GJGN050014232024	सत्यमेव जयते				
		Received on	20	03	2024
		Registered on	20	03	2024
		Decided on	08	08	2026
		Duration	**Y**	**M**	**D**
			02	**04**	**19**

IN THE COURT OF ADDITIONAL JUDICIAL MAGISTRATE FIRST CLASS, AT KALOL DIST.GANDHINAGAR

CRIMINAL CASE No. 889 OF 2024

COMPLAINANT

Patel Jagdishbhai Babubhai
Aged : Adult, Occupation : Business,
Residing at : A/5, Ramvadi Township,
Vitthalnagar, Ta: Kalol, District : Gandhinagar.

VERSUS

ACCUSED

Patel Darshan Arvindkumar
Aged : Adult, Occupation : Business,
Residing at : Amarjyot Bungalows,
Viratnagar, Odhav, Ahmedabad.

Appearances

Ld. Adv. B. K. Vankar For The Complainant.

Ld. Adv. D.H. Patel For The Accused.

The Complaint Under Section - 138 Of
The Negotiable Instrument Act

J U D G M E N T

1. FACTS OF THE COMPLAINT : -

The complainant resides with his family at the mentioned address and operates firms Vardayinee Jewellers and Meet Enterprise. The complainant engages in the business of buying and selling gold and silver jewelry and earns his livelihood through money lending. The complainant and accused are good friends.

The accused is engaged in the business of Car cover at the address mentioned in the title. The accused approached the complainant for urgent financial need of **Rs.8,00,000/-**, promising repayment within one year. Thus the complainant had lent **Rs.8,00,000/-** to the accused in part payments till 19/10/2022. The accused issued two cheques (cheque No.000031, and 000032 each Rs.4,00,000/-) from the bank of Ahmedabad Mercantile Co-operative Bank Ltd., Odhav Branch and executed a Rs.300/- stamp-paper before Notary Jitendra

R.Tripathi on 19.11.2022.

After the expiration of one year, the complainant demanded repayment, but the accused refused despite repeated requests. A legal notice for recovery was sent via RPAD on 27.10.2023, demanding the payment of the original cheque No.000031 and 000032, each Rs.4,00,000/-. Despite receiving notice, the accused failed to pay and threatened the complainant with false cases. The complainant again deposited both cheques into account No.3422693947 at Central Bank of India, Borisana Branch on 01.11.2023. The cheques were returned on 03.11.2023 with ***"payment stopped by drawer"*** endorsement.

A notice was sent through Registered Post AD on 08.11.2023 through learned advocate served on the accused, a reply of notice with false facts was received on 25.11.2023 from learned advocate of the accused. The accused borrowed Rs.8,00,000/- for business, issued cheques assuring payment on representation. The due amount was not paid despite legal notice hence, the complainant has filed a complaint under section 138 of the Negotiable Instrument Act, against the accused.

2. PLEA OF THE ACCUSED.

In response to summons issued, the accused appeared along-with his Ld. Advocate. The plea of the accused was recorded vide **Exh.07,** 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 not tried summerily and proceeded further.

3. EVIDENCE OF COMPLAINANT.

To support the case, the complainant has produced the following evidence.

ORAL EVIDENCE

Sr. No.	Particulars	Exhibit
1.	Examination-in-chief of Mr. **Patel Jagdishbhai Babubhai and cross-examination by the accused side**	04

DOCUMENTARY EVIDENCE

Sr. No.	Particulars	Exhibit
1.	Certified copy of consent agreement by the accused side on 19.11.2022	22
2.	Notice of debt recovery given by the complainant side	23
3.	Receipt of Registered Post A.D.	24

4.	Tracking report of notice	25
5.	Cheque No.000031was given by the accused side	26
6.	Cheque No.000031 was given by the accused side	27
7.	Receipt of cheque No.000031 deposited by the complainant	28
8.	Receipt of cheque No.000032 deposited by the complainant	29
9.	Cheque Return memo	30
10.	Cheque Return memo	31
11.	Notice was sent by the complainant to acccused	32
12.	Receipt of Registered Post A.D.	33
13.	Tracking report of notice	34
14.	Reply of notice by the accused side.	35
15.	Copy of Aadhar Card.	36

After-that the complainant has filed the evidence closing purshish vide Exh.41.

