

GJDH100004342024 	 सत्यमेव जयते	Presented on : 25-06-2024 Registered on : 25-06-2024 Decided on : 01-08-2026 Duration : 2 Year, 1 Month, 7 Day
---	---	---

**IN THE COURT OF PRINCIPAL CIVIL JUDGE & J.M.F.C
AT SANJELI, DAHOD**

Presided Over by DR.T.R.GHONIYA

RCS/ 10/2024

Exhibit No.:42

PLAINTIFF:

JAIN VASANTKUMAR PRAKASHCHANDRA

Age: 50, Occupation : Business

Residing at- Sanjeli, Ta. Sanjeli, Dist. Dahod.

--VERSUS--

DEFENDANT:

RAMSINGBHAI MATABHAI DINDOR

Age: 65, Occupation : Agruculture,

Address: Zaror, Post. Vashiya, Ta.Sanjeli, Dist.Dahod

Advocate for Plaintiff: R B Bhavsar

Advocate for Defendant: J S Makwana

**A SUIT FOR RECOVERY OF
MONEY RS. 4, 25, 573/-
ALONG WITH INTEREST
AND COSTS**

JUDGMENT

Principal Civil Judge,
Sanjeli.

(Delivered on 01-08-2026)

1. The plaintiff has instituted the present civil suit for recovery of Rs. 4,25,573/- (Rupees Four Lakh Twenty Five Thousand Five Hundred Seventy Three Rupees only) along with interest at the rate of 18% per annum from the date of filing of the suit till realization, along with costs of the suit.

Brief Facts Of The Case :-

2. The Plaintiff has pleaded that he runs a Jewellery shop in the Sanjeli. Defendant purchased ornaments of gold and silver of Rs. 4,25,573/-, for marriage in his family and also assured to make payment within short time. Then after, plaintiff had asked the defendant so many times to make payment, but defendant requested that he had not enough funds to make payment and defendant issued a cheque bearing no. 003870 dated 06/06/2022 from his bank account no. 31100100004504 maintained with Baroda Gujarat Gramin Bank, Sanjeli Branch. However, the said cheque was returned unpaid, therefore the plaintiff served a statutory notice upon defendant but as the defendant failed to honour the notice, plaintiff filed a complaint under section 138 of the Negotiable Instrument Act (**in short NI Act**) before this court which was registered as Criminal Case no. 210/2022. After trial of the said case, this court vide judgment dated 08/05/2024, convicted the defendant under Section 138 of the NI Act and sentenced him to undergo imprisonment for a term of 1 (one) year and further

directed him to pay compensation equal to the cheque amount of Rs. 4,25,573/- to the Plaintiff within 30 days.

3. However, the defendant failed to pay the compensation within the stipulated time, therefore, plaintiff served a notice upon the defendant on 16/05/2024 by registered post with acknowledgement due which was duly served to the defendant, but he neither replied the said notice nor made payment of compensation. Hence, the plaintiff is constrained to bring the present suit to recover the legally enforceable debt as per the judgement dated 08/05/2024.
4. The plaintiff has prayed for recovery of rs. 4,25,573/- along with interest at the rate of 18 % per annum till realization, and also the costs of the suit, from the defendant. On presentation of the plaint, it was examined and registered as a Regular Civil Suit No. 10/2024, and summons for settlement of issues was issued against the defendant.

Defence of the Defendant :-

5. On service of summons of the suit, the defendant caused his appearance along with his learned advocate and submitted his Written Statement at Exhibit-17 wherein he denied the averments of the plaint and contended inter alia that the defendant has already preferred an appeal being Criminal Appeal No. 56/2024 against the judgment passed in CC No. 210/2022.
6. Further, he also contended that two separate proceedings

cannot be undertaken for the same facts. He also relied upon the deposition of the plaintiff recorded in the CC No. 210/2022 to point out that there are so many infirmities in the said deposition.

Points for determination:-

7. After completion of the pleadings of the parties, following issues were framed at Exh.19 for the adjudication of the dispute;
 1. Whether the plaintiff proves that the plaintiff is entitled to recover rs. 4,25,573/- from the defendant as per the order and judgment dated 08/05/2024 passed by the JMFC, Sanjeli in CC no. 210/2022 ?
 2. Whether the pendency of appeal against the judgment of CC no. 210/2022 bars the present suit ?
 3. Whether the plaintiff is entitled to the relief as prayed for ?
 4. What order and decree ?

Answers to the Issues:-

8. After appreciation and evaluation of the evidences adduced in the case, and after analysing statutory provisions relating to the dispute, I have answered aforesaid issues as under;
 1. In Negative,
 2. In Negative,
 3. In Negative
 4. As per final order.

