblemished. The complainant deposed that accused issued a cheque towards discharge of his liability. This cheque was returned by the bank with an endorsement of “Funds Insufficient”. Then, a legal notice has been sent in statutory time limit which remained un-replied even though served to the accused. In the case of **Modi Cement Ltd. Vs. Kuchil Kumar Nandy GLR 1998 (2) 1620** and **K. Bhaskaran Vs. Palapetty SC 1999 CrLJ 4606**, it was said that

“once a cheque is given in satisfaction of debt and the same is returned for in-sufficient fund and holder of the cheque gives the due notice and if even after such notice the payment is not made, there is presumption of the offence having been committed. The onus is on the accused to rebut that presumption.”

23. It is held by Hon’ble Supreme Court in the case of **2000(2) SCC 745** titled as **M/s Kusum Ignots & Alloys Ltd. Vs**

M/s Pennar Peterson Securities Ltd that to constitute an offence u/s 138 of Negotiable Instruments Act following requirements are to 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 out of that account for the discharge of any debt or other liability; (ii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier; (iii) that 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; (iv) 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, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; 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.*

The complainant has fulfilled all the requirement in the instant case to substantiate on record that the offence u/s 138 of Negotiable Instruments Act has been committed by the accused.

24. After appreciating the entire record, I have reached on a conclusion that accused has failed to bring on record any contradiction or probability which may rebut the presumptions provided under the Act. The accused has even failed to brought on record any defence. On the other hand, there is overwhelming evidence to establish that accused committed an offence punishable under Section 138 of the Act. The complaint has been filed within the period of limitation. Thus, all the ingredients of the offence punishable under Section 138 of the Act have been proved.
25. I have no hesitation in my mind in holding that accused named- Ajinkya Sudhakar Magar had committed an offence under Section 138 of the Act. The case of the complainant stands duly proved in view of the reasoning given above in this judgment. Accused- Ajinkya Sudhakar

Magar stands convicted for commission of offence punishable under Section 138 of the Act.

Be heard separately on point of sentence.

Pronounced in the open court on **22/04/2026**.

(Sandipkumar Jagdishbhai Thakkar)

4th Addl. Sr. Civil Judge &

ACJM-Palanpur-BK

{UIC: GJ01277}

26. Heard LA of the complainant on the order of sentence.
27. LA of the complainant has submitted before the court that the complainant had given the loan on trust and, that has been broken by accused. Hence, accused must be inflicted with the maximum punishment so that person who betray such trust should get a lesson.
28. The LA of the accused remained absent before the court even at the stage of pronouncement of the judgement. Hence, he was not heard.
29. The Court has gone through various principles enumerated and mandate made by Hon'ble High Court of States and Hon'ble Supreme Court regarding inflicting the punishment in the case of offence punishable under section 138 of Negotiable Instrument Act. Thus, keeping the principles in mind, I find it fit and passes the following order:

ORDER

- (a) The accused named- Ajinkya Sudhakar Magar is hereby sentenced to undergo a simple imprisonment of 1 (One) Year for committing an offence under section 138 of Negotiable Instrument Act, 1881.

- (b) The accused shall pay **Rs.3,87,127/-** (Rupees Three lakh Eighty-seven Thousand One Hundred Twenty-seven Only) to the complainant by way of compensation under section 357(3) of Code of Criminal Procedure, 1973, within a period of thirty days from the date of this order. In default, he has to undergo 6 (Six) months imprisonment in addition.
- (c) Sentence Warrant be issued against the accused and same be sent to the concerned police station for execution.

The copy of the Judgement be provided free of cost to the accused.

Pronounced in the open court.

Date: 22.04.2026

Palanpur

(Sandipkumar Jagdishbhai Thakkar)

4th Addl. Sr. Civil Judge &
ACJM-Palanpur-BK

{UIC: GJ01277}