

GJBK130019002024



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Duration: - 01 03 03
(Y)(M) (D)

**In the Court of Principal Judicial
Magistrate First Class, At-Dantiwada,
Dist.Banaskantha.**

**Criminal Case No.1562/2024
Exhibit - 41**

**Complainant : Bhutabhai Laljibhai Patel,
Resi. Chodungari, Taluka-
Dantiwada, Dist-Banaskantha.**

VERSUS

**Accused : Proprietor of Pruthvi Trading co.
Bhogilal Bhuraji Jat,
Resi. Yavarpura , Ta.Deesa ,
Dist.Banaskantha.**

**SUBJECT: COMPLAINT UNDER SECTION-138 OF
NEGOTIABLE OF INSTRUMENTS ACT, 1881**

APPEARANCES:

1. MR. H.J.Sumara Ld. Advocate for the Complainant.
2. MR.H.M.Chavada & V.I.Lodna Ld. Advocate for the Accused.

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

1) The present complaint is filed by the complainant against the accused under section-138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as 'the N.I.Act').

2) The brief facts emerging from the complainant's complaint is as under: -

A. That the complainant resides at Dantiwada and partner at Vijaysar Cold Storage and accused holds firm with name of Prithvi Trading and partner of Prithvi cold storage. Both the parties were in friendly terms since 2015-16. The accused of the case is a potato trader and the accused used to borrow money from the complainant and return therefore both of them had relation of trust. The accused had to pay a loan therefore he took a loan of Rs. 10,00,000/- (Ten lakhs) on date 30/04/2018 from the complainant by cheque of Baroda Gujarat Gramin Bank, Deesa via cheque no 955219 and the accused also took a loan of Rs 4,00,000/- (four lakhs) from the complainant on 18/07/2018 by cheque of Bank of Baroda, Dantiwada Branch bearing cheque number 016299. Therefore

complainant gave loan of total Rs 14,00,000 (forteen lacks) to the accused.

B. When the complainant asked to return back money the accused issued a cheque of Dena Gujarat Gramin Bank, Deesa (New Name after merger: Baroda Gujarat Gramin bank) bearing cheque number 798332 dated 13/09/2024 ensuring that the complainant will get back his money.

C. When the cheque was presented at Bank of Baroda, Dantiwada it got dishonored with an endorsement of "Invalid after bank merged" on date 25/09/2024 and therefore the complainant informed the accused about the same but the accused did not provided any relief. Therefore demand notice was sent on date 21/10/2024 which was served on date 22/10/2024. The accused did not reply to the notice and did not return the money therefore this complaint is brought before this court.

3.) That upon filing of the complaint, considering the complaint, documents and affidavit u/s 145 of the N.I. Act, cognizance was taken and summons was issued against accused under Section-204 of the Criminal procedure Code for the offence under section-138 of N.I. Act. In pursuance of service of

summons the accused appeared before court and after compliance of section-207 of Criminal Procedure Code, plea came to be recorded at Exh.-07 wherein the accused pleaded not guilty and claimed to defend the matter. Then-after the matter was posted for the complainant's evidence.

4.) That to prove his case, the complainant produced and relied upon the following oral and documentary evidence produced on record.

Oral Evidence

Sr. No.	Description	Exh.
1.	Affidavit in the form of examination - in - chief of the complainant	4

Documentary Evidence

Sr. No.	Description of Document	Exh.
1	Original cheque bearing no. 798332	14
2	Original return memo	15
3	Statutory demand notice	16
4	Original acknowledgement slip	17
5	Original RPAD Slip	18

6	Tracking report of notice send by Indian Post	19
7	Bank entry of Complainant- (Baroda Gujarat Gramin Bank)	20
8	Bank entry of Complainant- (Bank of Baroda)	21

Thereafter the complainant tendered the closing purshish vide Exhibit-24.

5.) Recording of further statement of accused:-

a) As complainant tendered the closing pursis, statement of accused was recorded under Section 313 of the Code of Criminal Procedure and all the incriminating circumstances were put to him to enable him to offer an explanation. In that further statement, the accused denied the allegations which are leveled against him and further he stated that, false case is filed against him. Lastly, he stated that he does not wants to tender any further evidence. Therefore the matter was kept for final arguments.

