सत्यमेव जयते

Instituted on	04.03.2021		
Registered on	04.03.2021		
Disposed on	12.07.2026		
Duration	Year	Month	Date
	05	04	09

In the Court of Principal Civil Judge & J.M.F.C., Gir Gadhada.

Criminal Case No. 907/2024
Exhibit :-

Bharatbhai Balubhai Gohil,
R/o. Alidar, Ta. Kodinar,
Di. Gir Somnath. .... Complainant.

V/s.

Kaushikkumar Manilal Lakhani,
R/o. Bh. Blood Bank,
Una, Di. Gir Somnath. .... Accused.

Subject: Complaint under Section 138 of Negotiable Instruments Act.

Appearance: Ld. Advocate **Mr. R.R.Solanki** for the complainant.
Ld. Advocate **Mr. N.V.Rathod** for the accused.

JUDGMENT

(1).. Brief facts of the complaint is that the complainant, the complainant and the accused were known to each other. The accused, being in need of funds for construction, borrowed a sum of ₹2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) from the complainant in the presence of witnesses, namely Pratapbhai Gopalbhai Vaish, Maheshbhai Himmatbhai Parmar, Rawatbhai Ghelubhai Sankhat and Kuldipbhai Merubhai Padhiyar, all residents of Alidar. In discharge of the said liability, the accused issued Cheque No. 970315 dated 19.01.2021 for ₹2,50,000/- drawn on his account No. 32348642957 with State Bank of India, Una Branch, in favour of the complainant.

(1.1).. As per the complainant in his complaint, the complainant presented the said cheque for encashment on 19.01.2021 through his account No. 34902918388 with State Bank of India, Harmadiya Branch. The cheque was dishonoured vide Return Memo dated 20.01.2021 with the endorsement

"Funds Insufficient". Despite intimation to the accused, the amount was not paid.

(1.2).. Moreover, the complainant alleges that the complainant, through his advocate issued a statutory legal notice dated 05.02.2021 calling upon the accused to pay the cheque amount within fifteen days. The notice was sent by RPAD as well as ordinary post. The notice sent by ordinary post was served upon the accused on 08.02.2021 and the RPAD notice was accepted by the accused on 17.02.2021. The accused gave a false reply to the notice but failed to make payment of the cheque amount. Thus, the accused has committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The complaint is filed within the period of limitation.

(2).. As per Section-143 of the Negotiable Instruments Act, provision has been made for the proceedings of cases relating to offence under Chapter-17 to be conducted by summary trial but in the present case, the parties should get sufficient opportunity to present evidence on their behalf, therefore, as mentioned in the proviso to Section-143, the proceedings of the present case should be conducted by summons trial. It has been ordered by my predecessors to issue summons against the accused after taking cognizance of the present complaint against him.

(3).. The summons was served on the accused in the usual manner and the accused appeared before the court and filed a plea against the accused vide Exhibit-10. The accused has pleaded not guilty to the charges against him and the further judicial proceedings have been initiated.

(4).. The following oral and documentary evidence has been presented by the prosecution in this case.

Oral evidence:-

Sr. No.	**Name of the witness**	**Exhibit**
01	Complainant - Mr. Bharatbhai Balubhai Gohil	04
02	Witness – Mr. Kuldipbhai Merubhai Padhiyar	33
03	Witness – Mr. Pratapbhai Gopalbhai Vansh	34
04	Witness – Mr. Ravatbhai Ghelubhai Sankhat	35
05	Witness – Mr. Maheshbhai Himatbhai Padhiyar	36

Documentary evidence:-

Sr. No.	Name of the document	Exhibit
01	Original Disputed Cheque	19
02	Original Cheque Pay-in-Slip	20
03	Original Cheque Return Memo	21
04	Legal Notice given to the accused by Registered Post A.D.	22
05	Original postal Window-slip of R.P.A.D.	23
06	Original Window-slip of postal department	24
07	Original Reply/Counter Notice given by the accused	25
08	Copy of Bank-Statement of the complainant	46

(5).. During the proceedings of the present case, the complainant and other witnesses of the complainant, were cross-examined by the defence. After that, the closing pursis was presented vide Exhibit-37, after which the proceeding was kept on the stage of the further statement of the accused under section-313 of the Code of Criminal Procedure.

(6).. In the further statement, the accused, in response to the questions put forth by this Court under Section 313 of the Cr.P.C., denies the majority of the allegations levelled against him. The accused expressly declares to examine himself as a witness and further submits that he also intends to adduce defence witnesses in the present proceeding. According to the accused the present complaint, is false and frivolous, and is based on the misuse of cheques by the complainant. The accused has specifically denied any acquaintance or transaction with the complainant. It is the case of the accused that he does not know the complainant at all and has never borrowed any amount from him. The accused has further stated that the disputed cheque was never issued or handed over by him to the complainant. The said cheque is an old cheque and is not in the handwriting of the accused. The accused has alleged that the complainant, in collusion with the witnesses, has obtained the said cheque from some other person and has himself filled in the particulars and the amount therein with a view to extract money from the accused by misusing the process of law. The accused has further contended that there is no legally enforceable debt or liability towards the complainant. According to the accused, all prior transactions, if any, stood fully settled and an agreement to that effect was executed before a Notary. The accused has stated that the witnesses examined by the complainant are themselves engaged in the business of moneylending on interest and have colluded with the complainant. The accused has replied to the legal notice issued by the complainant and has denied any liability on the ground that no amount was ever received by him from the complainant. The accused also states to be innocent and has alleged that the present complaint is false, frivolous and has been filed with the ulterior motive of harassing him and extracting a huge amount from him. Thereafter, the matter was kept for the evidence of the accused side.

