सत्यमेव जयते

Received on	:	04 – 05 – 2026
Registered on	:	04 – 05 – 2026
Decided on	:	07 – 08 – 2026
Duration	:	Ys – Ms – Ds
		00 – 03 – 03

Ex. 12

IN THE COURT OF THE SESSIONS JUDGE, BHAVNAGAR

Criminal Appeal No.154 of 2026

Rajeshbhai Bholabhai Rathod,
Age: 45 years, Occu: Business,
Resi: Near Rukhadiya Hanuman
Temple, Karchaliya-Para, Bhavnagar. .... **Appellant**

(Original Accused)

VERSUS

1) Bharatbhai Ramsang Bavaliya,
Age: 43 years, Occu: Service,
Resi: Plot No.124, Akshar Park, Sheri
No.2, Bhavnagar. **(Original Complainant)**

2) The State. …. **Respondents**

: Appeals under Sec.415 of BNSS, 2023 :

Appearance :

==

Learned Advocate for the Appellant, ……...…..... Mr.MP Vyas
Learned Advocate for the Respondent No.1, ….... Mr.AB Tota
Learned APP for the Respondent No.2 - State, … Mr.MR Joshi

==

: JUDGMENT :

1. Being aggrieved and dissatisfied with the judgment and order of conviction, sentence and fine which is ordered to be paid as compensation to the complainant, dated 08-04-2026, passed in a Criminal Case No.10473/2023, passed by the Ld. 2nd Additional Chief Judicial Magistrate (Special Negotiable Instrument Court), Bhavnagar (hereinafter referred as 'the Ld. Magistrate'), whereby, the present appellant has been convicted for an offence punishable under section-138 of the Negotiable Instrument Act, 1882 (hereinafter referred as 'the N.I. Act') and has been directed to undergo simple imprisonment of one year and to pay the cheque-amount as compensation to the complainant with default stipulations, the present appellant – original accused has preferred the present Appeal under section-415 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred as "BNSS").

2. For the sake of brevity and convenience, the parties to the present Appeal are hereinafter referred in their original status as they were arrayed as parties before the learned Trial Court.

3. The factual matrix leading to the present Appeal are as under :

3.1 As alleged in the complaint, the complainant and accused are relatives and the accused was doing the real estate business in the year 2016-17 and he was in the dire need of money and, therefore, he requested the complainant to advance Rs.4,00,000/- without interest and as the complainant was relative of the accused, he advanced Rs.4,00,000/- in favour of the accused and in turn, the accused assured the complainant that the same shall be re-paid as agreed between the parties. Somehow, the accused was paid up the loan and, therefore, he issued a cheque bearing No.000004, dated 20-07-2023 of Jana Small Finance Bank. The said cheque was deposited for encashment, but the same was returned unpaid with an endorsement "Refer to Drawer / Not Arranged For" on 21-07-2023. The Return-Memo was received by the complainant on 24-07-2023 and, thereafter, the complainant issued statutory notice under section-138(b) of the NI Act dated 03-08-2023 which was served upon the accused on 04-08-2023. The said notice was replied by the accused on 11-08-2023, but he failed to make payment of the cheque-amount within the stipulated period. Therefore, the complainant preferred a private complaint for an offence punishable under section-138 of the NI Act on 22-08-2023 which was registered as Criminal Case No.10473/2023.

3.2 After appreciating the oral as well as documentary evidence and after hearing arguments of the Ld. Advocates for the parties, the Ld. Magistrate was pleased to convict the accused for an offence punishable under section-138 of the NI Act and the accused was directed to undergo sentence of Simple Imprisonment of one year and was also directed to pay the cheque-amount as compensation to the complainant failing which, the accused is directed to undergo the default sentence of Simple Imprisonment of three months. This order was passed on 08-04-2026 which is the subject matter of the challenge of the present Appeal.