6.) That to prove his defense, the accused produced and relied upon the following evidence produced on record.

Evidence of Accused

Sr. No.	Description	Exh.
1.	Cross examination of Complainant	4

7.) Arguments by both side: -

7.1) Arguments on behalf of complainant.

- a. That a legally enforceable debt is due.
- b. That accused failed to pay the legally enforceable debt.

Lastly prayed that as the complainant has proved his case and the presumptions are attracted, moreover the accused has not denied the cheque and his signature on cheque therefore the accused should be convicted and also prayed that the compensation should be awarded to the complainant from the accused.

7.2) Arguments on behalf of accused

- a) Per contra, accused has submitted written arguments vide Ex 33 and authority vide EX 34 and stated no legally enforceable debt is made out and Ld. Advocate for accused argued that main defense of the accused is that the reason shown in bank return memo is **INVALID After Bank Merged** and the provisions of 138 of NI Act does not apply as given in the authority

presented by Ld Advocate for the accused wherein he has submitted that the reason/remarks of the bank return memo (Exh.no. 15) is "**invalid after bank merged**" and the reason for which the cheque was dishonoured does not cover under the ambit of the N.I.Act. The learned Adv. for the Accused has placed his reliance on judgement of honourable allahabad highcourt which is as under :-

a) Smt.Archana Singh Gautam Vs. State of U.P. (Neutral citation number.2024: AHC: 102434 decided on 05.06.2024 by honourable Allahabad High court Wherein the honourable highcourt has taken the view that when the cheque in question which was issued from the account maintained in erstwhile bank after its merger with another bank, the cheque would not be a valid cheque on the date of his presentation as required by proviso (a) of section 138 of NI Act, therefore dishonouring the same will not attract the liability under section 138 N. I. Act. Moreover, the complainant has admitted in his cross examination that the reason of dishonor of cheque is **INVALID After Bank Merged**. The complaint and demand notice also shows the reason of dishonor as **INVALID After Bank Merged** and hence the complainant has failed to show that enforceable debt. The Ld advocate for accused also argued that the merger of complainant bank took place

on 01/04/2019 and the complainant had put the cheque for getting honoured on 25/09/24 therefore the period being more than 5 years and 5 months (the period when the bank of the complainant merged into another bank was more than 3 years) therefore the debt cannot be termed as legally enforceable debt as it is a time barred debt. Further it is argued that in cross examination when the complainant was asked about the transaction time of the commercial transaction the complainant admitted that the transaction took of Rs. 10,00,000/-(Rs ten lakhs) took place on 30/04/2018 and second transaction of Rs 4,00,000/- (Rs. Four lakhs) took place on date 18/07/2018.

Lastly he argued that complainant has not disclosed that the transaction was done with accused and his brother while this fact has not been shown in the complaint and affidavit. Complainant has also admitted that the Dena Bank got merged in Baroda Gujarat Gramin Bank in the year 2019. The complainant has admitted that the reason of return is **INVALID After bank merged** which does not attract liability under section 138 of NI Act. Therefore it is argued that the complainant has failed to prove his case and therefore the accused should be acquitted.

Having reference to the presumptions it is argued that said presumptions under Section-118 & 139 are not applicable in the present case. The learned advocate for the accused submitted that for invoking the provisions of Section 138 of the NI Act, the debt or other liability means a legally enforceable debt or other liability, which the complainant has failed to prove and accordingly, the accused is required to be acquitted.

After having all heed to the evidence produced on the record and arguments advanced by both the Advocates the following issues arise before me for judicial decision of the case.

a: Whether the Complainant proves that the Accused has issued the Cheque for the legally recoverable debt as alleged by them?

b: Whether the Accused has committed the offence punishable under [section 138](#) of N.I Act?

c: What Order or Sentence?

8.) My answers to the above issues are as under: -

a) In Negative

- b) In Negative
- b) As per final order.