4. FURTHER STATEMENT AND EVIDENCE OF THE DEFENCE.

After the above evidence was presented by the complainant, the matter was kept for recording of a further statement of the accused. The F.S was recorded on 17.12.2025 in which the accused denied all the oral as well as documentary evidence of the complainant and specifically stated that as per the consent agreement, the accused paid the remaining amount before the stipulated time. Despite receiving the payment, with an intention to obtain undue financial benefit, has filed a false and fabricated complaint by pretending that the cheque and agreement had been kept somewhere and thus after payment it was not handed over to the accused by the complainant.

It is pertinent to note here that the accused did not step into the witness box and he did not produce any documentary or oral evidence in support of his claim.

5. ARGUMENTS OF THE COMPLAINANT.

(5.1) The Ld. Advocate for the complainant has filed written arguments vide Exh.47, the gist of it, is as under:-

- Exh-1 is the affidavit of the complainant wherein he has supported all the facts of the complaint.
- Exh.22 is the certified copy of consent agreement by the accused side on 19.11.2022.
- Exh.23 is the Notice of debt recovery given by the complainant side.
- Exh.24 is the receipt of Registered Post A.D.
- Exh.25 is the Tracking report.

- Exh.26 is the Original Cheque given by the accused bearing No.000031 with his signature.
- Exh.27 is the Original Cheque given by the accused bearing No.000031 with his signature.
- Exh.28 is the Original Cheque given by the accused bearing No.000032 with his signature.
- Exh.29 is the receipt of cheque No.000031 deposited by the complainant.
- Exh.30 is the receipt of cheque No.000032 deposited by the complainant.
- Exh.31 is the cheque return memo.
- Exh.32 is the cheque return memo.
- Exh.33 is the notice given by the complainant through RPAD.
- Exh.34 is the tracking report of notice.
- Exh.35 is the reply of notice from the accused side.
- Exh.36 is the copy of the Aadhar card of Complainant.
- The complainant has proven the facts of the complaint through oral as well as documentary evidence.
- The complainant has proved his foundational facts.

- 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 so.
- The accused has given false reply vide Exh. 35 to the notice issued by the complainant. The averments of the said notice are false and fabricated.
- Considering all the above facts and evidence, the complainant has referred the judgment in the cases of T.vasantkumar V/s Vijayakumari (AIR 2015 AC 2240) and Rangappa V/s Shri Mohan (AIR 2010 AC 1898) and K. N. Bina V/s Muniyappan (AIR 2001 AC 2895) and Hiten P. Dalal V/s Batindranath Benargee (2001 (6) ACC 16) and Krishna Janardhan Bhatt V/s Datatray G. Hegde (2008 AIR HC 1325).
- The complaint has prayed to impose maximum punishment to the accused.

(5.2) The Ld. Advocate for the accused has filed written arguments vide Exh.49, the gist of it, is as under:-

- The accused had replied to the statutory notice dated 25.11.2023, specifically stating that the disputed cheques were issued as security and that payments had already been made through online transactions. Despite receipt of the said reply, the complainant neither disputed the contents nor offered any satisfactory explanation.

- During cross-examination, the complainant admitted that he had not disclosed in the complaint the name of any person in whose presence the alleged loan transaction took place and that no receipt, voucher or acknowledgment bearing the accused signature was obtained at the time of advancing the alleged loan.
- The complainant further admitted receipt of Rs.88,000/- and Rs.4,000/- from the accused through Google Pay, thereby supporting the defence case regarding repayment. He further admitted that, despite receiving a reply to the statutory notice, he did not issue any rejoinder thereto. The complainant failed to specify in his complaint and in what manner he informed the accused before filling up the disputed cheques. He also admitted that the signatures on the cheques are in English, whereas the remaining particulars are in Gujarati and were filled in by him.
- Further, the complainant failed to produce his PAN Card, Income Tax Returns, or any documentary evidence establishing his financial capacity or the advancement of the alleged loan. The complainant also admitted that, as per income tax provisions, a loan exceeding Rs.20,000/- is ordinarily required to be advanced through banking channels. The complainant has not produced the statements of his Axis Bank and Central Bank accounts.
- It has further come on record that the accused had deposited

certain amounts in the account of the complainant's mother, viz Babuben. However, the complainant has failed to produce the bank statement of his mother's account, which is a material piece of evidence. The accused has paid of Rs.20,000/- into Babuben's account on 19.12.2022 and thereafter on 21/12/22 deposited Rs.4,000/- + Rs.4,000/- in the same account.

