

RECEIVED ON : 15.12.2025

REGISTERED ON : 15.12.2025

DECIDED ON :

DURATION : _____

YY-MM-DD

IN THE COURT OF SESSIONS JUDGE

AT : GANDHINAGAR

CRIMINAL APPEAL NO.436 OF 2025

EX.: 14

APPELLANT(S):

1. PARTH DIPAKKUMAR JANI
PROPRIETOR OF PELICAN IMMIGRATION
CONSULTANT
AGE : 40 YEARS, RELIGION : HINDU,
OCCUPATION : BUSINESS,
ADDRESS : D-2035, BLUE BELL EXOTICA,
UVARSA ROAD, VAVOL,
GANDHINAGAR.

PRESENTLY AT :
CENTRAL JAIL, SABARMATI,
AHMEDABAD.

VERSUS

RESPONDENT:

1. KHUSHBUBEN RAMESHCHANDRA TRIVEDI
AGE : 39 YEARS, RELIGION : HINDU,
OCCUPATION : BUSINESS,
ADDRESS : FLAT NO.B/502,
RADHE CRYSTAL, KUDASAN,
GANDHINAGAR.
2. STATE OF GUJARAT

APPEARANCE:

MR.K.N.CHAVIDA : LD. ADV. FOR APPELLANT.
MR.P.R.PATEL : LD. ADV. FOR RESPONDENT NO.1.
MR.S,S,PANDYA : LD. APP FOR RES.NO.2-STATE.

J U D G E M E N T

[1] Present appeal has been preferred by the appellant / original accused, under Section 374 of the Criminal Procedure Code (Section 415 of Bharatiya Nagarik Suraksha Sanhita) and by way of this appeal, the judgement and order dated 15.11.2025 passed by learned 6th Additional Chief Judicial Magistrate, Gandhinagar in Criminal Case No.2268/2023 is under challenge, whereby the learned trial court has convicted the present appellant for the offence punishable under Section 138 of the Negotiable Instruments Act.

[2] Brief facts of the appeal are as under:

The complainant had filed complaint against the present accused under Section 138 of the Negotiable Instruments Act, which came to be registered as Criminal Case No.2268/2023. In his complaint, the complainant had contended that the complainant and accused were belonging to same caste

*Sessions Judge
Gandhinagar*

and they were knowing each other and the complainant was also knowing wife of accused. The accused was in need of money and therefore, he asked complainant to give Rs.20,86,000/-, which were given by the complainant on 08.09.2022 as per their deed of understanding, the said amount was to be returned upto 30.09.2022 and the accused had given six cheques towards security of the said amount. After completion of agreed period, the complainant demanded his money back and at that time, the accused issued cheque No.000244 dated 02.12.2022 of Rs.19,26,000/- of IDFC First Bank, Gandhinagar Branch). The said cheque was produced before the complainant's bank for realization and returned unpaid. Therefore, within stipulated time, the complainant issued notice against present appellant and even after service of the notice, the appellant has not made payment of said cheque amount. Therefore, complainant had preferred complaint against the present appellant-accused. After completion of trial, learned trial court convicted the present appellant and imposed sentence of simple imprisonment for one year and also directed present appellant to pay Rs.28,89,000/- as compensation and on failure of payment of fine, imposed further one month's simple imprisonment, by way of impugned judgement.

[3] It is stated by the appellant that the order of hon'ble trial court is against the principle of natural justice and against the established principles of law. It is further stated that hon'ble trial court has not taken into consideration the defence produced

by present appellant. It is further stated that hon'ble trial court has not interpreted the provision of law properly and has committed error, while convicting the present appellant. It is further stated that the evidence produced by the appellant is also not appreciated properly. It is further stated that the documentary evidences, produced by the appellant, in his defence, have not been taken into consideration, by the learned trial court.

[4] It is further stated that the court has not considered that the cheque in question is not mentioned in the deed of understanding executed between the parties. It is further stated that the complainant has failed to prove legally enforceable debt. These facts have not been taken into consideration by the learned trial court. Therefore, it is stated that the order of learned trial court is required to be set aside and prayed to allow present appeal.

[5] On presentation of appeal, notice was issued to the other side and after service of the notice, Respondent No.1 remained present through her learned advocate and Respondent No.2-State, which is a formal party, has appeared through learned A.P.P. and submitted appearance purshish.

[6] On presentation of appeal, R&P of Criminal Case No.2268/2023 has been called for. Looking to the record of

Criminal Case No.2268/2023, it transpires that following oral as well as documentary evidence has been produced by the parties:

Sr. No.	Description of Documents	Exhibit
<u>Oral Evidence from Complainant</u>		
1.	Deposition of complainant – Khushbu Rameshchandra Trivedi	4
<u>Documentary Evidence from Complainant</u>		
2.	Disputed cheque No.000244 of IDFC First Bank	10
3.	Cheque return memo	11
4.	Copy of legal notice	12
5.	RPAD slip of service of notice	13
6.	Postal tracking report regarding service of RPAD	14-15
7.	Deed of understanding	16

[7] No other evidence has been produced by the complainant.