(7).. The following oral & documentary evidence has been presented by the accused in this case.

Oral evidence:-

Sr. No.	**Name of the witness**	**Exhibit**
01	Accused – Mr. Kaushikkumar Manilal Lakhani	42

Documentary evidence:-

Sr. No.	**Name of the document**	**Exhibit**
01	Original Notice given by father of the accused to (1) Mansingbhai Gandabhai Vala, (2) Ranjitbhai Govindbhai Gohil, (3) Kuldipbhai Merubhai Padhiyar	43
02	Original Agreement/compromise agreement made between Manilal Monjibhai Lakhani and (1) Mansingbhai Gandabhai Vala, (2) Ranjitbhai Govindbhai Gohil, (3) Kuldipbhai Merubhai Padhiyar	44

(8).. The Ld. Advocate for the complainant argued orally that the complainant has successfully established his case by presenting sufficient evidence, including relevant documents and witness testimonies, to prove the accused's liability under Section 138 of the Negotiable Instruments Act.

Moreover, he has also argued that the complainant has submitted that the disputed cheque for ₹2,50,000/- was issued by the accused and was dishonoured on presentation due to insufficiency of funds. It is further submitted that the accused has admitted his signature on the disputed cheque. In view of the said admission, the statutory presumptions under Section 118 and Section 139 of the Negotiable Instruments Act, 1881 are attracted in favour of the complainant and the burden shifts upon the accused to rebut the same by leading cogent evidence. It is the case of the complainant that all the witnesses examined by him, including the witness at Exhibit-33, Mr-Kuldipbhai, have consistently supported the event of transaction between the complainant and the accused as well as the issuance and handing over of the disputed cheque by the accused to the complainant. The complainant has also placed on record the written agreement at Exhibit-44. It is submitted that the defence taken by the accused that he does not know the complainant is false and baseless. The accused, despite having legal knowledge, has made false statements, including denial of his own marriage. The complainant has further argued that the accused has not lodged any police complaint alleging forgery or misuse of the cheque against him and even he had not issued any stop-payment instructions to his banker. It is pointed out that several other cheque bounce cases are pending against the accused, which indicates a pattern of receiving money from various persons by issuing cheques and thereafter failing to honour the same. The conduct of the accused, according to the complainant, clearly establishes that the accused had no intention to repay the amount and that the present defence is an afterthought. The complainant has thus contended that he has successfully proved his case beyond reasonable doubt and that the defence version is wholly unreliable and deserves to be rejected. The complainant has prima facie proven the case, satisfying all legal requirements. The accused's defenses are baseless, lacking probable evidence to rebut statutory presumptions. Therefore, it is urged to convict the accused under Section 138 and impose a fine double the cheque amount and also to impose maximum punishment as per law.

(9).. The Ld. Advocate for the accused argued orally that he has already replied to the legal notice issued by the complainant and has denied any transaction or legally enforceable debt between the parties. It is submitted that the complainant does not have the financial capacity to advance such a huge amount of ₹2,50,000/-. There is no corresponding entry in the bank statement of the complainant evidencing any such transaction. It is further submitted that the complainant has not mentioned in the complaint the date, time, place or manner in which the alleged amount was handed over to the accused. The accused has pointed out that the complainant himself has admitted in his notice of Exhibit-22 that he had demanded interest. It is contended that the accused, drawing a monthly salary of ₹65,000/- to ₹75,000/-, had no necessity to borrow any amount from the complainant when he could have easily obtained a loan from the bank. Further, it is the case of the accused that all the witnesses examined by the complainant are his close friends and have been tutored. The witness at Exhibit-35 has admitted that the complainant had guided him regarding what to depose before the Court, which clearly establishes that the witnesses had prior discussion and have given false evidence against the accused. The accused has further submitted that there was no occasion for him to issue stop-payment instructions as there already existed a written agreement between the parties. The accused has strongly contended that the complainant himself has admitted that he had filled in the amount, date and other particulars in the disputed cheque. The signature on the cheque is stated to be in a different pen and appears to be old. It is submitted that the disputed cheque was originally given by the accused to some other person as security and the same has been misused by the complainant to file the present false complaint. On the basis of the above, the accused has prayed that he is innocent and deserves to be acquitted. The absence of corroborative evidence undermines the statutory presumption under Section 139. The accused's mere signature on the cheque does not imply liability, as he has rebutted the presumption by demonstrating probable circumstances of cheque misuse. The complainant has failed to prove the existence of a debt or lawful transaction. He has misused the disputed cheque. Therefore, the accused is innocent. The complainant has not discharged its burden beyond reasonable doubt.