9.) My reasons for above-mentioned answers are as under. Reasons.

9.1) Before adverting to the appreciation of evidence it would be germane to refer herein judgment of Hon'ble Apex Court in case of **N.Harihara Krishnan Vs. J.Thomas reported in AIR 2017 SC 4125**, in which Hon'ble Apex Court has enunciated necessary ingredients for attracting penal provisions under section-138 in para. 23 as under.

23. "Obviously such complaints must contain the factual allegations constituting each of the ingredients of the offence under Section 138. Those ingredients are:

- (1) that a person drew a cheque on an account maintained by him with the banker;
- (2) that such a cheque when presented to the bank is returned by the bank unpaid;
- (3) that such a cheque was presented to the bank within a period of six months from the date it was drawn or within the period of its validity whichever is earlier;
- (4) that the payee demanded in writing from the drawer of the cheque the payment of the amount of money due under the cheque to payee; and

(5) such a notice of payment is made within a period of 30 days from the date of the receipt of the information by the payee from the bank regarding the return of the cheque as unpaid.”

10.) Thus, it can be said that to prove the commission and successful prosecution of an offence under Section-138 of the N.I.Act, the following ingredients are required to be proved:

- A.** Cheque was drawn by the accused on a bank account maintained by him.
- B.** Cheque was issued in favour of the complainant in discharge of legal liability.
- C.** Cheque was returned for want of sufficient funds/ arrangement exceeded upon presentation.
- D.** Cheque was presented during the period of its validity.
- E.** A demand notice is sent by the complainant to the accused within 30 days of receipt of information from the bank regarding dishonour of the cheque.
- F.** Notwithstanding the receipt of the demand notice, the accused fails to make payment of the cheque amount within 15 days.

11.) Complainant's detailed cross-examination has been carried out by advocate for accused, wherein the complainant admitted that there were two transactions between him and the accused which took place on 30/04/2018 (RS ten lakhs) and 18/07/2018 (Rs four lakhs). The complainant admitted that he has not disclosed in his complainant that in the transaction between complainant and accused the brother of accused was also involved in it. The complainant admitted that the disputed cheque is of Dena Gujarat Gramin Bank, Deesa Branch and he also admitted that Dena Gujarat Gramin Bank was merged in Baroda Gujarat Gramin Bank in the year 2019. The complainant admitted that reason of cheque return was INVALID AFTER BANK MERGER. The Complainant also admitted that complaint was lodged on 02.12.2024 and complaint was lodged after elapsing of 4 years from the transaction. This case being contested by accused mainly on ground that the endorsement shown in bank return memo is of INVALID AFTER BANK MERGER and criminal complainant under section 138 of NI Act cannot be presented when on the reason of INVALID AFTER BANK MERGER shown in bank return memo.

12.) The complainant being holder of cheque and the signature on the cheque having not been

denied by the accused, presumption shall be drawn that cheque was issued for the discharge of any debt or other liability. The presumption under Section 139 is a rebuttable presumption. Before I refer to judgments cited by the complainant it is relevant to note that, the general principles pertaining to burden of proof on an accused especially in a case where some statutory presumption regarding guilt of the accused has to be drawn. A Three-Judge Bench of Hon'ble Apex Court in **Kali Ram Vs. State of Himachal Pradesh**, (1973) 2 SCC 808 has laid down the following:-

"23. One of the cardinal principles which has always to be kept in view in our system of administration of justice for criminal cases is that a person arraigned as an accused is presumed to be innocent unless that presumption is rebutted by the prosecution by production of evidence as may show him to be guilty of the offence with which he is charged. The burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the courts cannot record a finding of the guilt of the accused. There are certain cases in which statutory presumptions arise regarding the guilt of the accused, but the burden even in those cases is upon the prosecution to

prove the existence of facts which have to be present before the presumption can be drawn. Once those facts are shown by the prosecution to exist, the Court can raise the statutory presumption and it would, in such an event, be for the accused to rebut the presumption. The onus even in such cases upon the accused is not as heavy as is normally upon the prosecution to prove the guilt of the accused. If some material is brought on the record consistent with the innocence of the accused which may reasonably be true, even though it is not positively proved to be true, the accused would be entitled to acquittal."

