


GJGS010006052025	Received on : 28.05.2025
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	Decided on : 01.04.2026
	Duration : D - M - Y 04 - 10 - 00

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

Criminal Appeal No. 78 / 2025

Exhibit :

APPELLANT :
(ORIGINAL ACCUSED)

Virabhai Parbatbhai Vala
Age : 57, Occ. : Trade/Agriculture,
R/o. Ghusiya,
Tal. : Talala, Dist. : Gir-Somnath.

VERSUS

RESPONDENTS :
(ORIGINAL COMPLAINANT)

- 1] **Dilipbhai Karshanbhai Ram**
Age : 25 Occ. : Broker,
R/o. Talala,
Tal. : Talala, Dist. Gir-Somnath.
- 2] **The State of Gujarat,**
Through : P.P., Veraval.

Appearance :-

Mr. R.M. Ram, Ld. Advocate for the appellant.
Mr. R.B. Pandit, Ld. Advocate for the respondent No.1.
Mr. J.D. Pathak, Ld. A.P.P. for the respondent No.2-State.

**APPEAL FILED UNDER SECTION 415(3) of THE
BHARTIYA NAGRIK SURAKSHA SANHITA, 2023.**

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

- 1] Present appeal emanates from the judgment of conviction and sentence dated 03.05.2025, passed by Ld. J.M.F.C., Talala (herein after referred as 'Ld. Magistrate'), in Criminal Case No. 148/2023, whereby the Original Accused/Appellant is 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 8 months and he has been ordered to pay in total Rs.1,80,000/- as compensation (Rs.1,50,000/- as cheque amount and Rs.30,000/- as a compensation) within one month from the date of order. The Accused/Appellant in Criminal Case No. 148/2023 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 Instrument Act, 1881 (hereinafter referred to as the N.I. Act), against the Original Accused being Criminal Case No. 148/2023 alleging *inter-alia* that the accused had borrowed Rs.1,00,000/- and thereafter Rs.50,000/- from the complainant for which the accused had issued a cheque No. 000003,

dated 23.01.2023 of Rs.1,00,000/- and cheque No. 000002, dated 23.01.2024 of Rs.50,000/- of the HDFC Bank, Talala branch in favour of the complainant.

2.2] The complainant, upon receipt of the said cheque, the complainant had presented the said cheque for encasement before his bank. However, the said cheque was dishonoured and returned with the endorsement "**Account Closed**". Original Complainant therefore, through his Advocate, issued a notice by a registered post A.D., which was duly served to the accused but failed to comply with the same and did not make payment of the amount mentioned in the dishonoured cheque. Therefore, the Original Complainant filed a complaint before the Ld. Magistrate within the stipulated time as per order under the N.I. Act. On the basis of the complaint, Criminal Case No. 148/2023 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. at Exh.7 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 evidences produced by the complainant :-

Sr. No.	Particulars	Exh.
1	Oral Evidence of Original Complainant.	5
2	Original cheque No. 000003 given by the accused to the complainant.	12
3	Original cheque No. 000002 given by the accused to the complainant.	13
4	Return Memo of cheque No. 000003.	14
5	Return Memo of cheque No. 000002.	15
6	Office copy of the Demand Notice sent by the complainant to the accused.	16
7	R.P.A.D. receipt.	17
8	Acknowledgment receipt.	18
9	Reply given by the accused against the notice of the complainant and further notice of complainant.	19

Oral as well as documentary evidences produced by the accused :-

Sr. No.	Particulars	Exh.
1	Deposition of the Ravibhai Virabhai Vala. (Accused witness)	29
2	Bank statement of the Ravibhai Vala, son of Accused from ICICI branch.	30
3	Complaint given by the S/o. Accused i.e. Ravibhai Vala in the Talala Police station.	36

- 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 son of the accused had appeared and filed the examination-in-chief in favour of the accused and documentary evidence. 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 false implicated him in the alleged offence. The accused further contended that a false case has been filed against him by the complainant.

