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		Registered on	:	15 – 03 – 2023
		Decided on	:	02 – 07 – 2026
		Duration	:	YY : MM : DD
				03 : 03 : 17

<u>IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC</u>

<u>AT KALYANPUR, DEVBHOOMI DWARKA</u>

<u>(PRESIDED OVER BY MR. R.A.CHAUHAN)</u>

<u>Criminal Case No.248 of 2023</u>

Exhibit No. 54

Mansukhbhai Lakhbhai Matang **Complainant….**

Age : 40 years, Occupation : Farm Labour

Resident : Vadi Vistar, At.Po. Kalyanpur

Ta.Kalyanpur, Dist. Devbhumi Dwarka

V E R S U S

Sunilbhai Odhabhai Nakum **Accused….**

Age : 32, Occupation : Farming

Resident : At.Po Juvanpur (Hariyavar)

Ta.Kalyanpur, Dist. Devbhumi Dwarka

<u>Subject:</u>- Judgment Under Section–255 of Criminal Procedure Code in the matter filed under Section-138 of Negotiable of Instruments Act (herein after referred as "NI Act").

<u>APPEARANCE:</u> -

For The Complainant : Learned Advocate Mr. P.K.Solanki

For The Accused : Learned Advocate Mr.B.B.Nakum

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

(1) Introduction:

The Complaint has been filed by Mansukhbhai Lakhabhai Matang *(hereinafter "complainant")* against Sunilbhai Odhabhai Nakum *(hereinafter "accused")* under Section 138 of The Negotiable Instruments Act, 1881 *(hereinafter "NI Act").*

(2) Brief Facts of The Complaint:-

2.1 It is case of complainant that complainant resides at Kalyanpur Village and work as farm-labour and also does business of livestock and accused of this case resides at Juvanpur and does farming as well as does business of livestock.

2.2 It is stated that as complainant and accused are associated with business of livestock, when complainant was in need of buffalo for his business and as accused was doing business of sell & purchase of cow and buffalo, complainant has contacted accused and they have made an oral agreement and accordingly complainant has paid an amount of Rs.65,000/- for buffalo to accused and after acceptance of the amount accused has handed over possession of buffalo to complainant. As per this oral agreement, if buffalo will not let milking then buffalo will be returned and accused will pay back the amount to complainant.

2.3 It is further stated that as the buffalo will not let milking even after repeated attempt, the complainant has informed the accused, then accused has said to return the buffalo and to take the amount. When complainant has reached to return the buffalo and given back the buffalo to accused, but accused has said to give back money after 2-

3 days. Thereafter, despite several demands for money, accused has not paid back to complainant, and finally has given present disputed cheque vide no. 991686 of an amount of Rs.65,000/- by drawing on account of complainant on date of 25/01/2023. The complainant has presented cheque at SBI, Kalyanput branch in his account on date of 31/01/2023, which was returned with endorsement of “Funds Insufficient” and “ Drawer’s signature incomplete”. Thereafter, complainant has given demand notice via RPAD on date of 03/02/2023 which was served upon accused, yet accused has not paid money to complainant within 15 days, hence complainant has lodged present complaint.

(3) Case Proceedings:-

3.1 Cognizance of offence was taken and process was issued against the accused by Ld. Predecessor Judge. Upon successful service of the summons accused has appeared before the Court with his advocate, who has filed Vakalatnama vide Exh. 12 before the Court. The court has after complying with provision of Section- 207 of Cr.P.C., plea of accused has been recorded vide Exh. 13. In his plea, the accused has refused to plead guilty and claim to be tried in accordance with law.

(4) Evidence Adduced by the Complainant in support of his Complaint:-

(I) Oral Evidence:

Sr. No.	Particulars	Exh.
1.	Deposition of complainant	05

(ii) Documentary Evidence :

Sr. No.	Particulars	Exh.

1	Original cheque	15
2	Return memo	16
3	Legal demand notice	17
4	RPAD slip	18
6	Tracking report	19
7	Acknowledgment receipt of post	28
8	Cheque return register	38
9	Cheque deposit slip	39

(5) <u>Closure of Evidence:-</u>

5.1 The complainant has submitted his closing pursis vide Exh. 40 and stated that he does not want to produce further oral or documentary evidence. Thereafter, before the start of defence evidence, in order to allow the accused to personally explain the circumstances appearing in evidence against him, his further statement under section 313 of Cr. P. C. was recorded without oath.

(6) <u>Further Statement of Accused under section 313 of Cr. P. C.:-</u>

The accused has formally denied all the allegations against him. The accused has further submitted that accused is innocent and has prayed to acquit him.

(7) Accused did not wish to produce any evidence on his behalf hence matter was kept for final argument stage.

(8) <u>Final Arguments:-</u>

8.1 <u>Arguments on behalf of Complainant:-</u>

On behalf of complainant, Mr. P.K.Solanki has submitted written argument vide Exh. 42, which is considered by this court.