(10).. The following issues arise before me for the final judicial decision of the present case.

:: I S S U E ::

(1).. Whether the prosecution has proved beyond reasonable doubt that the accused has committed an offence punishable under section 138 of the Negotiable Instruments Act, 1881?

(2) What is the order?

(11).. My decisions on the above issues are as follows.

(1) In the affirmative.

(2) As per final order.

// Reasons //

(12).. According to the law of evidence, the burden of proving the facts lies with the parties who have appeared before the court with that fact. In the case of a dishonoured cheque, the complainant has to give evidence at the primary stage and after the evidence is submitted, the inference has to be drawn in favor of the complainant as per sections-118 and 139 of the Act. For this, first of all, whether the elements of section-138 of the Negotiable Instruments Act are proved? That has to be taken into account. In the present case, the allegation against the accused has been made regarding the offence under section-138 of the Negotiable Instruments Act. In which first of all, whether the elements of section-138 of the Negotiable Instruments Act are proved? That has to be taken into account. In which regard, the Hon'ble Supreme Court in **Jugesh Sehgal v. Shamsher Singh Gogi, (2009) 14 SCC 683**has established the principle of the essential elements of the offence under section-138 of the act to be proved and that is :

"9. It is manifest that to constitute an offence under section 138 of the Act, the following ingredients are required to be fulfilled:
(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account;
(ii) The cheque should have been issued for the discharge, in whole or in part, of any debt or other liability;
(iii) that cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;
(iv) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;
(v) the payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;
(vi) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice;
10. Being cumulative, it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under section 138 of the Act."

Section-138Dishonor of cheque on account of insufficient funds etc.:

If any person, for the purpose of discharging any debt or other liability, writes a cheque on an account maintained by him to a banker for the payment of money from that account to another person and the bank returns such cheque without paying it, because the balance in that account is insufficient to accept the cheque, or because the amount of the cheque as agreed upon with the bank exceeds that amount, such person shall be deemed to have committed an offence, and without prejudice to any other provision of this Act, he shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both. Provided that it is hereby provided that…

(a) Unless such cheque has been presented to the bank within six months from the date of writing or such period as may be permitted by law, whichever is earlier,

(b) Unless the payee or the holder, as the case may be, within thirty days of the receipt of information from the bank that the cheque has been returned unpaid, gives written notice to the writer of the cheque, demanding payment of such amount, and

(c) Unless the writer of such cheque, the payee or the holder, as the case may be, fails to pay the amount within fifteen days of the receipt of the said notice.

Explanation:For the purposes of this section, a debt or other liability means a debt or other liability which is legally enforceable. Thus, the offence under Section 138 of the Negotiable Instruments Act is proved.

Thus, for the offence under Section-138 of the Negotiable Instruments Act to be proved, the following requirements must be fulfilled:

1. The cheque must have been given to discharge its obligation.
2. The check must have been returned due to insufficient balance.
3. As mentioned in Section-138, the holder of the cheque should have given written notice of the cheque.
4. As mentioned in Section-138, he should have failed to pay the amount within 15 days of the notice.

If the above essential elements are fulfilled, the Neg. Inst. Act is said to be a bill of exchange and then Section-139 of the Neg. Inst. Act is presumed in favour of the holder.

<u>Section 139 Presumption in favour of the holder:</u>

Until the contrary is proved, it shall be presumed that the holder of the cheque had obtained the cheque referred to in section 138 in whole or in part for the payment of any debt or other obligation.

Note: It shall be presumed that the cheque returned was for a current debt or obligation. The burden of proving the contrary, that the cheque was not for any debt or obligation, shall be on the drawer of the cheque.

<u>Section-118 Presumptions about bills of exchange:</u>

Until the contrary is proved, it shall be presumed as follows:

(a) As to consideration: Every bill of exchange was made or drawn for consideration, and every such bill of exchange was accepted for consideration when it was accepted, drawn, drawn or drawn.

(b) As to date: Every bill of exchange bearing a date was made or drawn on that date.

(c) As to time of acceptance: Every bill of exchange accepted was accepted within a reasonable time after its date and before its maturity.

(d) As to the time of transfer: Every transfer of a bill of exchange was made before the date of maturity of that bill.

(e) As to the order of entries: The entries appearing to have been made on a bill of exchange were made in the order in which they appear to have been made on that bill.

(f) As to the stamp: The lost promissory note, bill of exchange or cheque was duly stamped.

(h) As to the presumption of the holder as the holder: The holder of a bill of exchange is as the holder as the holder unless it has been obtained by any crime or fraud from its legal owner or from a person legally in charge of it or from the person who made or accepted it by any crime or fraud, or for an illegal consideration. The burden of proving that the holder of the deed is the holder of the deed is on him.

(13).. Until the accused produces evidence refuting the presumptions under the above section, the offence under section-138 of the Act shall be presumed to be proven against the accused.

