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	Duration : D - M - Y
	16 - 04 - 00

**IN THE COURT OF DISTRICT & SESSIONS JUDGE,
GIR-SOMNATH AT VERAVAL.**

Criminal Appeal No. 63 / 2026

Exhibit : _____

**APPELLANT :
(ORIGINAL ACCUSED)**

Devraj Rambhai Jadav

Age : 23, Occ. : Trade

R/o. : Veraval, Tal./Dist. : Gir-Somnath.

VERSUS

**RESPONDENTS :
(ORIGINAL COMPLAINANT)**

1] Javidbhai Karimbhai Arba

Age : 39 Occ. : Broker,

R/o. Veraval,

Tal. : Veraval, Dist. Gir-Somnath.

2] The State of Gujarat,

Through : P.P., Veraval.

Appearance :-

Mr. A.I. Sumra, Ld. Advocate for the appellant.

Mr. S.I. Sida, Ld. Advocate for the respondent No.1.

Mr. J.D. Pathak, Ld. P.P. for the respondent No.2-State.

**APPEAL FILED U/S. 415 OF THE BHARATIYA NAGARIK
SURAKSHA SANHITA (B.N.S.S.), 2023.**

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

- 1] Present appeal emanates from the judgment of conviction and sentence dated 24.02.2026, passed by Ld. Additional Chief Judicial Magistrate, Veraval (herein after referred to as 'Ld. Magistrate'), in Criminal Case No. 1957 of 2024, whereby the Original Accused/Appellant came to be convicted for offence punishable u/s 138 of the Negotiable Instrument Act, 1881 (hereinafter referred as 'Act') and Ld. Magistrate was further pleased to sentence the accused to undergo simple imprisonment for one year and he has been ordered to pay Rs.11,00,000/- as compensation in one month and in default of this, he shall undergo further six months simple imprisonment. The Accused/Appellant in Criminal Case No. 1957 of 2024 is hereinafter referred to as the Original Accused and the Present Respondent No.1 is hereinafter referred to as the Original Complainant.
- 2] Filtering the unnecessary details, the facts which are requisite to be fresco-ed for the purpose of disposal of the present appeal are as under:
 - 2.1] That a complaint was filed by the Original Complainant under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the "N.I. Act") against the Original Accused, being Criminal Case No. 1957 of 2024, alleging inter alia that the accused had borrowed an amount of Rs.11,00,000/- from the complainant. It is further alleged that a promissory note was executed between the complainant and the accused on

08.01.2024 on a non-judicial stamp paper of Rs.300/-, wherein the accused agreed to repay the said amount within a period of five months from the date of execution of the promissory note. It is further the case of the complainant that, towards discharge of the said legally enforceable debt and liability, the accused issued a cheque bearing No. 053727 dated 07.06.2024 drawn on Bank of India, Veraval-Bhalpara Branch, in favour of the complainant.

2.2] Upon receipt of the said cheque, the complainant presented it for encashment through his banker. However, the said cheque was dishonoured and returned with the endorsement "**Funds insufficient**". Original Complainant therefore, through his Advocate, issued a statutory legal notice through Registered Post A.D., which was duly served to the accused though accused failed to comply with the same and did not make payment of the amount mentioned in the dishonored cheque. Therefore, the Original Complainant filed a complaint before the Ld. Magistrate within the period prescribed under the N.I. Act. On the basis of the complaint, Criminal Case No. 1957 of 2024 was registered and after recording verification, the learned Magistrate had issued process against present Original Accused. The plea of the Accused was recorded under Section 251 of the Cr.P.C. and the Accused denied the charged against him.

- 3] The Ld. Trial Court Magistrate relied upon the following oral as well as documentary evidence produced by the parties:-

Oral as well as documentary evidence produced by the complainant :-

Sr. No.	Particulars	Exh.
1	Oral Evidence of Original Complainant.	4
2	Original cheque given by the accused to the complainant.	12
3	Return Memo.	13
4	Promissory note.	14
5	Office copy of the Demand Notice sent by the complainant to the accused.	15
6	Window slip.	16
7	Acknowledgment receipt.	17
8	Online Track consignment report.	18

- 4] The Original Complainant put himself in the witness box and also produced documentary evidence in support of his case as alleged in the complaint. The accused neither led oral evidence nor produced any documentary evidence in defence. The further statement of the Accused under Section 313 of the Criminal Procedure Code, 1973 (hereinafter referred as 'Code') has been recorded wherein the accused denied the evidence led against him stated that, he is innocent and he has been falsely implicated in the alleged offence.

- 5] After the evidence was recorded by the Ld. Magistrate as stated herein above, the impugned Judgment was delivered, wherein the Original Accused was convicted and being aggrieved by the impugned order the present Appeal has been filed.
- 6] Since the present appeal was filed, the appellant has remained absent and has failed to appear before this Court despite due opportunities. Consequently, a Non-Bailable Warrant (N.B.W.) came to be issued against the appellant. However, the said warrant could not be executed and the appellant has continued to remain absent before this Court. In these circumstances, this Court is constrained to decide the present appeal in the absence of the appellant, on the basis of the evidence, documents and the record and proceedings of the trial Court available before it.
- 7] Having considered the submissions advanced by the learned advocate for the Original Complainant, the grounds raised in the memorandum of appeal and the material available on record, the following points arise for determination:-

Points for determination:-

1. Whether the complainant has proved that there existed a legally enforceable debt or liability?
2. Whether the Ld. Trial Judge erred in convicting the appellant-original accused for offences punishable

under Section 138 of the Negotiable Instrument Act?