9. Plaintiff has adduced following oral as well as documentary evidences in support of his case

Sr.No.	Particulars	Exhibit
1	Affidavit in lieu of examination-in-chief of the plaintiff	20
2	Certified Copy of the Judgement of CC No. 210/2022	26
3	Office copy of legal notice	27
4	Receipt of Regd. Post	28
5	Acknowledgement	29

10. Defendant has not adduced any evidences in support of his defence.

Appreciation of Evidence:-

11. As the issue nos. 1 to 3 are inter-related with each other, the same are discussed herein altogether for the sake of brevity and convenience. Before going into the merit of the present case, it is pertinent to note that it is fundamental principle of evidence lies under the provision of section 101 of the Indian Evidence Act. which reads thus;

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

12. It is the case of the plaintiff that he runs a jewellery shop and defendant had purchased gold and silver ornaments

of Rs. 4,25,573/- (Four Lakh Twenty Five Thousand Five Hundred and Seventy Three Rupees only) and to make payment of the same, defendant issued a cheque no. 003870 dated 06/06/2022 from his bank account maintained with Baroda Gujarat Gramin Bank, Sanjeli Branch. However, the said cheque was returned unpaid, therefore the plaintiff served a statutory notice upon defendant but as the defendant failed to honour the notice, plaintiff filed a complaint under section 138 of the NI Act before this court which was registered as criminal case no. 210/2022. After trial of the said case, this hon'ble court, vide judgment dated 08/05/2024, convicted the defendant under Section 138 of the NI Act and sentenced him to undergo imprisonment for a term of 1 (one) year and further directed him to pay compensation equal to the cheque amount of Rs. 4,25,573/- to the plaintiff within 30 days.

13. However, the defendant has not honoured the direction of the said judgement of this court. Plaintiff issued a notice to defendant to make payment of the cheque amount, but defendant did not pay heed to the said notice. Hence, the plaintiff filed the present suit. The said facts have been supported by an affidavit of the plaintiff. Defendant has undertaken cross examination of the plaintiff which is reproduced hereunder;

એ વાત ખરી છે કે હું સંજેલી મુકામ સોના ચાંદીનો ઘંઘો કરું છું. હું દરેક ગ્રાહકને સોના ચાંદીના ગુએસટી વાળા બિલ આપતો નથી પરંતુ જે ગ્રાહક માંગણી કરે તેને ગુએસટી વાળા બિલ આપું છું. એ વાત ખરી છે કે કોઈ ગ્રાહક માંગે તો હું કાર્યું બિલ પણ આપું છું અને આ કાર્યા બીલમાં ઘરેલાનું વજન અને તારીખ તેમજ કિંમત પણ

લખવામાં આવે છે. એ વાત ખરી છે કે હું મારા સોના ચાંદીના ઘંઘા અંગેના ચોપડાઓ નિભાવું છું અને તેમાં ગ્રાહકનું નામ તેમજ ઘરેણા વજન કિંમત વિગેરે લખવામાં આવે છે. એ વાત ખરી છે કે આ કામના પ્રતિવાદી ને કોઈ બિલ આપેલ હોય તો તે બિલ આ દાવાના કામે રજૂ કરેલ નથી. સાહેબ જણાવે છે કે અમે બીલ આપેલ છે. અમે જે બિલ આપીએ છીએ તેની એક ઓફિસ કોપી અમારા ઓફિસમાં રહે છે. અમોએ પ્રતિવાદી ને કાર્યું બિલ આપેલ. એ વાત ખરી છે કે અમોએ આ કામના પ્રતિવાદી સામે આ કોર્ટ માં ચેક રિટર્ન અંગેની ફરિયાદ કરેલ જેના ફોજદારી કેસ નંબર ૨૧૦/૨૦૨૨ છે. સદર ફોજદારી કેસમાં થયેલ હુકમ સામે નામદાર ડિસ્ટ્રિક્ટ કોર્ટમાં અપીલ પણ કરવામાં આવેલ છે. જેના અપીલ નંબર 56/2024 છે કે કેમ તેની મને ખબર નથી. અમોએ પ્રતિવાદી સાથે બિનકાયદેસર રીતે વ્યવહાર કરેલ છે. હવે હું કહું છું કે વ્યવહાર કાયદેસર કરેલ છે. એ વાત ખરી છે કે પ્રતિવાદી સાથે અમોએ કાયદેસર વ્યવહાર કરેલ હોય એવું દર્શાવતો કોઈ દસ્તાવેજ પુરાવો આ કામે અમોએ રજૂ કરેલ નથી.