The Ld.advocate on behalf of the accused is relying his case upon the decision of the Hon'ble Allahabad High Court which is reported in 2024 AHC 10243, Smt.Archana Singh Gautam VS State of UP and Another, wherein the Hon'ble Allahabad High Court has issued a significant ruling regarding cheque bounce cases involving merged bank accounts. The said court held that dishonored cheques from a bank that has undergone merger cannot attract liability under [section 138](#) of the NI Act. Further at paragraph no.12 it is also held as follows:

"12. This Court is also of the view that the above analogy will also be applicable to the cheques of all banks which had merged with other banks".

13.) The Ld advocate appearing on behalf of the complainant has vehemently objected the argument stating that the fact of the judgment of the Hon'ble Allahabad High Court are completely different with that of the facts of the case in hand. Moreover, when the cheque got dishonored with endorsement of INVALID AFTER BANK MERGER and legal notice was sent to the accused while demanding the due amount for which the accused did not file any answer to the notice. Therefore there is no reason to believe that section 138 of NI Act does not apply to the case given in hand.

Therefore, the accused should be convicted.

14.) To bring an end to the above stated query this court would like to discuss the judgment of Hon'ble Allahabad High Court which is reported in 2024 AHC 10243 between Smt. Archana Singh Gautam VS State of UP and Another, wherein the Hon'ble Allahabad High Court has issued a significant ruling regarding cheque bounce cases involving merged bank accounts. The said court held that dishonour order cheques from a bank that has undergone merger cannot attract liability

under [section 138](#) of the NI Act. Further at paragraph no.12 it is also held as follows:—

"12. This Court is also of the view that the above analogy will also be applicable to the cheques of all banks which had merged with other banks".

Moreover, In the case in hand the dishonour memos are produced and marked as Ex.15. As per the said endorsements the Cheques are dishonoured for the reason " Invalid after Bank Merged". It cannot be disputed that Dena Gujarat Gramin Bank is merged with Baroda Gujarat Gramin Bank on 01-04-2019 and the validity of the cheque leaves of Dena Gujarat Gramin Bank was only till 31-03-2022. As such the cheque i.e., Ex.14 are not valid as on the date of the said cheques. From the above decision and also on perusal of [section 138](#) of the NI Act, it is clear that if any invalid cheque is presented before the bank and the same is dishonored, then no liability under [section 138](#) of the NI Act would be attracted. Further the cheques in question which was issued from the account maintained in the erstwhile Dena Gujarat Gramin Bank after its merger with Baroda Gujarat Gramin Bank is not valid cheque on

the date of presentation as required by proviso (a) of [section 138](#) of the [NI Act](#), therefore dishonoring the same will not attract liability under [section 138](#) of the NI Act.

15.) On the basis of the proposition of law stated as above and authority presented by the Ld Advocate for the accused this court is of the considered view that issue no 1 and no.2 is decided in negative as per the above discussion. Therefore the following order.

ORDER

That considering the evidence on record and the reasons stated–above, the accused– Proprietor of Pruthvi Trading co. Bhogilal Bhuraji Jat Resi. of Yavarpura, Ta.Deesa,Dist.Banaskantha. found not guilty of the offence under Sec. 138 of the N. I. Act. Therefore the accused is hereby acquitted for the offence under Sec. 138 of the N.I.Act.

Final Order

1.) Accused is hereby acquitted under section-255(2) of Criminal Procedure Code for offence under section-138 of N.I.Act.

2.) The bail bonds of the accused stands cancelled.

CC. NO. 1562/2024

3.) Accused is directed to furnish Personal bond of Rs. 10,000/- for six months in compliance with Section 437(A) [1] of Criminal Procedure Code.

Order signed & pronounced in open Court.

Date:13 .03.2026

(N. V. Gupta)

Place-Dantiwada(B.K.) Judi.Magistrate 1st Class,

Dantiwada- B.K.

(UIC: GJ01650)