6. ISSUES.

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

1. Whether the prosecution proves that the accused **borrowed** **Rs. 8,00,000/-** from the complainant and the accused did not repay the amount within the stipulated time and when the complainant demanded money, the accused gave a cheque to the complainant and on presentation of the said cheque in bank the same was dishonoured due to ***"payment stopped by drawer"*** and thereafter, the complainant gave a legal notice through the accused and 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?

2. Does the accused prove that he has no legal debt or

liability against the complainant?

3. What order?

DECISION ON ISSUES.

7. 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

8. 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. To decide whether the accused has committed an offence under Section 138 of the Negotiable Instruments Act? It is very important to keep in mind the related definition.

> **6. "Cheque".—**A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated Bank Cheque and a Bank Cheque in the electronic form.

8. “Holder”.—The “holder” of a promissory note, bill of exchange or Bank Cheque means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. Where the note, bill or Bank Cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. “Holder in due course”.—“Holder in due course” means any person who for consideration became the possessor of a promissory note, bill of exchange or Bank Cheque if payable to bearer, or the payee or endorsee thereof, if 1 [payable to order,]before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

118. Presumptions as to negotiable instruments.

Until the contrary is proved, the following presumptions shall be made**:—**

(a) of consideration:—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration;

(b) as to date:—that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance:—that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer:—that every transfer of a negotiable instrument was made before its naturity;

(e) as to order of endorsements:—that the endorsements appearing upon a negotiable instrument were made in the order in which they appear then on;

(f) as to stamp:— that a lost promissory note, bill of exchange or Bank Cheque was duly stamped;

(g) that holder is a holder in due course:—that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offense or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

138. Dishonor of Bank Cheque for insufficiency, etc., of funds in the account.

Where any Bank 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 honor the Bank 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 offense and shall, without prejudice to any other provision 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 Bank Cheque has been presented to the bank within a period of six/three 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 Bank Cheque as unpaid; and

(c) the drawer of such Bank 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 of other liability” means a **legally enforceable debt or other liability.**

139. Presumption in favour of holder.—It shall be presumed, unless the contrary is proved, **that** the holder of a **Bank Cheque received** the Bank Cheque of the nature referred to in section138 **for the discharge,** in whole or in part, **of** any **debt or other liability.**

140. Defense which may not be allowed in any prosecution under section 138.—It shall not be a defense in a prosecution for an offense under section 138 that the **drawer had no reason to believe** when he issued the Bank Cheque **that the Bank Cheque may be dishonored** on presentment for the reasons stated in that section.

142. Cognizance of offenses.—1[(1)]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no court shall take cognizance of any offense punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made **within one month of the date on which the cause of action arises** under clause (c) of the proviso to section 138:

2[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offense punishable under section 138.].

3[(2) The offense under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—(a) if the Bank Cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the Bank Cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a Bank Cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the Bank Cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.]

146. Bank's slip prima facie evidence of certain facts.—The Court shall, in respect of every proceeding under this Chapter, on production of Bank's slip or memo having thereon the official mark denoting **<u>that the Bank Cheque has been dishonored,</u>** presume the fact of dishonor of such cheque, **<u>unless</u>** and until such fact is **<u>disproved.</u>**

8.1 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 **<u>essential elements</u>** of the above definition, **<u>along with the</u>** **<u>oral as well as documentary evidence</u>** produced by the complainant side.

<u>PRESENTATION OF CHEQUE.</u>

9. If we read the original two Cheques presented vide Exh.26, 27, it bears the date of 01.11.2023. As per Section 138 of the Act, it has to be presented to the bank within a maximum of three months. The return memo presented vide Exh.30, 31 expresses that the Bank Cheque was presented to the bank and returned on 03.11.2023. Hence, the Bank Cheque was presented to the bank within the said time limit. Thus, Section 138 of the Act is complied with.

