Exhibit	46		
Filed On	21	04	2022
Registered On	21	04	2022
Decided On	29	06	2026
Duration	**YY**	**MM**	**DD**
	04	**02**	**08**

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE AT KALOL DIST. GANDHINAGAR

CRIMINAL CASE NO.1227 OF 2022

COMPLAINANT

The Kalol Co-operative Credit & Supply Society Ltd.,
through Manager, Rathod Sureshbhai Dhaniram,
Aged : Adult,
Residing at : 14 to 17, Shakti Shopping Center,
Vyapari Jinma, Tal.Kalol, Dist.Gandhinagar

VERSUS

ACCUSED

Zala Jogendrasinh Shivaji
Aged : Adult,
Residing at : 10/B, Navkar Apartment, Tal.Kalol, Dist.Gandhinagar
Presently residing at : 20, Brhamshatriya Society, Paldi, Ahmedabad

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Ld. Adv. R. N. Jadav for the Complainant.

Ld. Adv. A.K.Oza for the Accused.

The Complaint Under Section - 138 Of

The Negotiable Instrument Act

J U D G M E N T

FACTS OF THE COMPLAINT IN BRIEF.

1. The facts of the case is that the complainant is residing at the mentioned address in the cause title. The Complainant, the Kalol Co-operative Credit & Supply Society Ltd., is duly registered under Gujarat State Co-operative Society Act engaged in providing financial asistance and credit facilities to its members. Accused, Zala Jogendrasinh Shivaji is member of complaiant-Society bearing Membership No.2007.

1.1 The accused approached the complainant-society for financial assistance for social purposes and requested a loan. Accordingly, the complainant society sanctioned loan of Rs.3,00,000/- to the accused on 07.04.2018. At the time of availaing the loan, the accused executed all necessary document in favour of the complainant society including the loan agreement, guarantor's consent, pomissory note and other requisite documents. The loan was repayble in 50 monthly installments along with interest at the rate of 12% per annum.

However, the accused failed to repay the loan amount regularly and committed default in payment of the installment. The complainant-Society, issued legal notice through his advocate dated 04.01.2022 demanding payment of outstanding dues amounting to Rs.3,68,745/- as on 31.12.2021 with penal interest at the rate of 3% per annum,.

1.3 It is averred that on 15.02.2022, the accused personally approached the complainant society and discussed the outstanding loan account. During the said meeting, the accused acknowledged his liability and agreed to pay a total sum of Rs.3,77,201/- towards the loand amount, accrued interest, penal interest and other charges. The accused agreed to pay Rs.3,64,722/- immediately and assured that the remaining amount of Rs.12,480/- would be paid. The accused issued a cheque No.533066 dated 15.02.2022 drawn on State Bank of India, Paldi Branch for an amount of Rs.3,64,722/- in favour of Tha Kalol Co-operative Credit & Supply Society Ltd. The accused personally filed and signed the cheque and handed over the same ot the complainant with an assurance that upon representation. The cheque would honoured and outstanding amount dues would be duly paid. The cheque was deposited on 15.02.2022, through its banker for encashment. However, the cheque was returned unpaid on 17.02.2022 with an endoresement of **"*Funds Insufficient.*"** The complainant informed the accused, but they failed to respond or make payment. Thereafter, the complainant-Society served a legal notice through his advocate by registered AD Post on 14.03.2022 and notice was served to the accused on 16.03.2022 which has been ignored by the accused till date. Hence, the present complaint is filed under Section 138 of the Negotiable Instrument Act.

<u>PLEA OF THE ACCUSED.</u>

2. In response to summons issued, the accused appeared along-with his Ld. Advocate. The plea of the accused was recorded vide **<u>Exh.12,</u>** wherein the accused did not plead guilty and claimed the trial before the Court.

2.1 Looking at the facts of the complaint, documents produced along-with and evidence on oath, the summons triable procedure has been adopted for recording of plea and evidence. The Hon'ble Supreme Court in Mehsana Nagarik Sahakari Bank Ltd., Vs. Shreeji Cab Co.& Ors. Etc. 2013 (0) AIJEL-SC 54770 has observed when the evidence is recorded in full and not in a summary manner, there is no need for *denovo* trial. Hence, the case was proceeded further.