[8] On completion of evidence, further statement under Section 313 of Criminal Procedure Code has been recorded by learned trial court.

[9] The appellant-accused has stated that he had not filled the details of the cheque and the complainant has misused the cheque given by him and false case has been filed against

him, however, he has not produced any oral or documentary evidence before the trial court.

[10] Heard learned advocates for the parties and gone through the material available on record.

[11] Considering above mentioned facts and circumstances and considering record of Criminal Case No.2268/2023, following points have been framed for final disposal of present appeal:

1. Whether the trial court has erred in convicting the appellant?
2. Whether the order of the trial court requires any interference?
3. What order and decree?

[12] The findings of this court, for the above points are as under:

Issue No. 1 : In negative.

Issue No. 2 : In negative.

Issue No. 3 : As per final order.

REASONS

[13] Now, looking to the record of Criminal Case No.2268/2023, it transpires that the complainant has filed his complaint, for the offence punishable under Section 138. The contentions of the complaint are that as the accused was in need,

the complainant had given Rs.20,86,000/- to the the accused and as per their deed of understanding, the said amount was to be returned upto 30.09.2022 and the accused had given six cheques towards security of the said amount. The said cheque was returned unpaid with an endorsement of "*Payment Stopped by Drawer*". Therefore, notice was issued to the accused and even after service of the notice the accused has not made payment of the said amount, and therefore, present complaint came to be filed.

[14] Now, considering said contention the provision of Section 138 is required to be kept in mind that the drawer of the instrument has issued the cheque for the repayment of amount borrowed from the complainant and that the cheque has been issued for fulfillment of legally enforceable debt. Further, the cheque is required to be produced before the bank for realization within the period of six months and on presentation of cheque before the bank, if there is no sufficient fund, the bank returns said cheque, with a return memo mentioning "*Payment Stopped by Drawer*" and on receiving said intimation from the bank, the complainant is required to issue a notice within period of 30 days and after service of the notice, if within period of 15 days, the accused fails to pay the cheque amount, then the offence, punishable under Section 138 can be said to have been constituted. Now, looking to said provision, whether these facts

are proved or not for that the evidence produced by the parties is required to be considered.

[15] The complainant has deposed before learned trial court vide Ex.4 and supported her complaint. Further, complainant has been cross-examined by the accused. In his cross-examinations he has admitted that she is doing dress-material business since last about 12 years and is earning Rs.25000/- to 30000/-, profit per month. She had stated that she had given Rs.5 Lacs on 21.04.2022, Rs.5 Lacs on 27.04.2022, Rs.5 Lacs on 27.05.2022, Rs.14 Lacs on 14.06.2022 and Rs.2 Lacs on 30.06.2022. She has stated that the amount given in piecemeal is not mentioned in the complaint or in the deed of understanding. She has stated that the accused had given signed cheque and the other details were filled by her. She has admitted that bank stamp is not there in the return memo, however, she has denied that the return memos are fake. She has stated that she is now showing her income in IT Return and she is not able to produce proof of her income. She has denied that she has misused the cheque given as security and filed complaint.

[16] So, considering said cross-examination, it transpires that the accused had taken said amount from the complainant and the cheque was given to the complainant. Accused has not produced any evidence to defend himself. From nowhere, it reveals that the accused had tried to suggest that the amount had been returned to the complainant. Further, it is also not proved

that the accused did not give said cheque to the complainant or his signature is not there. Therefore, there is no reason to disbelieve that the accused had given the said cheque by signing the same against the money given by the complainant.

[17] The accused has not submitted any cogent and reliable evidence to defend his case. However, from the evidence available on record, it does not transpire that the accused did not give said cheque to the complainant or his signature is not there.

[18] Thus, in view of above discussion, considering the material available on record, accused has failed to prove that the cheque has not been signed by him and not given for legally enforceable debt and also failed to prove that notice is not served on him. In these circumstances, considering evidence of complainant, this court is of the view that the complainant has succeeded in proving that the accused had issued said cheque.

[19] Further, looking to the Ex.11-cheque return memo, it appears that said cheque has been returned unpaid with an endorsement "*Payment Stopped by Drawer*". So, considering said fact that the accused has issued cheque by putting his signature and given it to the complainant, then it is presumed that the accused has issued said cheque towards fulfillment of legally enforceable debt and when said cheque was produced for realization, it has returned unpaid, with an endorsement of "*Payment Stopped by Drawer*".

[20] Also considering said Ex.11, it appears that said cheque has been returned unpaid on 02.12.2022 and looking to Ex.12 it appears that the on request of accused the said cheque was re-deposited on 04.01.2023 and again the said returned unpaid with remarks "*Payment Stopped by Drawer*" on 05.01.2023 and the complainant had issued notice to the accused dated 11.01.2023. Now, looking to the record, it transpires that the cheque is admitted and signature is also admitted and deed of understanding made between the parties has also been admitted. The accused has stated that he has returned a part of amount in cash to the complainant, however, no evidence has been submitted to prove this contention.