8.2 <u>Arguments on behalf of Accused:-</u>

On behalf of accused, Mr.B.B.Nakum has submitted written argument vide Exh. 50, which is considered by this court.

(9) Issues:-

Having heed to the above mentioned facts and circumstances, evidence and arguments of either side following issues arise before me for just decision of the case.

Sr. No.	Issues
1	Whether the complainant proves that cheque at Exh. 15 bearing No. 991686 of Rs. 65,000/- was issued by the accused on dated 25/01/2023 in favour of complainant to discharge his legally enforceable debt, which was presented by the complainant in the bank and the same was dishonored with the endorsement of "Funds Insufficient" and " Drawer's Signature Incomplete" despite of demand notice served to the accused he has failed to repay the amount of the cheque and thus, accused has committed offence under Section-138 of NI Act?
2	What Order?

My findings upon such issued are as under.

Issue No.1	In Affirmative
Issue No.2	As per final order

(10) Reasons:-

10.1 I have heard counsels on behalf of both the sides, perused the record as well as relevant provisions of law.

10.2 Before appreciating the facts of the case in detail for the purpose of decision, let relevant position of law be discussed first. Section 138 Section 138, NI provides as under:

"Section 138.- Dishonour of cheque for insufficiency, etc., of funds in the account.-

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that 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 that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:"

Provided that nothing contained in this section shall apply unless:

(A) The 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;

(B) The payee or the holder in due course of the cheque, as the case may be, 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 thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and (C) The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation -- for the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

10.1 It is well settled position of law that to constitute an offence under

Section 138, NI Act, the following ingredients are required to be fulfilled:

I. drawing of the cheque by a person on an account maintained by him with a banker,

II. The cheque was issued for payment to another person for discharge in whole/part any debt or liability;

III. 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. RBI in its notification DBOD.AML BC.No.47/14.01.001/2011-12 has reduced the aforesaid period from 6 months to 3 months.

IV. Returning of the cheque unpaid by the drawee bank for want of sufficient funds to the credit of the drawer or any arrangement with the banker to pay the sum covered by the cheque;

V. Giving notice in writing to the drawer of the cheque within 30 days of the receipt of information by the payee from the bank regarding the return of the cheque as unpaid demanding payment of the cheque amount;

VI. Failure of the drawer to make payment to the payee or the holder in due course of the cheque, of the amount covered by the cheque within 15 days of the receipt of the notice.

The offence under Section 138, NI Act is made out against the drawer of the cheque, only when all the aforementioned ingredients are fulfilled.

10.2 As per the RBI guidelines, it is essential for the cheque in question be to presented within a period of three months from the date on which they are drawn and the same be returned as unpaid by the drawee bank for want of sufficient funds to the credit of the drawer or any arrangement with the banker to pay the sum covered by the cheque. In the case at hand, the cheque in question, i.e., Ex.15 dated 25.01.2023 was returned vide return memo dated 31.01.2023 due to the reason "Funds Insufficient" and " Sign Incomplete". By implication thereof, the cheque was presented within three months and the same was returned for want of sufficient funds to the credit of the drawer. Therefore, Ingredient number III & IV stand fulfilled in the present case.

10.3 In the present case at hand, the complainant has filed on record the original cheque, i.e., bearing no. 991686 dated 25.01.2023 for a sum of Rs. 65,000/-, drawn on SBI, Kalyanpur branch (Ex.15). It is also not disputed that the cheque in question is not drawn on the account maintained by the accused person and it is impliedly admitted therefore that the accused is the drawer of the cheque. Therefore, ingredient number I stands fulfilled in the present case.

10.4 The legal notice (Ex.17) was dispatched on 04.02.2023 by RPAD, i.e., within 30 days of return of the bank memo indicating cheque in question being unpaid. The fact that the legal demand notice has made a clear and unambiguous demand for payment of the cheque in question is not disputed. Accused has not taken any objection that legal notice was not sent on proper address of accused. As per the presumption raised under Section 114 of Indian Evidence Act, 1872 and Section 27 of General Clauses Act, if the legal demand notice is sent at the correct address, then the same shall be deemed to have been duly served. As per the precedent laid down by the Hon'ble Supreme Court in C.C. Alavi Haji v. Palapetty Muhammed, (2007) 3

SCC (Cri), "A person who does not pay within 15 days of receipt of the summons from the court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the GC Act and Section 114 of the Evidence Act."

In K. Bhaskaran vs Sankaran Vaidhyan Balan and Anr, Appeal (crl.) 1015 of 1999 (SC) (hereinafter referred to as "K. Bhaskaran"), the Hon'ble SC observed:

"On the part of the payee he has to make a demand by `giving a notice' in writing. If that was the only requirement to complete the offence on the failure of the drawer to pay the cheque amount within 15 days from the date of such `giving' the travails of the prosecution would have been very much lessened. But the legislature says that failure on the part of the drawer to pay the amount should be within 15 days `of the receipt' of the said notice. It is, therefore, clear that `giving notice' in the context is not the same as receipt of notice."