<u>EVIDENCE OF COMPLAINANT.</u>

3. To support the case, the complainant has produced following evidences.

<u>ORAL EVIDENCE</u>

Sr. No.	Particulars	Exhibit
1.	Examination-in-chief of the complainant-Society Manager, Mr. **Rathod Sureshbhai Dhaniram**	04

DOCUMENTARY EVIDENCE

Sr. No.	Particulars	Exhibit
1.	Cheque bearing No.533066 of State Bank of India, was given by the accused dated 15.02.2022	33
2.	Cheque was deposited by the complainant (counter slip)	34
3.	Cheque bearing No. 533066 returned memo	35
4.	Original Letter of returned memo	36
5.	Legal Notice was issued by the learned advocate for the complainant-side	37
6.	Registered A.D Post Receipt	38
7.	Acknowledgment slip	39
8.	Notice issued to recover against the accused	40
9.	Registered A.D Post Receipt	41
10.	Resolution made by the complaiant	42

After that, the complainant has filed his closing purshish at Exh.43.

FURTHER STATEMENT AND EVIDENCE OF THE DEFENCE.

It is pertinent to state here that The accused didnot remain present before the court , Hence ,the right of accused to file FS was closed by the Court. This Court has also closed the right of evidence as well as cross examination of the complainant. The right of accused to submit the argument is closed. The matter is pending for the purpose of the Judgment.

<u>ORAL ARGUMENT BY THE COMPLAINANT-SIDE.</u>

6. The learnd advocate for the complainant had argued that-

1. Exh.4 is the affidavit of the complainant wherein he has supported all the facts of the complainant.
2. Exh.34 is the Cheque bearing No.533066 of State Bank of India, was given by the accused dated 15.02.2022.
3. Exh.35 is the Cheque Return memo of **"*fund insufficient*."**
4. Exh.36 is the Original Letter of returned memo.
5. Exh.37 is the R.P.A.D slip of cheque return to the accused.
6. Exh.38 is the R.P.A.D slip of notice given to the accused.
7. Exh.39 is the Acknowledgment slip
8. Exh.40 is the Notice issued to recover against the accused
9. Exh.41 is the Registered A.D Post Receipt
10. Exh.42 is the Resolution made by the complaiant
11. The complainant is the holder in due course of the cheque. According to Sections 138, 139 and 118(A) of the Negotiable Instruments Act, the presumption in this case is in favour of the complainant and the onus is on the accused to rebut that presumption however, the accused has failed to do.

12. Considering all the above facts and evidence, the prosecution has proven the case against the accused beyond a reasonable doubt and has requested that the maximum punishment be imposed on the accused and the legal amount be refund.

ISSUES.

7. In view of the above facts, in my opinion the following issues arise for the judicial decision of the said case.

- Whether the prosecution proves that the accused **borrowed** **Rs. 3,64,722/-** from the complainant. The accused did not repay the amount within the stipulated time. When the complainant demanded money, the accused gave a cheque to the complainant. On presentation of the said cheque in bank the same was not honored due to ***"fund insufficient."*** Thereafter, the complainant gave a legal notice through the accused. Though, the said notice was served to the accused, he has not repaid the amount to the complainant within stipulated time and thus, he has committed an offence under Section 138 of Negotiable Instruments Act?

- Does the accused prove that he has no legal debt or liability against the complainant?

- What order?

DECISION ON ISSUES.

8. My decision on issues are as follows:

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

REASONS.

EVALUATION OF THE EVIDENCE

9. Considering the nature of issues no.1 and 2, they are related to each other and therefore, in order to avoid repetition and for brevity they have been discussed simultaneously. Now, whether the accused has committed the offense under Section 138 of the Negotiable Instruments Act or not? has to be examined keeping in mind the **essential elements** of the above definition, **along with the oral as well as documentary evidence** produced by the complainant side. The following are the reasons for the decision:-

(9.1) The oral testimony of the complainant supported by documentary evidence establishes issuance of cheque, dishonour due to insufficient funds, issuance and service of statutory notice, and non-payment within the statutory period. The signature on the cheque is not disputed. The presentation of cheque, return of cheque and demand notice are not rebutted by probable defense.