- 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] From the submissions made by the Original Complainant and the documents produced before the Trial Court as well as the averments made in the present appeal memo by the Appellant as well as the submissions made by the Original Complainant the following points require to be determined by this Court.

Points for determination:-

1. Whether, the Complainant has proved beyond reasonable doubt that the Accused had agreed to pay the debt amount and whether there was a legally enforceable debt?

2. Whether the Ld. Judge erred in convicting the appellant original accused for offences punishable under section 138 of the Negotiable Instrument Act?

3. What order?

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

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

:: REASONS ::

Point Nos. : 1 and 2 :-

8] In order to prove the case the Original Complainant has entered the witness box and narrated all the events that had occurred. All the events are supported by documentary evidence i.e. the Cheque at Exhibit-12 & 13, the Return memo at Exhibit-14 & 15, Notice at Exhibit-16 etc. The cheque at Exhibit-12 & 13 show that, the Original Accused had taken money and therefore, the Notice at Exhibit 16 was issued against the liability i.e. the money. The fact that the Original Accused/Appellant had taken money from the complainant has not been denied by the Original Accused/appellant. 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-14 & 15. 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 and discharge of the liability and the Original Accused/Appellant was required to pay an amount of Rs.1,80,000/- to the Original Complainant.

- 9]** 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. 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 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 & 13 has not been denied by the Original Accused/Appellant, and therefore, the Original Accused/appellant has not rebutted the presumption.

- 10]** I have read and considered the written arguments filed by the learned Advocate for respondent No.1 at Exh.21. The defence material placed on record, including the written submissions filed before the Trial Court and treated as documentary evidence, has been duly considered. However, the same does not probabalise the defence case. The principal defence raised therein relates to the alleged lack of financial capacity of the complainant, the non-mentioning of exact dates of the transaction, and the contention that the cheques in question were issued only as security. The defence has also relied upon the deposition of the son of the accused and certain bank statements to suggest repayment of the alleged amount. However, no convincing evidence has been produced to establish that the alleged bank transfers were made towards discharge of the specific cheque amounts involved in the present case. The plea that the cheques were issued merely as security has remained a bald assertion without any cogent and reliable proof. The original cheques produced at Exh.12 and Exh.13 have not been denied by the accused, and no

convincing material has been placed on record to show that the said cheques were not issued towards discharge of a legally enforceable debt or liability. The learned Trial Court has rightly appreciated the oral as well as documentary evidence on record and has correctly applied the settled principles governing Section 138 of the Negotiable Instruments Act. Therefore, this Court does not find any illegality, perversity, or infirmity in the findings recorded by the learned Trial Court. The complainant has successfully proved the existence of a legally enforceable debt and the commission of the offence under Section 138 of the Negotiable Instruments Act beyond reasonable doubt. In view of the aforesaid discussion, I answer Point No.1 in the Affirmative and Point No.2 in the Negative.

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

:: ORDER ::

- 1] Criminal Appeal No. 78 of 2025 is hereby dismissed.
- 2] The Judgment of conviction and sentence dated 03.05.2025, passed by the Ld. J.M.F.C., Talala in Criminal Case No. 148/2023 is hereby confirmed.
- 3] The bail and personal bond of the appellant/accused in this case are hereby ordered to be cancelled.
- 4] The appellant/accused shall surrender before the Trial Court within seven days from the date of this order.

- 5] In the event the appellant/accused fails to surrender before the Trial Court within the stipulated time, the Trial Court shall be at liberty to initiate further proceedings against the appellant/accused.
- 6] The parties shall bear their own costs of appeal.
- 7] The copy of this Judgment be sent along with the R & Ps to the Trial Court.

Pronounced in open court today on this 01st day of April, 2026.

Place : Veraval.
Date : 01.04.2026

(Vikramsingh B. Gohil)
Principal District & Sessions Judge,
Gir-Somnath at Veraval.
Code No.GJ01042