The burden of giving notice within 30 days of return of bank memo, falls on the complainant/payee to constitute the offence u/s 138, NI Act. If the notice is sent on correct address, then the presumption u/s 27 General Clauses Act and Section 114, Indian Evidence Act arises in the favour of the complainant/payee.

Therefore, it is deemed that the legal notice was duly served on the accused person.

The ingredient number V is fulfilled by virtue of giving of legal demand notice within 30 days from the bank return memo. The receipt of legal demand notice by the accused is deemed to be admitted as per the discussion above.

10.5 Moving on, it is not disputed that the accused has not made the payment of the cheque amount within 15 days of the receipt of legal demand notice. Therefore, ingredient number VI also stands fulfilled in the present case.

10.6 Let us now move on to ingredient number II, The NI Act raises two presumptions in favour of the holder of the cheque, i.e., complainant; firstly, with regard to the issuance of cheque for consideration, as contained in Section 118(a) and secondly, with regard to the fact that the holder of cheque received the same for discharge, in whole or in part, of any debt or other liability, as contained in Section 139 of the Act.

Analysing all the concerned provisions of law and various pronouncements in this regard, the Hon'ble Apex Court in the case of Basalingappa v. Mudibasappa [AIR 2019 SC 1983] held that:

"23. We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:-

(i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a

persuasive burden.

(v) It is not necessary for the accused to come in the witness box to support his defence."

It is therefore implied that the law regarding the presumption for the offence under Section 138, NI Act, the presumptions under Section 118(a) and Section 139 have to be compulsorily raised as soon as the execution of cheque by the accused is admitted or proved by the complainant and thereafter the burden is shifted upon the accused to prove otherwise.

10.7 These presumptions shall end only when the contrary is proved by the accused, that is, the cheque was not issued for consideration and in discharge of any debt or liability etc. The Hon'ble Apex Court in Kumar Exports v. Sharma Carpets [(2009) 2 SCC 513], has laid down the benchmark for the burden of proof that the accused has to raise a doubt as to the presumption under Section 139, NI Act.

"The accused in a trial under Section 138 of the Act has two options. He can 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 note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the non-existence of consideration and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. 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. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averments in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. 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."

To put in a nutshell, the intent behind the NI Act is to prevent financial frauds and affect the socio-economic well-being of the country. If the burden is placed on the complainant to prove the existence of liability against the accused, that would be too heavy a burden as most of these transactions are in the nature of "friendly loan" and the accused would, in a normal circumstance, always deny the liability. Therefore, the legislation is drafted in a way so as to discharge the complainant from proving the liability and a presumption is raised by virtue of Section 139 read with Section 118(a) of the Act that the cheque if issued by the accused, then the same is deemed to be in discharge of some legally enforceable debt in favour of the complainant. The presumption is rebuttable and the accused "may" either prove that no legally enforceable debt existed or punch holes in the story of the complainant and give rise to a probable defence to rebut the presumption. As per the law discussed above, the burden of proof on the accused to raise a probable defence is that of "preponderance of probabilities", and not "beyond reasonable doubt." Once a probable defence is raised, then the onus is shifted to the complainant to establish that a legally enforceable liability existed in his favour and the burden of proof on complainant in this case is that of "beyond reasonable doubt."

10.8 The accused can rebut the presumption as raised under the NI Act by (a) putting forth his defence at the time of framing of notice u/s 251 CrPC; (b) cross-examining the complainant; (c) when statement of accused is recorded u/s 313 CrPC; (d) or by leading defence evidence, thereby demolishing the case of the complainant. It is amply clear that the accused does not need to discharge his or her liability beyond the shadow of reasonable doubt. He just needs to create holes in the case set out by the complainant. Accused can say that the version brought forth by the complainant is inherently unbelievable and therefore the prosecution cannot stand.

10.9 In light of the above discussion, since the accused has admitted to issuance of cheque, admitted the signatures on the cheque and legal notice has also been deemed to be served, what is left to be seen is whether the accused has been able to rebut the presumption against him, i.e., whether the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt?