The Hon'ble Supreme Court in case of **M/s. Kumar Exports Vs. Sharma Carpets, 2009(2) GLR 1240** in para-11 discussed in detail when inferences can be made and how the accused can discharge the onus of refuting those inferences.

In cases under Section 138 of the Negotiable Instruments Act:

1. The presumptions under Sections 118 and 139 of the Act are **rebuttable presumptions**.
2. The accused has two primary options to rebut the statutory presumptions:
    1. Show that no consideration or debt existed.
    2. Establish that the non-existence of consideration or debt is so probable that a prudent person would act on the conclusion that they did not exist.
3. The burden of proof for the accused is not as stringent as the complainant's burden in a criminal trial. The accused does not need to disprove the presumptions beyond a reasonable doubt but must create a **reasonable doubt** or **preponderance of probabilities** against the presumptions.
4. The accused may rely on:
    1. **Direct evidence** to show the absence of consideration or debt.
    2. **Circumstantial evidence** that is compelling enough to shift the burden of proof back to the complainant.
    3. **Presumptions of fact** under Section 114 of the Indian Evidence Act.
    4. **The complainant's own case**, including the averments in the complaint, statutory notice, and evidence during the trial.

5. A mere denial by the accused is insufficient. The accused must bring forward facts or circumstances that make the non-existence of consideration or debt probable.
6. Once the accused has successfully rebutted the presumption, the burden shifts back to the complainant to prove the existence of consideration and debt.

(14).. Considering the above judgment with due respect, a reasonable person would be led to believe that a probable defence which can rebut the presumptions or on the basis of which the presumptions are rebutted has such evidence been presented by the accused party? Or whether such defence can be brought on record by the accused party? That has to be considered.

(15).. In the present case, the complainant has submitted the affidavit of the complainant Vide Exhibit-04 and accordingly, the facts supporting the complaint have been submitted on record by the complainant through the affidavit. Further, taking into account the important facts of the cross-examination conducted by the learned Advocate for the accused, the complainant has stated that he has been residing in Alidar village since birth and has good relations with witness Kuldeepbhai Merubhai Padhiyar, who has also been residing in the same village since birth. He is aware that the accused had financial dealings with the said witness Kuldeepbhai. He has not mentioned in his complaint or in the affidavit filed during inquiry the date, time, place or manner in which he allegedly paid ₹2,50,000/- to the accused. He has also not stated when and at what time the accused allegedly handed over the disputed cheque to him. In the bank statement extract produced by him, there is no entry showing that he had a balance or savings of ₹2,50,000/- at any point of time. On being shown the disputed cheque from the court record, he admitted that the signatures on the cheque are in a different pen and all other particulars, including the amount are written in a different pen and also stated that "It is true that the disputed amount has been filled in with my handwriting." He also admitted that his signature does not appear on the legal notice of Exhibit-22. He further admitted that in the said notice, he had demanded interest from the accused. He also admitted that the accused is working as a teacher and draws a salary, and therefore the accused could have obtained a loan from the bank. He voluntarily stated that there exists a friendly relationship between him and the accused. He denied the suggestion that he had received the disputed cheque from Kuldeepbhai and had himself filled in the amount and other particulars, and that he had filed a false complaint.

(15.1).. In the present case, the complainant's witness – Mr. Kuldipbhai Merubhai Padhiyar in his testimony on oath vide Exhibit-33 the witness deposes on oath that he is well acquainted with the accused Bharatbhai Balubhai. He first met the accused through his friend Pratapbhai, and thereafter they used to meet frequently as their acquaintance developed. The witness further deposes that he has personal knowledge of the monetary transactions between the complainant and the accused, wherein the accused used to borrow money from the complainant for construction of his house and, in the like manner, used to borrow money from the witness himself. It is specifically deposed that the accused handed over a cheque to the complainant towards the outstanding dues in the presence of Rawatbhai and Pratapbhai at Alidar Bus Station. However, the accused failed to repay the said amount to the complainant. The witness voluntarily further states that after the said incident, he also forcibly obtained a writing from the witness. In connection with the incident pertaining to the said letter, the father of the accused informed them that his son would die after consuming medicine, whereupon they proceeded to the place. The witness has categorically stated that none of the amounts mentioned in the said letter have been paid to him. Then after, in his cross-examination by the Ld. Advocate of the accused, the present witness has stated that his wife is employed as a teacher. He denied the suggestion that he knows Kaushikbhai merely because both his wife and Kaushikbhai are the teachers, or that he is aware whether his wife, being a teacher, would be eligible for a personal loan of up to Rs. 5 lakhs. The witness admitted that after Bharatbhai filed the present complaint, Kaushikbhai served him with a notice regarding the cheque in question, to which he replied through his advocate. He voluntarily clarified that he has already furnished his reply through his lawyer. The witness admitted that a writing was executed between the parties in the year 2019, which was notarized in person and contained his photograph. He further admitted that the said writing stipulated that he should return the cheques received by him, and that he has in fact returned the said cheques. It was also admitted that from the year 2019 till date, the witness has neither filed any complaint nor issued any notice to Kaushikbhai alleging threats. The witness denied that the money taken by Kaushikbhai from him and Mansingbhai was advanced at interest. He denied having given the disputed cheque to Bharatbhai for any work or having provided any money to Bharatbhai to fight the present case. The witness admitted that he enjoys good relations with the complainant and that the complainant also carries on business with him. However, he denied the suggestion that he is deposing falsely on oath today in support of Bharatbhai on account of any good relations with the latter.