(9.2) In view of Sections 118(a) and 139 of the Negotiable Instruments Act, a statutory presumption arises in favour of the complainant regarding existence of legally enforceable debt. The Hon'ble Supreme Court in *Rangappa v. Sri Mohan* (2010) and *Bir Singh v. Mukesh Kumar* (2019) has clearly held that the burden to rebut this presumption lies upon the accused.

(9.3) In the present case, the accused has neither cross-examined the complainant nor led any defence evidence. Even in the further statement under Section 313 Cr.P.C., the accused hasnot remain present & failed to put forth any specific or probable defence.

(9.4) It is evident from the record that the accused appeared before the Court, and further statement was not recorded, and thereafter he deliberately remained absent or lead evidence despite sufficient opportunities. Such conduct amounts to a conscious waiver of the right of defence. The Court is not bound to wait indefinitely for an accused who intentionally delays the proceedings. Proceeding with the matter on the basis of available material causes no prejudice to the accused and is fully in consonance with law, particularly in view of the principles laid down in *Indian Bank Association v. Union of India* (2014).

(9.5) Hence, this Court finds no reason to disbelieve the unchallenged and cogent evidence of the complainant. All the essential ingredients of Section 138 of the Negotiable Instruments Act stand proved, without probable defense.

FINAL CONCLUSION.

10. The offence under Section 138 of the Negotiable Instruments Act is primarily a financial offence. The object of the statute is compensatory rather than punitive. Imposition of compensation would meet the ends of justice and restore the complainant to the extent possible. Further, in light of the above discussions, the accused is found guilty of the offense under Section 138 of the Negotiable Instruments Act and deserves punishment. If the words of the Section 138 of the Negotiable Instruments Act are to be read, it gives discretionary power to the this court regarding the punishment. The maximum punishment is two (02) years of imprisonment or a fine up to two times the amount of the Bank Cheque or both. Thus, the discretion lies with this court to order the punishment keeping in mind the facts of the case. There should be special and extra-ordinary circumstances for the maximum punishment in any offense. Such unusual and special circumstances are found in the present case. As discussed above, the complaint has succeeded in proving the case against the accused and therefore, the answer to point no.1 is given in the affirmative. As the accused has failed to rebut the proven facts of the complainant, the answer to point no.2 is given in the negative. The accused or on behalf of him no one remain present for hearing of the sentence . To considering the elements like the punishment, the gravity of the offense, the age of the accused etc., while answering issue no.3, I found the following final order is passed:-

ORDER

1. The accused **Zala Jogendrasinh Shivaji,** is hereby **convicted** for the offence punishable under **Section 138 of the Negotiable Instruments Act, 1881**.

2. The accused is sentenced to **simple imprisonment** for a term of **Twelve (12) months** under Section 255(2) of the Criminal Procedure Code, 1973. The accused had not remain present before the court . The non bailable warrant shall issue against the the accused.

3. As per Section 357(3) of the Criminal Procedure Code, the accused is ordered to pay twice the amount of cheque of **Rs. 3,64,722/- (Rupees three lakh sixty four thousand seven hundred twenty two Only)** to the complainant as compensation within one month.

4. If the accused defaults in paying the above compensation amount, then for such default, the accused is ordered to undergo **simple imprisonment for a further period of six (06) months.**

Additional Senior Civil Judge, Kalol

5. It is ordered that a copy of this order be provided to the accused free of cost upon his appearance.

6. If the accused in this case has previously served any sentence, then it is ordered that such sentence served shall be set off against the sentence imposed as per Section 428 of the Criminal Procedure Code, 1973.

Signed and pronounced in the open Court today on the 29th of June, 2026.

Date : 29.06.2026
Place : Kalol

ALI ASGAR HASANALI HIRANI
Additional Chief Judicial Magistrate,
Kalol, Dist.Gandhinagar
Code No.GJ01184

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