

GJGS010007582024	Received on : 23.07.2024
	Registered on : 23.07.2024
	Decided on : 16.06.2026
	Duration : D - M - Y 24 - 10 - 01

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

Criminal Appeal No. 65 / 2024

Exhibit : _____

APPELLANT :
(ORIGINAL ACCUSED)

Mahendrakumar Lakhmanbhai Makwana

Age : 44, Occ. : Labourer

R/o. Semarvav (Devdi),

Tal. : Talala, Dist. : Gir-Somnath.

VERSUS

RESPONDENTS :

1] The State of Gujarat,
Through : P.P., Veraval.

2] Arvinbhai Ranabhai Jotva (Original Complainant)
Age : 40 Occ. : Agriculture
R/o. Talala (Gir), Tal. : Veraval, Dist. Gir-Somnath.

Appearance :-

Mr. J.B. Jotva, Ld. Advocate for the appellant.

Mr. K.D. Vala, Ld. P.P. for the respondent No.1-State.

Mr. M.G. Sikotra, Ld. Advocate for the respondent No.2.

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 01.07.2024, passed by Ld. J.M.F.C., Talala (herein after referred as 'Ld. Magistrate'), in Criminal Case No. 843 of 2021, 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 one year and he has been ordered to pay the cheque amount of Rs.4,00,000/- as compensation within 1 month from the date of order. The Accused/Appellant in Criminal Case No. 843 of 2021 is hereinafter referred to as the Original Accused and the Present Respondent No.2 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. 843 of 2021 alleging *inter-alia* that the accused had borrowed Rs.4,00,000/- from the complainant, for which the accused had issued a cheque No. 557155, dated 01.07.2021 of S.B.I., Talala branch.

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 "**Funds insufficient**". 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 dishonored 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. 843 of 2021 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 leveled 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.	34
2	Accused has given in writing to the	36

	complainant.	
3	Original cheque given by the accused to the complainant.	37
4	Return Memo.	38
5	Office copy of the Demand Notice sent by the complainant to the accused.	39
6	Window slip.	40
7	Acknowledgment receipt.	41

- 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 had not led any oral evidence as well as filed any documentary evidence to prove its case. 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 falsely 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 No. : 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-37, the Return memo at Exhibit-38, Notice at Exhibit-39 etc. The cheque at

Exhibit-37 show that, the Original Accused had taken money and therefore, the Notice at Exhibit-39 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-38. 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.4,00,000/- 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-37 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*.

10] As far as the Point 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*.

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

:: ORDER ::

- 1] Criminal Appeal No. 65 of 2024 is hereby dismissed.
- 2] The Judgment of conviction and sentence dated 01.07.2024, passed by the Ld. J.M.F.C., Talala in Criminal Case No. 843 of 2021 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 16th day of June, 2026.

Place : Veraval.

Date : 16.06.2026.

(Vikramsingh B. Gohil)

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

Code No.GJ01042