(15.2).. In the present case, the complainant's witness – Mr. Pratapbhai Gopalbhai Vansh in his testimony on oath vide Exhibit-34 the witness deposes on oath that he knows the accused Bharatbhai Balubhai, who is his friend. He further states that he is aware of the monetary transactions between the complainant and the accused, wherein the accused used to borrow money from the complainant for the construction of his house. The accused also used to borrow small and large amounts from the witness in a similar manner. It is specifically deposed that the money transaction between the accused and the complainant took place at Alidar Bus Station in the presence of the witness, Rawatbhai and Kuldeepbhai, at which time the complainant handed over cash to the accused and the accused gave the disputed cheque to the complainant. The witness states that he has since received the amounts pertaining to the small and large money transactions between himself and the accused. The witness is further aware that the accused has been taking money from others and is not returning the same, and has also been issuing threats to kill him. The witness categorically states that the accused has not returned the amount due to the complainant. Then after, in his cross-examination by the Ld. Advocate of the accused, the present witness has stated that he is engaged in agriculture as well as business and is presently running a furniture business, having earlier carried on stationery business at Una. He admitted that, being a stationery businessman, teachers including Kaushikbhai who is a teacher regularly purchase stationery from him and that he therefore knows Kaushikbhai. The witness admitted that he is occupied with his furniture business, which is being conducted by him and his partner. He denied the suggestion that he has to proceed straight home at night on account of his business. He denied that he and Kuldeepbhai are engaged in the business of lending money at interest. The witness admitted that he was brought to the court on that day along with the case file. He denied the suggestion that there was no financial transaction between the complainant and the accused. He admitted that teachers are eligible to obtain personal loans or other loans up to Rs. 5 lakhs. The witness voluntarily stated that he does not know the exact amount of loan that can be availed. He denied the suggestion that he, along with Kuldeepbhai and the complainant, had entered into a compromise and lodged a false complaint in respect of an amount that was never advanced by the accused, and that he is today deposing falsely on oath in support of the complainant.

(15.3).. In the present case, the complainant's witness – Mr. Ravatbhai Ghelubhai Sankhat in his testimony on oath vide Exhibit-35 the witness deposes on oath that he knows Bharatbhai Balubhai but does not know the accused in the present case. He voluntarily clarifies that his knowledge is limited to the fact that the accused used to sit with Kuldeepbhai and had visited on two or three occasions. The witness further states that he is aware of transactions of borrowed money between the complainant and the accused which took place on two or three occasions and that the said transactions have not been completed. He voluntarily deposes that the cheque in question was given but was subsequently taken back after the accused threatened to commit suicide. The witness categorically states that the accused has not repaid the amount due to the complainant. Then after, in his cross-examination by the Ld. Advocate of the accused, the present witness has stated that he is engaged in agricultural work. He admitted that Bharatbhai is his friend and that he maintains good relations with him. He admitted that the complainant, Kuldeepbhai and Pratapbhai brought him to court to depose and that they travelled together, during which they discussed the testimony to be given in court. The witness admitted that he is aware of a transaction between the accused and Kuldeepbhai and that apart from that he has no other information. He denied the suggestion that he is lying when he states that he is aware of borrowed money transactions between the complainant and the accused on two or three occasions. He denied that Kuldeepbhai, Pratapbhai and two or four other persons together carry on the business of lending money at interest. He further stated that he has no information as to when the complainant gave notice to the accused or when the present complaint was filed.

(15.4).. In the present case, the complainant's witness – Mr. Maheshbhai Himatbhai Parmar in his testimony on oath vide Exhibit-36 the witness deposes on oath that he knows both the complainant Bharatbhai Balubhai Gohil and the accused Kaushikkumar Manilal Lakhani. He has stated that there was a money transaction between the complainant and the accused, and that the amount given by the complainant to the accused has not been repaid. However, the witness has categorically stated that he is not aware whether the accused had issued any cheque to the complainant towards the said transaction. He has further deposed that there was no money transaction between him and the accused. He has stated that he resides in Fatsar and knows that the accused is a teacher in Fatsar. Then after, in his cross-examination by the Ld. Advocate of the accused, the present witness has stated and admitted that Bharatbhai Balubhai Gohil did not give any money to the accused in his presence. Further, he voluntarily stated that he knows Bharatbhai used to come to collect money. He also admitted that Bharatbhai is his relative and he knows the accused as a teacher in the village where his children study and he does not know the date on which Bharatbhai came to collect money and he went to Alidar, but denied that Bharatbhai gave money to the accused at the bus stand and Bharatbhai has good relations with Pratapbhai Gopalbhai and Kuldeepbhai Merubhai and also admitted that the accused had money transactions with Kuldeepbhai Merubhai and had given cheques to him and Bharatbhai used to frequently visit Fatsar to collect the money which he had given to Kuldeepbhai and the accused is financially well-off as he is working as a teacher.