10.10 The accused has not produced any evidence in his defence, in that case this court has to look into cross-examination of the complainant and circumstances of the case on record to check whether the accused got successful to rebut presumptions that arise in favor of the complainant. Considering the facts of complaint and examination-in chief of complainant, it is case of complainant that complainant and accused both are associated with business of livestock and in that regard complainant has contacted accused, and they have made an oral agreement for purchase of buffalo for price of Rs.65,000/- and in furtherance of that agreement complainant has paid an amount of Rs.65,000/- in cash. Further, as per that agreement it was condition that if buffalo will not let milking, then complainant will return the buffalo and accused will repay the price amount to complainant. As the buffalo won’t let milking, complainant has returned the buffalo to accused and in exchange of that accused has given disputed cheque to complainant. In cross-examination of complainant as well it clearly came on record that complainant has paid price to accused when he purchased buffalo from accused and as buffalo will not let milking, complainant has returned the buffalo to accused after 5 days. Thus, it clearly established on record that there was a transaction between parties for sell and purchase of buffalo. Thereafter, accused has put a defence in cross-examination of complainant that accused has given another buffalo in exchange of buffalo returned by complainant to which complainant has clearly denied. Thereafter, accused has not proved his defence in any way by either producing any oral evidence or any documentary evidence.

10.11 The accused was required to prove as to why the cheque in question was handed over to the complainant and that he has no legal liability towards the complainant. Accused has failed to point out any complaint against the complainant for non return of his precious signed cheque. Accused was required to prove non existence of liability/ debt by either direct evidence or by bringing on record his defence, on a scale of preponderance of probabilities, but he has failed to do so.

10.12 In view of the provision of Section 139 of the NI Act r/w Section 118 of the Act, the Court has to presume that cheque has been issued for discharging debt or liability. The said presumption which is rebuttable could be rebutted by accused by proving the contrary. For shifting the burden, accused had to prove his defence by preponderance of probabilities whereas he has completely failed to do so. Comprehensive perusal of the evidence led on record shows that the accused has failed to rebut the presumption in favour of the complainant and he has failed to create any doubt over the case put forth by the complainant.

10.13 The accused is not required to conclusively prove his evidence in support of his defence to rebut the presumption but he has to show certain circumstances or lead evidence so that the court either believes his defence to exist or the court considers its existence so probable that a prudent man would, under the circumstances of the case, believe the same. However, the accused has failed to do so. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. Without rebutting the presumption, the onus to prove his case will not shift to complainant. It is clear the accused has not led any cogent evidence to rebut presumptions under section 118,139 of the NI Act.

10.14 For the reasons, this court is firmly believes that the accused is committed offence under Sec.138 of the N.I.Act. All these gathered fact and circumstances of the case suggests that complainant has successfully prove that accused has issued cheque to discharge his legal liability. In this circumstances this Court finds accused guilty for offence committed under section138 of N.I.Act. Hence, answering issue no. 1 in affirmative present case is postponed for hearing on point of sentence.

10.15 Heard both side for sentence.

10.16 Advocate for the complainant Mr. P.K.Solanki argued that as complainant has proved his case against the accused and hence maximum punishment may be awarded along with fine of twice amount of the cheque as a compensation.

10.17 Advocate for the accused Mr.B.B.Nakum argued that accused is a sole bread earner for his family and he has responsibility to maintain his family, hence prayed for minimum sentence.

10.18 Having heard both sides I have gone though many policies regarding awarding sentence in cases filed u.s.138 of N.I.Act.. Maximum punishment which may be inflicted on conviction of offence U/s.138 of the N.I. Act is 2 years or with fine which may extend to twice the amount of cheque or both. As cheque in question contains amount of Rs. 65,000/- (Sixty Five Thousand Rupees only) and accused has not repaid that amount. Court while awarding punishment has to strike balance by keeping fact and circumstances in which offence happened and impact of it on accused as well as society at large. Further-more, Hon'ble Supreme Court as well as Gujarat High Court in catena of judgments has directed all trial Courts to award compensation in cases of N.I.Act invariably.

10.19 Hence, in wake of foregoing reasons I pass following final order for issue no.2.

: : FINAL ORDER : :

1. Accused **Sunilbhai Odhavbhai Nakum** Age : 32, Occupation : Farmer, Resident : At.Po Juvanpur (Hariyavar), Ta.Kalyanpur, Dist. Devbhumi Dwrka is hereby convicted under section-255(2) of Criminal Procedure Code for offence committed under section-138 of N.I.Act and accused is hereby ordered to suffer simple imprisonment for a term of 6(Six) months.
2. Accused **Sunilbhai Odhavbhai Nakum** is also hereby ordered to pay amount of Rs. 65,000/- (Sixty Five Thousand Rupees only) to the complainant as a compensation under Section-357(3) of Cr.P.C within 30 days from this order. In default of payment of the same accused to further suffer simple imprisonment of 3 (three) months.
3. Accused to be provided with free copy of the judgment henceforth under Section-363(1) of Cr.P.C.

Signed and pronounced today on the day of 2nd July, 2026 in the open Court.

Date : 02. 07. 2026
Kalyanpur

(Mr. R. A. Chauhan)
Principal Civil Judge &
Judicial Magistrate First Class,
Kalyanpur
U. I. C. Code – GJ01747