14. Thus, the suit of the plaintiff is essentially for recovery of money from the defendant but on the basis of the order and judgement dated 06/05/2024 passed by this court in CC No. 210/2022 filed by the plaintiff under section 138 of the NI Act. It is worthy to note that the plaintiff has not come before this court to claim the amount on the basis of the transaction as pleaded in the plaint. It transpires from the plaint itself that the plaintiff has not relied upon any of the document with regard to the transaction of purchase of gold-silver ornaments. Even plaintiff has not placed on record the invoice, cheque, return memo, books of account etc. to support his claim of recovery of money. It is well settled law that the standard of proof in criminal case is different than civil case. Therefore, it becomes imperative for this court to dwell into the issue of binding nature of judgement in criminal matter in civil matter. Honourble the Supreme Court had an occasion to deal with the issued in case of Seth

Ramdayal Jat vs Laxmi Prasad 2009 (11) SCC 545,

wherein it is held that “*A civil proceeding as also a criminal proceeding may go on simultaneously. No statute puts an embargo in relation thereto. A decision in a criminal case is not binding on a civil court.*”

15. Therefore, first proposition of law is that there is no bar on initiation of civil proceeding even if criminal proceeding is pending on the same set of facts. But, if an order or judgement is passed in criminal case, it does not bind the civil court trying the civil suit. Thus, there is absolutely no bar on the civil suit being filed by the plaintiff even if the criminal case was decided. But the present case is not on the same facts as in the criminal case for the reason that the criminal case was filed on the basis of the negotiable instrument issued by the defendant in favour of plaintiff pursuant to the purchase of silver-gold ornaments by defendant. It is true that this court, as a criminal court, trying the said case being CC No. 210/2022, convicted the defendant and sentenced him to undergo imprisonment for a period of 1 year and also directed the accused to pay the cheque amount as a compensation to the plaintiff. But that judgement was delivered on independent facts in light of the provisions of the NI Act. Whereas, the civil suit is required to be dealt with on its own settled principles.
16. Further, it is well settled law that the standard of proof in civil and criminal proceedings is different. Standard of proof in criminal case is “proof beyond reasonable doubt”, whereas in civil case it is “preponderance of

probability”. Further, there is a specific chapter in the NI Act to deal with the matter relating to dishonour of cheque for insufficiency of funds etc, and there are special provisions enshrined under section 118 and 139 for presumption in favour of the holder of the cheque. Therefore, if a person has issued a cheque which is dishonoured on its presentation at bank, he has remedy of either to file a complaint under section 138 of the NI Act or to file a civil suit for recovery of money due or to file both simultaneously. In the case on hand, plaintiff opted to file a complaint under section 138 of the NI Act, but not a civil suit for recovery of money due from the defendant. There can be no question as to why plaintiff opted for the said remedy. But the question is that the plaintiff proceeded with the complaint which resulted in conviction and sentence. Now the plaintiff has filed the suit not on the basis of original transaction or on the basis of negotiable instrument but brought the suit solely on the basis of the judgement passed in the criminal case (CC No. 210/2022. Meaning thereby the plaintiff has filed a suit to execute the order of criminal court. It must be noted here that this court, as civil court, while trying a civil suit is not binding by its own decision delivered in a criminal case as a criminal court.

17. In such a situation, let us now examine the provisions relating to the recovery of the amount of compensation awarded in the criminal case filed under section 138 of the NI Act. Though, the court in Judgement dated

08/05/2024 has not mentioned any provision for awarding compensation to the complainant of the matter but it is deemed to have been passed under section 357(3) of the Code of Criminal Procedure, 1973 for the reason that fine has not been imposed in the judgement dated 08/05/2024. Therefore, fine does not form a part of sentence in the said judgement which means the award of compensation flows from section 357(3) which reads as under;

357. Order to pay compensation.

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death ;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property

is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.”

18. Now, the question arises as to what is the procedure for recovery of such amount of compensation awarded under section 357(3) of the CrPC in a case filed under section 138 of the NI Act. Though, there is no specific provisions in the NI Act for the recovery of compensation awarded under section 357(3), however, after insertion of section 143A in the NI Act, it has constructive provision for recovery of compensation which read as under;

143A. Power to direct interim compensation

- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—*

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) XXX

(3) XXX

(4) XXX

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section.

19. Thus, the interim compensation amount can be recovered from the accused treating it as fine under section 421 of the Cr.P.C. Further sub clause (6) of section 143A also makes it clear that the amount of interim compensation would be taken into account while passing an order of fine or compensation under section 357 of the Cr.P.C. Therefore, the provision for recovery of interim compensation would be equally applicable to that of compensation under section 357(3) for the purpose of recovery. At this juncture, Section 421 of the Cr.P.C. is required to be referred to, which reads thus;

421. Warrant for levy of fine.—

(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may—

(a) issue a warrant for the levy of the amount by

attachment and sale of any movable property belonging to the offender;

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter:

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under Section 357.