4. The Ld. Advocate for the appellant submitted that the Ld. Magistrate has not taken into consideration the cross-examination of the complainant wherein, he has admitted the fact that the entire transaction between the parties was arrived at in the year-2016-17 and there was an agreement-to-sell, executed between the parties which is produced at Ex.23 which depicts the fact that the complainant had agreed to purchase a plot from the accused in the sale consideration of Rs.7,00,000/-, but no final sale-deed was executed between the parties and this agreement-to-sell was executed on 02-08-2021. From the bare perusal of agreement-to-sell, dated 02-08-2021 (Ex.23), it clearly appears that if the complainant was entitled to recover Rs,400,000/- for the period between the years – 2016-17 to 2023, there was no need for the complainant to pay Rs.7,00,000/- in cash to the accused and thus, from the agreement-to-sell (Ex.23), it clearly appears that no such transaction was arrived at between the parties whereby, the complainant had advanced a sum of Rs,400,000/-. He further submitted that from the cross-examination of the complainant, it also appears that the complainant has not proved the date on which the said amount of Rs,400,000/- was advanced by him and he has also not produced any books of account including the Income-Tax Returns which creates doubt about the averments made in the complaint. He lastly submitted that the accused has successfully rebutted the presumption available under section-138 of the NI Act and the benefit ought to have been given to the accused, but without appreciating the oral as well as documentary evidence, the Ld. Magistrate has passed an order of conviction which is not sustainable in the eye of law.

5. *Per contra,* the Ld. Advocate for the original complainant submitted that the accused had never disputed the issuance of the cheque and the signature affixed by him on the above referred cheque. Since, the accused has not disputed the signature on the cheque and the issuance of the cheque, the presumption under section-139 of the NI Act applies in the present case and, therefore, no fault can be found with the impugned order of conviction, dated 08-04-2026. He further submitted that it is not mentioned in the complaint that the complainant had advanced Rs.400,000/- in the year – 2016-17 in favour of the accused, but a bare statement has been made that the accused was doing business of real estate in the year – 2016-17 and he was in need of money and, therefore, a hand-loan was given by the complainant in favour of the accused and that too without claiming any interest on the said amount. He further submitted that the complainant had filed reply to the statutory notice which is produced at Ex.14 and in the said reply, the accused has not stated anything with respect to the agreement-to-sell dated 02-08-2021 (Ex.23) and thus, it can be easily said that the accused has projected the wrong defence and unsuccessfully tried to rebut the presumption under section-139 of the NI Act. He lastly submitted that the Ld. Magistrate has properly appreciated the oral as well as documentary evidence available on record and, therefore, no interference is called for in the impugned order dated 08-04-2026.

6. The Ld. PP for the State has submitted to pass necessary order in accordance with law.

7. I have heard the Ld. Advocates for the parties.

8. From the above referred rival submissions, the following points emanate for determination of the present Appeals :

1. Whether the original appellant - accused proves that the impugned judgment and order, dated 08-04-2026, passed by the Ld. 2nd Additional Chief Judicial Magistrate, Bhavnagar against the appellant - original accused in Criminal Case No.10473 of 2023, calls for any interference ?

2. What order ?

8.1 For the reasons stated hereinafter, my findings on the above points are as under :

1. In the negative
2. As per final order.

: **R E A S O N S** :

9. **POINT NO.1** :

9.1 The Ld. Advocate for the appellant has relied upon the agreement-to-sell, dated 02-08-2021 produced at Ex.23. As per the said agreement-to-sell, the complainant agreed to purchase Plot No.124, Akshar Park, Sheri No.2, Taluka-District Bhavnagar from the accused in the sale consideration of Rs.7,00,000/-. Relying on this document, he then referred to the averments made in the complaint wherein the complainant has averred and alleged that the accused was doing the real estate business in the year – 2016-17 and for that he was in need of money and, therefore, the complainant advanced Rs,400,000/- (without interest) in favour of the accused. He further submitted that since, the complainant has already paid Rs.7,00,000/- in favour of the accused on 01-07-2021, it becomes clear that the accused was not entitled to recover any amount on or after 01-07-2021 whereas, as per say of the complainant, the loan was advanced in the year – 2016-17, which is not believable. Based on this, the, the Ld. Advocate for the appellant submitted that the complainant has failed to prove that the complainant is entitled to recover the legally due and payable amount of Rs,400,000/- from the accused.