3. What order?

8] My findings on the above points are as under :-

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

:: REASONS ::

Point No. : 1 and 2.

9] In order to prove his case, the Original Complainant entered the witness box and deposed on oath regarding the transaction between the parties. His oral testimony is duly corroborated by the documentary evidence produced on record, namely, the original cheque at Exhibit-12, the Return Memo at Exhibit-13, the Promissory Note at Exhibit-14, the statutory Demand Notice at Exhibit-15, the postal receipt at Exhibit-16, the acknowledgment receipt at Exhibit-17 and the online track consignment report at Exhibit-18. The cheque at Exhibit-12 establishes that the accused had issued the cheque in favour of the complainant towards discharge of the liability arising out of the loan transaction. The Return Memo at Exhibit-13 reveals that the cheque was dishonoured with the endorsement "Funds Insufficient". The Promissory Note at Exhibit-14 evidences that the accused had borrowed an amount of Rs.11,00,000/- from the complainant and had

agreed to repay the same within a period of five months from the date of its execution. Despite sufficient opportunities, the Original Accused failed to remain present before the learned Trial Court. Consequently, his right to lead defence evidence and to right of arguments came to be closed. Thus, there is no rebuttal evidence on record to dislodge the oral and documentary evidence adduced by the Original Complainant.

- 10]** The Original Complainant has proved the preliminary foundation that he is "holder" of the cheque as defined in Section-8 of the Negotiable Instrument Act. Therefore, after having proved that the Complainant is the "holder", the presumption under Section 139 of the N.I. Act comes into operation. The Complainant has established his entitlement to the possession of the cheque in his own name by producing the Return Memo at Exhibit-13. The Complainant has proved that, he is entitled to receive or recover the amount due. Therefore, the Complainant after having discharged the initial burden of proof of being a "holder" of the cheque, the Trial Court has rightly presumed that the Original Accused/Appellant had issued the cheque and the Original Complainant had received the cheque in discharge of the liability and the Original Accused/Appellant was required to pay an amount of Rs.11,00,000/- to the Original Complainant.
- 11]** Looking to Section 138 of the Act, there are three ingredients, viz. (i) that there is a legally enforceable debt;

(ii) that the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which presupposes a legally enforceable debt; and (iii) that the cheque so issued had been returned due to insufficiency of funds. The proviso appended to the said section provides for compliance of legal requirements before a complaint petition can be acted upon by a Court of law. Section 139 of the Act raises a presumption in regard to the second aspect of the matter. It merely raises a presumption in favour of a holder of the cheque that the same has been issued for discharge of any debt or other liability. The Original Complainant has proved beyond reasonable doubt that there was an existence of a debt. It is also clear from the record that, there was an agreement between the Accused/Appellant and the Complainant. The same is evident from the original cheque and notice placed on record by the Original Complainant. Therefore, existence of legally recoverable debt is not a matter of presumption under Section 139 of the Act. It merely raises a presumption in favour of the holder of a cheque that the same has been issued for discharge of any debt or other liability. Looking to the ingredients of Section 139, it provides that there is a presumption unless the contrary is proved that the holder of cheque received the cheque in discharge, in whole or in part, of any debt or other liability. The effect of the presumption is to place the evidential burden on the accused for proving that the cheque was not given to the complainant towards the discharge of any liability. Something which is probable has to be brought on

record for getting the benefit of shifting the onus of proving on the complainant/ holder in due course. To disprove the presumption Accused has to bring on record such facts and circumstances, which the Court may either believe that the consideration does not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, Act upon the plea did not exist. In the present case, as mentioned herein above, the original cheque that is placed on record at Exhibit-12 has not been denied by the Original Accused/Appellant, and therefore, the Original Accused/appellant has not rebutted the presumption. In view of the aforesaid discussion, I decide the Point No. 1 in the *affirmative*.

11] As far as the Issue No.2 is concerned, the Ld. Trial Court has not erred in convicting the Accused and the judgment passed by the Ld. Trial Court does not require interference, therefore, I decide the Issue No.2 in the *negative*.

12] In view of referred discussion, I pass the following order :-

:: ORDER ::

- 1] Criminal Appeal No. 63 of 2026 is hereby dismissed.
- 2] The Judgment of conviction and sentence dated 24.02.2026, passed by the Ld. Additional Chief Judicial Magistrate, Veraval in Criminal Case No. 1957 of 2024 is hereby confirmed.

- 3] This judgment is pronounced in absence of the Accused and non-bailable warrants have already been issued earlier which would continue till his arrest.
- 4] The bail and personal bond of the Appellant/Accused in this case are hereby ordered to be cancelled.
- 5] The parties shall bear their own costs of appeal.
- 6] The copy of this Judgment be sent along with the R & Ps to the Trial Court.

Pronounced in open court today on this 10th day of August, 2026.

Place : Veraval.

Date : 10.08.2026.

(Vikramsingh B. Gohil)

Principal District & Sessions Judge,
Gir-Somnath at Veraval.

Code No.GJ01042