RETURN OF CHEQUE.

10. The complainant has submitted the cheque return memo vide Exh.30, 31, which has been returned with the remark of **"*payment stopped by drawer*".** Thus, Section 138 of the Act is complied with.

DEMAND NOTICE.

11. According to Section 138 of the Act, the holder of a Bank Cheque shall, within one month of the knowledge of the Bank Cheque being dishonored, have to give a written demand notice to the drawer of the Bank Cheque for the said amount. The bank return memo presented at Exh.30, 31 is of 03.11.2023 and the copy of the demand notice presented at Exh.32 is of 08.11.2023 and that notice has been served to the accused and the accused has not filed reply vide Exh. 35 inter alia stating the details of the part payment and alleging that the complaint has misused the cheque given for the security.

COGNIZANCE AS PER SECTION 142.

12. The complaint has been filed in writing. In the present case, the complainant sent the demand notice dated 08.11.2023 at Exh.32 to the accused, which was found to have been served. If the accused does not pay the money, then the complaint has to be filed within one month. In the present case, the complaint has been filed by the complainant. Here, as the accused has failed to pay the amount within fifteen days of the service of the notice, the complaint is filed within one month after expiry of such fifteen days and therefore, the provisions of the law are complied with.

AFFIDAVIT AND CROSS-EXAMINATION OF THE COMPLAINANT'S EVIDENCE.

13. The complainant has supported all the facts of the complaint on oath in his affidavit of examination-in-chief vide Exh. 04. The accused has taken defence in the cross examination that part payments of Rs.88,000/- and Rs.4,000/- and Rs.4,000/- are paid to the complainant and it is accepted by the complainant also but the complainant has clarified that such payments were for the different transaction. This clarification is not rebutted by the accused.

PRESUMPTION OF SECTION 139.

14. The Section 139 of the presumes that the Bank Cheque has been issued under a legal debt or liability in favor of the holder of the cheque. In the present cheque, the complainant is the holder of the Bank Cheque and thus the said Bank Cheque has to be presumed as a matter of law to have been given by the accused under a legal debt or liability to the complainant. Now, if the accused wants to rebut such a fact and wants to prove a fact against it, then the responsibility of proving such a fact rests on the head of the accused. If the accused claims that the disputed Bank Cheque was not given to the complainant or he has no legal debt or liability against the complainant, then the onus is on the accused to prove such a fact and if the accused fails to prove such a fact, then according to the provisions of law, the fact that the said Bank Cheque was given by the accused to the complainant under a legal debt or liability is to be considered as proved.

FACTS PROVED BY THE COMPLAINANT AND ITS REBUTTAL BY THE DEFENCE.

15. After considering all the oral as well as documentary evidence it transpires that the complainant has followed all the requirements of the Section 138 of the Negotiable Instrument Act and therefore, the complainant has proved his foundational facts. Now, once the complainant has proved his case the presumption under Section 118 and 139 of the Act goes against the accused. Thus, the onus is on the accused to rebut the fact proven by the complainant. And therefore, it becomes necessary to take into account the facts raised by the accused, if any.

15.1 **The accused has not presented any oral or documentary evidence to rebut the proven facts of the complainant nor rebutted the presumption by putting questions to the complainant.**

15.2 The complainant has consistently deposed in his examination-in-chief that the accused had borrowed a total sum of Rs.8,00,000/- in part payments till 19.10.2022 and thereafter executed a notarized agreement dated 19.11.2022 and issued two cheques of Rs.4,00,000/- each towards repayment of the said liability. The execution of the cheques and the agreement is supported by the documentary evidence produced at Exh.22, Exh.26 and Exh.27. The cheques, upon presentation, were dishonoured with the endorsement ***"Payment Stopped by Drawer"***, whereafter the complainant complied with the statutory requirements by issuing the demand notice within the prescribed period. Thus, the complainant has duly established the foundational facts necessary for attracting the provisions of Section 138 of the Negotiable Instruments Act.