(15.5).. In the present case, the accused – Mr. Kaushikkumar Manilal Lakhani in his testimony on oath vide Exhibit-42 the accused deposes on oath that and the accused admits that the disputed cheque No. 19 bears his signature and was dishonoured due to insufficient funds. However, he completely denies any transaction or liability towards the complainant Bharatbhai. Further, he stated that he had no dealing with Bharatbhai at any time. All his transactions were only with Kuldeepbhai, to whom he had given the cheque. He had already repaid the money to Kuldeepbhai and executed a notarised agreement. Kuldeepbhai misused the cheque and handed it over to the complainant, leading to this false case. Further, In cross-examination by the Ld. Advocate of the complainant, he denied receiving any money from the complainant, denied giving the cheque to him, and denied borrowing from complainant’s circle. He admitted previous cheque bounce cases against him and his friendship with Kuldeepbhai’s group. During his entire cross-examination, he maintained that there is no privity or debt between him and the complainant.

(16).. Throughout the entire trial of this case, the accused has not disputed the fact that the cheque was not from her own account. Moreover, the accused has not disputed the return of the cheque. Thus, in all the above circumstances, the main question for the adjudication of the case remains whether the cheque was given as a legitimate debt or not? Considering the documents submitted by the complainant, including the date of the disputed cheque, the date of the cheque return memo, the date of the notice given to the accused and the date of filing the present complaint, the complainant has filed the present complaint within the prescribed time limit, so that the present case falls within the scope of Sections 118(a) and 139 of the Act. Accordingly, the presumption against the accused is evident. The onus of rebutting the presumptions against the accused, if they exist, or of bringing the facts to the record, lies with the defence and until such legal presumptions are rebutted, they continue to exist as such against the accused.

In view of the above facts, if the principle of Section-139 of the Negotiable Instruments Act, 1881 is taken into consideration, it will be presumed that the cheque was given in respect of the debt of the debtor, unless the contrary is proved or any rebuttal evidence is produced.

(17).. In the present case, taking into account all the evidence presented by both the parties, the accused has taken defence that the signature of the accused is in a different pen/ink from the other handwritten particulars such as date, amount in words and figures, and payee name. The complainant further admitted that "the disputed amount has been filled in with my signature." Now perusing the documentary evidence of Exhibit-20 & 21, Pay-in-Slip and Return Memo, these documents prove the presentation of the cheque and its dishonour on the ground of "Funds Insufficient". The dishonour is not in dispute.

Further, exhibit-22 which is a Legal Notice the complainant in his cross-examination candidly admitted that "my signature is not on the said notice" and that Ex.22 is only a photocopy. This is a material infirmity. A statutory notice under Section 138(b) of the NI Act must emanate from the payee/holder and is expected to bear his signature or proper authorization. The fact that the complainant hasn't signed the letter makes it very unlikely that it is real and was sent correctly. Additionally, the complainant admitted that he had demanded "interest" in the notice, which finds no mention in the complaint as forming part of the alleged debt. Exhibit-23,24 & 25, the RPAD acknowledgment and postal receipts prove service of notice. The accused replied vide Exhibit-25, which is consistent with his defence throughout denying any transaction with the complainant and asserting that the cheque originated from his dealings with Kuldeepbhai Merubhai Padhiyar which stood settled. Exhibit-43 & 44, Notice dated 16.03.2021 and Notary

Agreement dated 13.08.2019. These documents do not help the accused in rebutting the presumption. Exhibit-44 is a registered notary agreement executed between the father of the accused and three persons including Kuldeepbhai Merubhai Padhiyar. Neither the complainant nor the accused is a party to it. The accused did not examine his father as a witness. Crucially, the agreement does not refer to the disputed cheque at all. The accused admitted that the number of the disputed cheque is not mentioned in the agreement. The agreement records that all cheques had been returned as of August 2019. The disputed cheque is dated 19.01.2021, more than 17 months later. If this was an old security cheque lying with Kuldeepbhai, the accused who claims to have legal knowledge ought to have issued stop-payment instructions or lodged a complaint with the bank or police when he allegedly came to know of the misuse. No such kind of action was taken. Further, exhibit-43, notice is an afterthought issued only after the legal notice from the complainant. These documents, far from rebutting the presumption, actually weaken the accused's defence of "old cheque misuse" because they show that by 2019 the accused and his father were already conscious of cheque-related disputes, yet no protective steps were taken regarding this particular instrument for over a year and a half.

