Exhibit	:	**31**
Filed on	:	13/02/2024
Decided on	:	16/03/2026
Duration	:	**Y**-02, **M**-01, **D**-03

IN THE COURT OF SESSIONS JUDGE, JAMNAGAR.

Criminal Appeal No.59 of 2024

Appellant :-

1. Liyakat Kasambhai Chavda,
   Age about 37 years, Occupation : Driving,
   Resident of behind Market,
   Moti Ashapura's Khadki,
   Bachunagar, Jamnagar.

V E R S U S

Opponents:-

1. The State of Gujarat,
   Through : D.G.P.,Jamnagar.
2. Hitendrasinh Gagendrasinh Jadeja,
   Age about 34 years, Occupation : Service,
   Resident of village Rojiya,
   Ta.Dhrol, Dist. Jamnagar.

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Subject :- *Appeal U/s. 374 (3)(A) of the Criminal Procedure Code.*

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Appearance :-

Mr.A.M.Sama,learned advocate for Appellant /Accused.

Mr.D.R.Trivedi, learned Ad.PP for the Opponent No.1/State.

Mr.L.N.Nanda, learned advocate for Opponent No.2.

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

1. The appellant-accused has challenged Judgment and conviction order dated 19/01/2024 passed by the Court of 10th Additional Chief Judicial Magistrate, Jamnagar in Criminal Case No.1783 of 2019, by which appellant/accused convicted for the offence punishable under Section 138 of the Negotiable Instrument Act. The appellant/accused is convicted for two years of simple imprisonment for offence punishable under Section 138 of the Negotiable Instrument Act. Appellant/accused is directed to pay fine to the tune of Rs.3,00,000/- and out of fine amount,Rs.1,50,000/- would be paid to complainant, in default, simple imprisonment of six months.

2. The short facts leading to the appeal are that ;

Accused required money for his personal needs and for that, he requested complainant to hand-loan and complainant gave Rs.1,50,000/- on account of friendly relation. Thereafter, time and again, the complainant was asking to return amount of hand-loan, hence accused issued a cheque bearing No.133692 for sum of Rs.1,50,000/- in favour of complainant and assured him that amount mentioned in cheque would be honoured. When said Cheque was presented by complainant in his bank account for clearing, said Cheque was returned with endorsement of 'Funds insufficient' on 17/12/2018. On 11/01/2019, demand notice through advocate was issued to accused and same was served upon him on 12/01/2019. Accused has neither replied nor paid cheque amount. In light of these facts, complainant was constrained to file complaint against accused under section 138 of The Negotiable Instrument Act, 1881 before Trial Court.

3. During trial, complainant adduced following oral as well as documentary evidences ;

(A) Oral Evidence :-

Sr.No.	Details	Exh
1	Affidavit of chief-examination of complainant	05

(B) Documentary Evidence :-

Sr.No.	Particular of Documents	Exhibit
1	Cheque	26
2	Cheque Return Memo	27
3	Copy of demand notice	28
4	Receipt of RPAD	29
5	Acknowledgment	30
6	Copy of Bank Statement from 01/01/2017 to 31/12/2018	44
7	Copy of Bank Statement from 01/04/2018 to 22/04/2022	45
8	Copy of Revenue Records of land revenue survey No.308,106 and 487 situated at village Rojiya,Ta.Dhrol.	46

4. Accused has adduced oral and documentary evidence in his defence as follows ;

(A) Oral Evidence :-

Sr.No.	Details	Exh
1	Deposition of accused	53
2	Deposition of DW-2 Faizalbhai Mamadbhai	57
3	Deposition of DW-3 Abhinav Omkarnath	60

(B) Documentary Evidence :-

Sr.No.	Particular of Documents	Exhibit
1	Certificate under Bankers Book Evidence Act	62
2	Certificate under section 2(a)(b) of the Bankers Book Evidence Act	63
3	Mirror Copy of Cheque Return Memo for cheque No.133692	64

5. On conclusion of trial, Trial Court, by impugned judgment and conviction order dated 19/01/2024, convicted accused for offence punishable under section 138 of The Negotiable Instrument Act, 1881 and was sentenced accordingly.

6. Being aggrieved and dissatisfied by impugned judgment of conviction, appellant has approached this Court by way of present criminal appeal with prayer to allow present appeal by setting-aside impugned judgment of conviction order and to acquit appellant for offense punishable under section 138 of The Negotiable Instrument Act, 1881.

7. Mr.L.N.Nanda, appeared on behalf of complainant, whereas on behalf State, learned Ad.PP Mr. D.R.Trivedi appeared.

8. The Learned Advocate Mr. for appellant has filed written argument at Exh.28. Crux of argument is that complainant has produced documentary evidence, but are not proved by complainant and failed to prove his case, hence, appeal is required to be allowed. The judgment is bad in law and contrary to evidence and material on record.