15.3 In ***Rangappa v. Sri Mohan*** **(2010) 11 SCC 441**, the Hon'ble Supreme Court has held that once the execution of the cheque is admitted, the presumption under Sections 118 and 139 of the Act is mandatory and includes the presumption of existence of legally enforceable debt.

The accused was therefore required to rebut this presumption by raising a **probable defence** based on cogent material. In ***Basalingappa v. Mudibasappa*** **(2019) 5 SCC 418**, the Hon'ble Supreme Court clarified that such rebuttal cannot rest on mere denial, bald suggestions, or unsubstantiated explanations, but must be supported by evidence or circumstances rendering the complainant's case improbable.

In the present case, apart from a vague plea of part payment and assertion of account mismatch, the accused has neither produced any documentary evidence nor entered the witness box. Despite repeated opportunities, the accused failed to lead any defence evidence. Hence, the statutory presumption remains wholly unrebutted.

15.4 During the cross-examination, the complainant admitted that the accused had transferred Rs.4,000/- through Google Pay into his Central Bank account on 03.04.2023 and another Rs.4,000/- on 31.12.2023. However, he categorically clarified that those payments were not made towards the loan covered by the disputed cheques. The complainant specifically stated: **"એ વાત ખરી છે કે તારીખ 3 એપ્રિલ 2023 ના રોજ, આરોપીએ સેન્ટ્રલ બેંકના ખાતામાં રૂપિયા 4 હજાર ગૂગલ પે થી નાંખેલા, સાહેદ સ્વેચ્છાએ જણાવે છે કે, તે પૈસા આરોપીએ અલગ વ્યવહારના નાંખેલા છે, ચેકના લેણાના નાંખેલા નથી. એ વાત ખરી છે કે તારીખ 31−12−2023 ના રોજ આરોપીએ સેન્ટ્રલ બેંકના ખાતામાં રૂપિયા 4 હજાર ગૂગલ પેથી નાંખેલા, સાહેદ સ્વેચ્છાએ જણાવે છે કે, અમારે વેપારીઓની વી.સી. ચાલતી હતી, તેના રૂપિયા આરોપીએ ગૂગલ પે કરેલા, ચેકનો વ્યવહાર અલગ છે."** Thus, the admission regarding receipt of the said amounts cannot be read in isolation. The complainant has consistently maintained that those payments pertained to independent business transactions and not towards discharge of the liability arising from the disputed cheques.

15.5 The burden of proving that the aforesaid online transfers constituted repayment of the cheque amount squarely rested upon the accused. Except making suggestions in the cross-examination and taking such a plea in the reply notice, the accused has not produced any bank statement, account extract, receipt, settlement document or any other reliable evidence establishing that the disputed liability had been discharged. More importantly, the accused has chosen not to enter the witness box. Consequently, the explanation furnished by the complainant regarding the Google Pay transactions has remained unshaken and there is no material on record to hold that the said payments were made towards the legally enforceable debt covered by the disputed cheques.

15.6 Another significant circumstance which goes against the defence of the accused is the conduct of the parties prior to the presentation of the disputed cheques. The complainant has produced the debt recovery notice dated **26.10.2023** at **Exh.23**, wherein a specific reference has been made to the notarized agreement dated **19.11.2022** produced at **Exh.22**. By the said notice, the complainant categorically called upon the accused to pay the outstanding amount in terms of the agreement and further informed him that, upon such payment, the original cheques bearing Nos. **000031** and **000032**, each for **Rs.4,00,000/-**, would be returned to him. It was also specifically intimated that in the event of failure to make payment, the said cheques would be presented for encashment. Despite receipt of the said notice, the accused neither disputed nor sought cancellation, rescission or avoidance of the agreement at **Exh.22**. The accused also did not assert in reply that the liability under the agreement stood fully discharged or that the complainant was not entitled to present the disputed cheques. Thus, the agreement at **Exh.22** continued to remain operative and unchallenged.