Further, from the oral evidence of Exhibit-4 of the complainant, the complainant mentioned the specific date, time, place or exact manner in which the cash of Rs. 2,50,000/ was allegedly handed over to the accused or the cheque was received. In cross-examination, he admitted "It is true that in my complaint and affidavit I have not given any details about when, on what date and at what time I gave Rs. 2.5 lakh to the accused." and similarly regarding receipt of the cheque. The complainant admitted close and friendly relations with witness Kuldeepbhai Merubhai Padhiyar. He also admitted that the accused had prior financial dealings with Kuldeepbhai. These admissions, when taking into consideration with the 2019 notary agreement of Exhibit-44, make the defence story of an old security cheque originating from the Kuldeepbhai circle and later misused. In this connection, witness Kuldeepbhai Merubhai Padhiyar in his testimony of Exhibit-33 supports the complainant's version of the transaction at Alidar bus station, his cross-examination reveals that he had executed the 2019 notary agreement, had returned cheques as per that writing, and maintains close business and personal relations with the complainant. His voluntary statement that the accused's father obtained a letter by threatening suicide is uncorroborated and appears to be an afterthought to explain why the cheques were allegedly not returned. Witness Pratapbhai Gopalbhai Vansh at Exhibit-34 & Rawatbhai Ghelubhai Sankhat at Exhibit-35, both states presence at the time of the alleged transaction. Witness Maheshbhai Himmatbhai Parmar at exhibit-36, who resides in Fatsar and is a relative of the complainant. Significantly, he admitted that "Bharatbhai did not give any money to Kaushikbhai in my presence." He also states that the complainant used to visit to "collect money". This does not corroborate the specific case of handing over Rs. 2,50,000/- on a particular occasion.

Further, the accused testimony and his cross-examination of Exhibit-42 & Section 313 CrPC Statement, he admits his signature on the cheque but explains that it was a blank signed security cheque given to Kuldeepbhai Merubhai Padhiyar in connection with transactions of 2019 and earlier, which were fully settled as per the notary agreement of exhibit-44. He has denied any acquaintance or financial transaction with the complainant. He has placed on record the 2019 agreement and the subsequent notice issued to the Kuldeepbhai group alleging misuse of cheques.

Now, from the above discussion and the facts of the matter, considering the judgment of the Hon'ble Supreme Court of **Rangappa v. Sri Mohan, (2010) 11 SCC 441**, the Hon'ble Supreme Court held that once the signature on the cheque is admitted, the presumption under Section 139 NI Act is attracted. The burden shifts to the accused to rebut it by preponderance of probabilities by showing that no debt or liability existed or that the cheque was not issued towards any such debt. In the present case, the accused has failed to discharge this burden. While he admits his signature, his explanation that he gave a blank signed cheque to Kuldeepbhai in 2019 or earlier as security for settled transactions is not probable. The 2019 notary agreement of Exhibit-44 itself records that all cheques had been returned. The disputed cheque is dated 19.01.2021, more than 17 months later. The accused took no steps to stop payment or inform the bank despite claiming knowledge of misuse. The different ink on the cheque and the complainant's admission regarding filling of particulars are not sufficient to rebut the presumption when the core transaction is supported by consistent oral evidence of the complainant and three witnesses. The accused's history of other cheque bounce cases, his defence is not acceptable. Thus, the presumption remains unrebutted.

Further, in the judgment of **Bir Singh v. Mukesh, (2019) 4 SCC 197** the Hon'ble Supreme Court held that even a post-dated cheque or a cheque issued by way of security would attract Section 138 if it represents a debt or liability which has become due. In the present case, the complainant has proved through oral evidence that the accused borrowed Rs. 2,50,000/- for construction and issued the cheque in discharge of that liability. The witnesses have consistently supported the transaction at Alidar bus station. The accused's defence of "no transaction with complainant" and "misuse of old cheque" has been disbelieved.

Further, in the present case the complainant has established the debt through consistent oral evidence of multiple witnesses who were present at the time of the transaction. Minor omissions in the complaint regarding exact date and time do not discredit the case when the witnesses have supported the core transaction. The penal provision of Section 138 is attracted once the ingredients are proved and the presumption remains unrebutted.

(18).. Now, at the end of above discussion, in the case of **K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510**, the Hon’ble Supreme Court held that for a conviction under Section 138, the following conditions must be met:

a) A cheque must be issued for a legally enforceable debt.

b) It must be dishonored due to insufficient funds.

c) A valid notice must be served, and the drawer must fail to pay within the statutory period.

Looking to the above discussed evidence and the facts and arguments of the parties, in the present case, all conditions are satisfied. The Hon’ble Supreme Court in the judgment of **Hitenbhai Parekh v. State of Gujarat 2009(3) GLH 742** held that a signed cheque implies authority to fill details, and the drawer remains liable for the debtand in such circumstances, the above stated defence of the accused does not seem to be acceptable, so I clearly hold that the defence raised here is not acceptable.

(19).. Thus, at the end of all the above discussions, the accused has not proved his defence for the purpose of rebutting the presumption under Section-139 of the Negotiable Instruments Act, 1881, in that case, the Hon'ble Supreme Court in **ROHITBHAI JIVANLAL PATEL VS. STATE OF GUJARAT & ANR. CRIMINAL APPEAL NO. 508 OF 2019 (Arising out of Special Leave Petition (Crl.) 1883 of 2018)** considering the principle established in the judgment dated 15.03.2019, until the accused proves his defence, taking into account the presumption under Sections 118 and 138 of the Negotiable Instruments Act, 1881, the complainant is not required to prove his due amount as claimed and even by raising a doubt, and it is not necessary to prove and even by raising doubt, the accused cannot be considered to have succeeded in refuting the presumption against him.