[21] So, considering said documentary evidence it appears that complainant succeed to established that he had given money to present appellant and present appellant has issued said cheque to discharge his duty to give back said money and said cheque returned unpaid so, considering said fact it is clearly proved that the all ingredients of Section 138 of the Act are proved. As per Section 138 and 139 of the Negotiable Instruments Act r.w.s. 118 of the Act, there is a presumption that:

Section 139 - Presumption in favour of holder:— *It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.*

[22] Therefore, presumption against present appellant would be required to be drawn that he has issued said cheque to discharge his liability.

[23] Further, looking to the record it appears that present appellant has not denied that the signature on the cheque is not of his. Further, he has not denied that he had not received notice from the complainant. Considering said fact and looking to the ratio laid down by Hon'ble Supreme Court in various judgements, it is held by Hon'ble Supreme Court that when accused admitted signature on the cheque, and he did not raise probable defence and accused failed to reply to statutory notice under Section 138 of the Act, in that circumstances, it can be said that complainant succeeded to prove his *prima facie* case and existence of a legally enforceable debt or liability and conviction can be confirmed. So, looking to the judgments of Hon'ble Apex Court and considering evidence produced by complainant, it clearly appears that complainant has successfully proved her case before trial court.

[24] When it is proved that appellant has issued cheque in favour of complainant and said cheque is returned unpaid and on receiving unpaid cheque, with return memo from bank, complainant has issued notice to the appellant and said notice has been served and even after service of the notice neither given any reply to said notice nor made any payment of cheques.

Considering said fact the cheque, return memo and notice are sufficient documents to prove the case of complainant and complainant succeeded to prove his case before learned trial court.

[25] Further, the appellant-accused has taken defence that the complainant is not having enough income to lend this amount to the accused. However, the complainant has failed to raise this issue, while cross-examination of the complainant, to prove his defence. On the other side the appellant has contended in his appeal that from the cross-examination of the complainant, it transpires that complainant had given Rs.16 lacs to the appellant. The complainant has admitted that as mentioned in deed of understanding, the amount of Rs.16 lacs was given to the appellant by the complainant, however, the appellant has not admitted that as alleged by complainant, Rs.20.86 lacs were given to him. Further, he has also not clarified that why the cheque of Rs.19.26 lacs was issued to the complainant and why payment was stopped.

[26] Further, the appellant has also contended that he has returned Rs.5 lacs to the complainant, but he has not produced any evidence to prove the same. In this regard, the appellant has produced affidavit of witness Rekhaven Sureshkumar Panchal at Ex.31 before trial court. But the said witnesses did not enter in the witness box, for the purpose of cross-examination by the complainant, and the right of accused to produce witness was

closed on 23.08.2024. It is settled law that if the witness does not appear for cross-examination, then his/her examination-in-chief also cannot be read in evidence. Therefore, the affidavit of witness Rekhaben Sureshkumar Panchal cannot be considered as evidence on behalf of the accused and cannot be considered while deciding the matter.

[27] Further, from WhatsApp chat, it transpires that the accused has mentioned Rs.14.26 lacs balance payment to be made, but the defence against dishonour of cheque of Rs.19.26 lacs is not proved. Thus, the appellant-accused has failed to prove his defence before the trial court. In these circumstances, considering the date of notice it appears that within time limit, the complainant has issued demand notice and even after service of the notice, the accused has not made payment of said cheque amount hence, the complainant has filed present complaint on 22.02.2023, which came to be registered on 22.02.2023.

[28] In view of above mentioned facts and circumstances, it appears that learned trial court has rightly held the accused, guilty for the offence punishable under Section 138 of the Negotiable Instruments Act, because even after return of the cheque and even after service of the notice, the accused has not made payment of this cheque amount. Hence, the judgement of learned trial court does not appear erroneous and therefore, no interference is required to be made in the said judgement/order passed by learned trial court and accordingly, present appeal is

required to be dismissed and therefore, point No.1 and 2 are replied accordingly and following order is passed:

ORDER

- (a) The present appeal is hereby dismissed.
- (b) The judgement and order dated 15.11.2025 passed by learned 6th Additional Chief Judicial Magistrate, Gandhinagar in Criminal Case No.2268/2023, is hereby confirmed.
- (c) The amount, if any, deposited by the appellant-accused, be given to the original complainant, along with accrued interest, on proper verification.
- (d) The appellant-accused has neither remained present before the court, nor has been produced by the concerned jail authority. Therefore, copy of this order along with necessary yadi for issuance of warrant and execution of the impugned order dated 15.11.2025 passed in Criminal Case No.2268/2023, be sent to the concerned trial court.
- (e) R&P of Criminal Case No.2268/2023 is ordered to be sent back to the trial court.

Signed and Pronounced in open Court on **21st** day of **April, 2026.**

Date : 21.04.2026
Place: Gandhinagar

[ASHISH J.S. MALHOTRA]

GJ01504

SESSIONS JUDGE

GANDHINAGAR

vb/gnr