9.2 At the first go, the above referred argument advanced on behalf of the appellant appears to be attractive and deserves merit, but upon careful perusal of the agreement-to-sell produced at Ex.23 depicts the fact that on 01-07-2021, the complainant had paid Rs.7,00,000/- as a sale consideration for the purchase of Plot No.124, Akshar Park, Sheri No.2, Taluka-District Bhavnagar, but this does not mean that there was no transaction between the parties after 01-07-2021. The accused sought to rely upon paragraph No.3 of the complaint wherein, the complainant has mentioned that the accused was doing the real estate business in the year – 2016-17 and, therefore, only in the year – 2016-17, an amount of Rs,400,000/- was advanced by the complainant. In fact, there is no evidence available on record that on which date, a sum of Rs,400,000/- was advanced by the complainant. However, the cheque issued by the accused which is produced at Ex.8 clearly depicts the fact that the same was signed by the accused and the other details of the cheque were never disputed by the accused meaning thereby, the accused has issued cheque only on 20-07-2023 and the transaction must have arrived somewhere around the year-2023. One of the arguments which is advanced on behalf of the accused is to an effect that, if Rs.7,00,000/- had already been paid by the complainant in favour of the accused on 01-07-2021, then on that day i.e. on 01-07-2021, the complainant was not entitled to recover any amount from the accused as he had already paid Rs.7,00,000/- in favour of the accused. But as noted hereinabove, the accused had tendered a cheque, dated 20-07-2023 which was dishonoured and the signature on the cheque was never disputed by the accused. Therefore, in view of presumption contained under section-139 of the NI Act, it is to be presumed that the accused has issued the above referred cheque for legally due and payable amount.

9.3 It is also required to be noted that the accused had replied to the statutory notice under section-138(b) of the NI Act issued by the complainant and in the said reply (Exh.14), the accused has not mentioned anything with respect to the agreement-to-sell dated 02-08-2021 (Ex.23). Thus, it becomes clear that the accused has raised concocted and baseless defence in the above referred complaint. The accused has never challenged the cheque or the signature on the cheque or details of the cheque *inter alia* contending that the cheque was not signed by the accused and the accused was never liable to pay any amount in favour of the complainant.

9.4 It is also required to be noted that the accused is the uncle of the complainant and obviously, the complainant had no reason to file a forged and fabricated case against his uncle. The Ld. Advocate for the accused has submitted that the complainant has not proved the date and time of the so-called transaction and since it is not proved by the complainant, the entire transaction vitiates and no complaint for the offence punishable under section-138 of the NI Act was maintainable. The above referred argument advanced on behalf of the Ld. Advocate for the appellant cannot be accepted because, the accused has never disputed the issuance of the cheque and signature on the cheque. Therefore, it was not relevant and important for the complainant to prove that on which date, the transaction was arrived at between the parties. In view of the presumption contained under section-139 of the NI Act, if it is proved by the complaint that the cheque was signed by the accused and issued in favour of the complainant and if such cheque returns unpaid, then the Court has to presume that the said cheque was issued for legally due and payable amount. In that view of the matter, the above referred argument advanced on behalf of the accused cannot be accepted and the same is rejected.

9.5 Since, the Ld. Advocate for the appellant has not raised any other contention apart from the contentions mentioned hereinabove and all those arguments have been turned down, I do not find it fit to interfere with the impugned judgment of conviction, sentence and fine / compensation and, therefore, I answer point No.1 in the negative and for point No.2, pass the following order :

: **<u>O R D E R</u>** :

1. The present Criminal Appeal is here by dismissed.

2. The impugned judgment and order, dated 08-04-2026, passed by the Ld. 2nd Additional Chief Judicial Magistrate, Bhavnagar in Criminal Case No.10473 of 2023, is hereby confirmed.

3. R & P be sent back to the Ld. Magistrate alongwith a copy of this judgment.

4. No order as to costs.

Pronounced and signed in the open Court on today 7th day of August, 2026.

(H. S. MULIA)
Sessions Judge
Bhavnagar
(Code : GJ00915)

Place : Bhavnagar
Date : 07-08-2026

* * *

Yasin Kalvatar