15.7 The subsequent conduct of the accused further assumes significance. After receipt of the notice at **Exh.23**, the complainant presented the disputed cheques and both the cheques came to be dishonoured with the endorsement ***"Payment Stopped by Drawer."*** In the absence of any material showing that the stop-payment instructions had been issued prior to the receipt of the notice, the sequence of events probabilises that the accused issued stop-payment instructions after receiving the notice and before the cheques were presented. Though such inference is drawn from the surrounding circumstances, it gains importance because even at that stage the accused neither discharged the liability demanded under **Exh.23** nor took any legal steps to invalidate or cancel the agreement at **Exh.22**. Therefore, the conduct of the accused is inconsistent with the defence that no legally enforceable liability existed on the date of presentation of the cheques and, on the contrary, lends corroboration to the complainant's version.

FINAL CONCLUSION.

16. This Court is of the considered opinion that the complainant has successfully proved the foundational facts constituting the offence under Section 138 of the Negotiable Instruments Act, whereas the accused has failed to discharge the burden of rebutting the presumptions available under Sections 118(a) and 139 of the Act. Accordingly, the defence raised by the accused does not create any probable doubt regarding the existence of the legally enforceable debt or liability represented by the disputed cheques.

16.1 The Hon'ble Supreme Court has repeatedly held that while the object of Section 138 is compensatory, **imprisonment becomes necessary where the conduct of the accused shows wilful and contumacious disregard for the law and repeated default**, so as to uphold the sanctity of commercial transactions. Considering the magnitude of the amount involved, prolonged deprivation suffered by the complainant, breach of settlement, and repeated dishonour of cheques, this Court is of the considered opinion that a **sentence involving substantive imprisonment coupled with fine and compensation** is warranted in the facts of the present case.

INTEREST / ENHANCED COMPENSATION — JUSTIFICATION

16.2 The 2 cheques total amount of Rs.8,00,000/- has remained unpaid since November 2023. The complainant has been deprived of the legitimate use of his money for a considerable period and has been compelled to undergo prolonged litigation. Though the Negotiable Instruments Act does not expressly use the term “interest”, the power of the Court to award **compensation exceeding the cheque amount**, up to twice the amount, is well recognized under Section 138 read with Section 357 Cr.P.C., to account for loss, delay, and litigation expenses. Grant of enhanced compensation in the present case is therefore justified to offset:

- the time value of money,
- repeated default by the accused,
- litigation costs incurred by the complainant.

16.3 Thus, 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 Hon'ble 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 the Hon'ble 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 the issue no.1 is given "in the affirmative."** As the accused has failed to rebut the proven facts of the complainant, **the answer to the issue no.2 is given "in the negative."** Considering the elements like the punishment, the gravity of the offense, its impact on the society etc., while answering issue no.3, I found the following final order judicious.

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

1. The accused **Patel Darshan Arvindkumar** is hereby **convicted** for the offence punishable under **Section 138 of the Negotiable Instruments Act, 1881**.

2. The accused is sentenced to **<u>simple imprisonment</u>** for a term of **<u>Twelve (12) months</u>** under Section **255(2) of the Criminal Procedure Code, 1973**.

3. As per Section 357(3) of the Criminal Procedure Code, the accused is hereby ordered to pay compensation to the complainant in sum of **Rs.16,00,000/- (sixteen lakh only)** being twice the total amount of cheque of **Rs. 8,00,000/- (Rupees eight lakh Only)** within one month from the date of this order.

4. If the accused defaults in paying the above compensation amount, then for such default, the accused is ordered to undergo **<u>simple imprisonment for a further period of six</u>**

<u>(06) months.</u>

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.

7. The accused has remained absent at the time of pronouncement of the judgment without any sufficient cause. The judgment is, therefore, pronounced in his absence as per section 353(7) of Criminal Procedure Code, 1908.

8. The bail bond of the accused stands cancelled. Issue a Non-Bailable Warrant against the accused for committing him to prison to undergo the sentence awarded under this judgment.

Signed and pronounced in the open Court today on the 08th of August, 2026.

Date : 08.08.2026.
Place : Kalol

(Priyanka Jaymin Surti)
Additional Judicial Magistrate First Class,
Kalol, Dist. Gandhinagar
UIC Code No.GJ01570

//m.i.pipadwala//