Moreover, in the Judgement **TRIYAMBAK S. HEGDE V/s. SRIPAD CRIMINAL APPEAL NO. 849 OF 2011** the Hon'ble Apex Court has held that, if the signature on the cheque is admitted, then in such a situation, the presumption under Section-139 of the Act has to be made. Therefore, any defence put forward by the accused does not seem to be acceptable.

(20).. Thus, at the end of all the above discussions, on the basis of the oral and documentary evidence submitted by the complainant and on the basis of the record, it is clearly concluded that the accused has failed to rebut the legal presumption by putting forward any specific defence of his own. No normative provisions are found to have been violated. The complainant has proved, beyond reasonable doubt, that the accused issued the cheque to discharge a legally enforceable debt, which was dishonored, followed by compliance with statutory notice requirements. The accused's defence lacks cogent evidence to rebut the Section 139 presumption. The offence under Section 138 is established. Therefore, it is clear from the discussion and as per the circumstances of the matter on hand that the accused is guilty of an offence under Section 138 of the NI Act. I humbly hold that the complainant has succeeded in proving its case. Thus, at the end of the above entire discussion, the answer to point number : 1 is given "in the affirmative", the accused is declared to be convicted under section-138 of the Negotiable Instruments Act as per the section-255(2) of the Criminal Procedure Code and the matter is kept for hearing for the quantum of the punishment.

Date : 13.07.2026.
Place : Girgadhda.

(H.M.Vaishnav)
Principal Civil Judge & JMFC, Girgadha.
(UIC No. GJ 01530)

Heard about the punishment.

Firstly, it has been argued by the learned Advocate for the complainant in this case that in the circumstances where we have proven our complaint to be true and the accused has given a disputed cheque to pay the outstanding dues and on the refusal of which she has cheated us and committed the present crime and even now we have not received our legal amount and we are forced to file this present complaint, therefore it is requested to order the accused to pay us fine of double the amount of the cheque and to give us the maximum punishment as per the law.

Thereafter, according to the argument made by the learned Advocate for the accused in this case, the accused has all the responsibilities of the family on her. The accused has no involvement in the crime, so considering all the facts, the least punishment should be given. The accused has no involvement in the crime, which is why it is requested to give the least punishment considering all the facts.

Thus, considering the submissions and arguments of both the parties and all the facts on record, the charge against the accused has been proven beyond a doubt. Moreover, the present crime is of a financial nature, the accused is a principal in a government school and although he has committed the present offence and there is also number of such cases against him which shows his conduct and habitualness and therefore a fine of double the amount of the disputed cheque is imposed and the amount to be given to the complainant as compensation, I am of the clear opinion that the purpose of justice will be served. Further, the Hon'ble Supreme Court has also described the scope of the law and emphasized the need for adequate punishment. Considering Section-357(1)(b) of the Indian Criminal Procedure Act, the amount of the loss suffered by the complainant should also be paid to the complainant as compensation. The disputed cheque of the complainant has been returned. If the entire amount of the cheque had been paid to the complainant at that time, the complainant would not have had to resort to the present legal proceedings and the complainant could have used this amount as an investment or some other use to earn income and thus the loss of interest suffered by the complainant is given as compensation, the purpose of justice will be maintained.

When the crime against the accused is proven, the purpose of the provision made in the law can be achieved by punishing the accused with both punishment and compensation instead of just fine or punishment. Therefore, considering the seriousness of the crime, the purpose of justice will be maintained by punishing the present accused with simple imprisonment for 1 (one) year and paying double the amount of the cheque to the complainant as compensation.

Therefore, at the end of all the discussions, the following verdict is passed under issue number 2, declaring the accused convicted.

:: Final Order ::

(1).. The accused in this case, **Kaushikkumar Manilal Lakhani**, resident of Bh. Blood Bank, Una, Ta. Una, Di. Gir Somnath, is hereby convicted for the offence of Section-138 of the Negogitable Instrumenct Act, and sentenced to undergo **simple imprisonment for a term of 1 (one) year** and ordered to pay double the amount of the cheque, i.e. **Rs.5,00,000/- (Rupees Five Lac Rupees)**, to the complainant as compensation, under Section-255(2) of the Code of Criminal Procedure.

(2).. It is further ordered that if the accused fails to pay such compensation, he shall undergo simple imprisonment for a further period of 2 (two) months.

(3).. A copy of the order shall be provided to the accused free of cost under Section-363 of the Code of Criminal Procedure.

Signed and pronounced today in the open Court on date : 13th of July, 2026.

Date : 13.07.2026.
Place : Girgadhada.

(H.M.Vaishnav)
Principal Civil Judge & JMFC, Girgadhada.
(UIC No. GJ 01530)