(2) XXX

(3) XXX

20. Further, section 431 of The Code of Criminal Procedure also bridges the gap between the recovery of “fine” and “compensation” which reads as under;

431. Money ordered to be paid recoverable as a fine.

Any money (other than a fine) payable by virtue of any order made under this Code and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine:

Provided that Section 421 shall, in its application to an order under Section 359, by virtue of this section, be construed as if in the proviso to sub-section (1) of Section 421, after the words and figures "under Section 357", the words and figures "or an order for payment of costs under Section 359" had been inserted.

21. Therefore, section 431 makes it clear that any money other than a fine shall be recovered as if it were a fine which makes it further clear that the amount of compensation falls in the said phrase “any money” and shall

be recovered as it were a fine. Hence, it is quite clear that the complainant in whose favour the order and judgement under section 138 of the NI Act is passed, he has remedy under section 421 of the Cr.P.C. to recover the amount of compensation awarded along with sentence. It is also pertinent to note that the judgement in criminal case does not bar a civil suit, but then the civil suit must be filed on the same set of facts and plaintiff is duty bound to prove his case on the principles of preponderance of probability. In the present case, the plaintiff has not adduced any evidence to prove that he is entitled to recover any money from the defendant for the reason that defendant purchased some ornaments from his shop. Therefore, even if the provisions of recovery of compensation as discussed hereinabove is ignored, the plaintiff has failed to prove that the defendant has purchased any ornaments from his shop and that defendant owes any financial liability towards the plaintiff. Plaintiff cannot rest his case merely on the judgement passed by the criminal court in CC No. 210/2022 for the reason that it is not binding on civil court as discussed earlier. Therefore, **Issue no. 1** is answered in **Negative**.

22. The defence raised by the defendant is that the present suit is not maintainable due to his conviction and the compensation order passed in the proceedings under Section 138 of the NI Act and therefore no parallel proceedings can be undertaken. I find no merit in the defendant's argument for the reason that it is well settled proposition of the law that even two parallel and separate

proceedings in case of cheque return can be initiated by the payee of the cheque. The said proposition is also propounded by the Honourable the Supreme Court in catena of decisions. There is only one caveat that there cannot be double recovery of the same transaction. Therefore, if any compensation is awarded and realized in criminal proceedings shall be adjusted in the civil decree.

23. It is also pertinent to note that the defendant has failed to pay compensation within the 30 days granted by the criminal court in CC No. 210/2022. Defendant, then, filed a Criminal Appeal being Cr. A. No. 56/2024 before the honourable Sessions Court, Dahod which came to be dismissed vide judgment dated 23/04/2026, confirming the conviction and order of compensation, with a direction to defendant to surrender and to undergo his sentence. However, the defendant has absconded and failed to surrender, therefore a non-bailable warrant has been issued against the defendant. During the course of the arguments, defendant has submitted that the defendant has also filed a Criminal Revision Petition being R/CR.R.A. No. 1542/2026 before the Honourable High Court of Gujarat. However, defendant has not produced any order of the honourable the High Court of Gujarat. Further, Honourable the Supreme Court in case of **Seth Ramdayal Jat vs Laxmi Prasad 2009 (11) SCC 545**, has held that a civil proceeding as well as a criminal proceeding may go on simultaneously. Applying the said analogy to the present case, merely because the criminal appeal was pend-

ing the plaintiff was not disentitled to initiate civil proceedings for recovery of his dues. Therefore, I find no substance in the argument of the defendant and accordingly the **Issue No. 2** is answered in **Negative**.

24. However, before I conclude the matter, it is required to be clarified that since no money has been recovered from defendant under Section 357 Cr.P.C., the plaintiff is fully entitled to recover the same but in accordance with law as discussed hereinabove.
25. In view of the aforesaid facts and circumstances, I am of the firm view that the plaintiff is not entitled to the relief as prayed for. But looking to the peculiar set of facts and circumstances of the case, I don't find it fit to award any costs in the interest of justice. Therefore, I answer the Issue no. 3 in **Negative** and I pass following order qua the **issue no.4** in the interest of justice;

--ORDER--

- A. The suit of the plaintiff is hereby dismissed.
- B. Parties to bear their own costs.
- C. Decree be drawn accordingly.

Order pronounced today on 01/08/2026 in an open court.

Sanjeli
Date : 01-08-2026

(DR.T.R.GHONIYA)
PRINCIPAL CIVIL JUDGE
SANJELI, DAHOD
GJ10561.

Visit ecourts.gov.in for updates or download mobile app “eCourts Services” from Android or iOS

Principal Civil Judge,
Sanjeli.