GJGS010015212025	Received on : 12.12.2025 Registered on : 12.12.2025 Decided on : 07.08.2026 Duration : D - M - Y 26 – 07 – 00

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

Criminal Appeal No. 168 / 2025
Exhibit :

APPELLANT :
(ORIGINAL ACCUSED)

Karshanbhai Ranmalbhai Barad
Age : 57, Occ. : Agriculture
R/o. Sutrapada,
Tal. : Sutrapada, Dist. : Gir-Somnath.

VERSUS

RESPONDENTS :

1] **Karshanbhai Bhagvanbhai Rathod**
(Original Complainant)
Age : 55, Occ. : Agriculture,
R/o. Maljinjava,
Tal. : Talala, Dist. Gir-Somnath.

2] **The State of Gujarat,**
Through : P.P., Veraval.

Appearance :-

Mr. B.M. Sumra, Ld. Advocate for the Appellant.
Mr. H.D. Lakhani, Ld. Advocate for the Respondent No.1.
Mr. K.D. Vala, 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 14.11.2025, passed by Ld. J.M.F.C., Veraval (hereinafter referred to as the 'Ld. Magistrate'), in Criminal Case No. 138 of 2020, whereby the Original Accused/Appellant is convicted for offence punishable U/s. 138 of the Negotiable Instrument Act, 1881 (hereinafter referred as 'Act') and learned Magistrate further sentenced the Original Accused to undergo simple imprisonment for six months and directed him to pay compensation of Rs.55,000/- within 30 days from the date of the order and in default thereof, to undergo simple imprisonment for three months. The Accused/Appellant in Criminal Case No. 138 of 2020 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. 138 of 2020 alleging *inter-alia* that the accused had borrowed Rs.70,000/- from the complainant, for which the accused had issued a cheque No. 000103, dated 06.12.2019 of the Junagadh Jilla Sahakari Bank Ltd., Sutrapada

Branch.

2.2] Upon receipt of the said cheque, the Original Complainant presented the same 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 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. 138 of 2020 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 Exhibit-7 and the Accused denied the charge against him.

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

<u>Oral as well as documentary evidence produced by the complainant</u> :-

Sr. No.	Particulars	Exh.
1	Oral Evidence of Original Complainant.	5

2	Original cheque given by the accused to the complainant.	18
3	Return Memo.	19
4	Office copy of the Demand Notice sent by the complainant to the accused.	20
5	Window slip.	21
6	Acknowledgment receipt.	22
7	Courier slip.	23
8	Courier acknowledgment receipt.	24

4] The original complainant entered the witness box and led oral evidence. He also produced documentary evidence in support of the allegations made in the complaint. The accused had appeared but not led any oral evidence nor did he produce any documentary evidence in support of his 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 falsely implicated him 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] 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 Original Complainant has proved beyond reasonable doubt that the cheque in question was issued by the Original Accused towards discharge of 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?

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

1] In affirmative.

2] Partly in the affirmative.

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-18, the Return memo at Exhibit-19, Notice at Exhibit-20 etc. The cheque at

Exhibit-18 indicates that the Original Accused had issued the said cheque towards repayment of the amount borrowed from the Original Complainant and therefore, the Notice at Exhibit-20 was issued against the liability i.e. the money. The fact that the Original Accused/Appellant had borrowed 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-19. 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 towards discharge of the liability and the Original Accused/Appellant was required to pay an amount of Rs.70,000/- 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. Section 139 of the Act raises a statutory presumption in favour of the holder of the cheque that the cheque has been issued for discharge, in whole or in part, of any legally enforceable debt or liability. 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. Once the execution of the cheque is admitted or proved, the statutory presumption under Section 139 extends to the existence of a legally enforceable debt or liability unless the contrary is proved by the accused. 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-18 has not been denied by the Original Accused/Appellant and therefore, the Original Accused/Appellant has not rebutted the presumption.

10] In the present case, the Original Complainant has proved the foundational facts by producing the original cheque at Exhibit-18, the return memo at Exhibit-19, the statutory demand notice at Exhibit-20 and the postal as well as courier acknowledgments at Exhibits-21 to 24. The Original Accused has not disputed his signature appearing on the cheque nor has he led any oral or documentary evidence to rebut the statutory presumptions available under Sections 118 and 139 of the Negotiable Instruments Act. Consequently, the learned Trial Court has rightly held that the cheque in question had been issued towards discharge of a legally enforceable debt or liability. Upon independent re-appreciation of the entire oral as well as documentary evidence available on record, this Court finds no perversity or illegality in the findings recorded by the learned Trial Magistrate so far as the conviction of the Original Accused for the offence punishable under Section 138 of the Negotiable Instruments Act is concerned.

11] It has been brought on record during the pendency of the present appeal that the Appellant–Original Accused has deposited the entire compensation amount of Rs.55,000/- before this Court and the receipts evidencing such deposit are already on record. The complainant is, therefore, entitled to receive the said amount in accordance with law. It is pertinent to note that, the learned Trial Court had already granted credit of Rs.15,000/- paid by the Appellant while determining the compensation payable and had ultimately directed payment of Rs.55,000/- as compensation. Thus, the direction regarding payment of compensation passed by the learned Trial Court stands fully complied with. The complainant is, therefore, entitled to receive the said amount in accordance with law.

12] The only surviving question, therefore, is with regard to the substantive sentence imposed upon the Appellant. Considering that the Appellant has deposited the entire compensation amount during the pendency of the present appeal and the receipts thereof are on record and having regard to the facts and circumstances of the case, this Court is of the opinion that, the ends of justice would be adequately met, if the substantive sentence imposed by the learned Trial Court is modified. Accordingly, while confirming the conviction recorded by the learned Trial

Court for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, the sentence imposed upon the Appellant is modified to the extent that, he shall undergo *imprisonment till the rising of the Court*. Accordingly, Point No.1 is answered in the affirmative, Point No.2 is answered partly in the affirmative and consequently, the following final order is passed qua Point No.3:-

:: ORDER ::

1] The present Criminal Appeal is hereby partly allowed.

2] The judgment of conviction dated 14.11.2025 passed by the learned Judicial Magistrate First Class, Veraval, in Criminal Case No.138 of 2020, convicting the Appellant for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, is hereby confirmed.

3] The direction of the learned Trial Court regarding payment of compensation of Rs.55,000/- is hereby confirmed. Since the said amount has already been deposited by the Appellant–Original Accused before this Court, the same shall be disbursed to the complainant/respondent No.1 after due verification. The fine amount of Rs.2,000/-, already deposited by the Appellant is directed to be paid to the complainant as compensation, shall also be disbursed to the complainant/respondent No.1 after due verification.

4] However, the sentence imposed by the learned Trial Court is modified to the extent that the Appellant–Original Accused is sentenced to *imprisonment till the rising of the Court.*

5] Bail bond, if any, stands cancelled.

6] Record and proceedings be sent back to the Trial Court forthwith.

Pronounced in open court today on this 07th day of August, 2026.

Place : Veraval.
Date : 07.08.2026.

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