It is further argued that cheque book was lying in the dashboard of accused's Car and complainant had took-away cheque in question and keep in his possession, thereafter, he misused it by filing false complaint against him. It is further argued that trial Court has committed a serious error in assuming that accused was served with notice because, in fact, accused has not received any demanded notice from complainant and statutory notice under Section 138 of the Negotiable Instrument Act is necessary and mandatory. Moreover, Summons issued by the Court at Exh.7 was also not served upon accused. Thereafter, Court has issued Bailable Warrant against accused, but not served upon him and whenever, accused came to know about the Warrant, he would on his own, approach the Court.

It is further argued that, he has not entered with any loan transaction with complainant. Moreover, complainant is not capable to gave a hand-loan of Rs.1,50,000/-. Complainant has stated that accused was working as 'informer'. But, in cross-examination, complainant has admitted the facts that he is working in the crime branch at City 'A' Division Police Station and his duty is to maintain 'Registers' and it is not his duty to remain in contact with people. Therefore, facts stated by complainant of hand-loan of Rs.1,50,000/- is not believable as complainant's monthly salary was Rs.19,750/-.

It is further argued that complainant has stated that he was having 90 Vighas agricultural land but not produced a single document to show it. It is further argued that Trial Court has erred by not evaluating evidence in its true perspective. The documentary evidence based upon which punishment order is passed were not legally proved and hence also, impugned judgment is required to be set aside by allowing present appeal.

9. On the other-hand, complainant has submitted written argument at Exh.29. Sum and substance of argument is that complainant has produced oral as well as documentary evidence to establish the offence under Negotiable Insufficient Act as well as affidavit of Examination-in-chief at Exh.5 to prove transaction of loan as well as dishonour of cheque and signature of accused on cheque. That Trial Court has passed order in consonance with the facts and evidence on record and settled proposition of law, which does not requires any kind of interference and prayed to dismiss present appeal.

10. Learned Ad.PP for the State Mr.Trivedi has argued that grounds cited in judgment and reasons which have been assigned by Trial Court are in consonance with facts and evidence on record and after evaluating all documents, no interference is called for and hence urged to reject present appeal.

11. Having, gone through the complaint, grounds of appeal and submissions advance on behalf of respective parties, following points emerges for the consideration.

1	Whether complainant proves that cheque dated 11/12/2018 bearing No.133692 for sum of Rs.1,50,000/- was issued by accused in his favour towards discharge of legally enforceable liability?
2	Whether impugned judgment and order dated 19/01/2024 passed by learned Trial Court in Criminal Case No.1783 of 2019, convicting appellant (accused) for offence punishable u/s.138 of The Negotiable Instrument Act, 1881 is incorrect and requires to set-aside ?
3	What final order ?

12. My findings on the above mentioned issues with reason are as under.

1	In the Affirmative.
2	In the Negative.
3	As per final order.

-: R E A S O N S :-

Issue no. 1 :-

13. This is an appeal arising out of judgment of conviction recorded by Trial Court under section 138 of the NI Act. So at this stage it would be proper and convenient to take up for determination, question as to what are presumptions available to complainant under section 138 of the NI Act. In the case on hand, considering record, it is to be seen whether appellant has been able to rebut presumption under section 139 so this court can presume that cheque was not issued for discharge of debt or any liability.

14. In present matter, complainant himself appeared in witness box as CW-01 and tendered his affidavit of evidence in lieu of chief-examination at Exh-05, wherein he has reiterated same facts in complaint. He further deposed that accused has given him a cheque to repay the amount of hand-loan and cheque issued by accused was dishonoured and this facts is very well within the knowledge of accused, notice was duly served upon him, and accused failed to replied that notice and intentionally avoided to pay legal debt.

In cross-examination complainant has stated that he is working in the police department since 2014. He is serving at the post of Police Constable. He was serving in Surat in 2019. His monthly salary was Rs. 19750/- in the year 2018. There was no deduction from -19750/-. It is true that his salary is credited to the bank. He resided at village Rojiya, Ta.Dhrol. Presently, his bank account is in Surat, earlier it was in SBI bank situated at Jamnagar, M.P.Shah, Saru Section Road. He got married in 2017. His monthly household expenses were around 3000/- and his other expenses were around Rs. 4,000/-.

Complainant has further stated that he was not filing Income Tax Return. It is true that his monthly savings was Rs.12,000/-. He gave the accused Rs. 1,50,000/- in cash. He was doing farming, having 90 Vighas agricultural land at village Rojiya. It is true that he has not produced any evidence regarding agricultural land. He has not produced any evidence of sale of agricultural produce. It is true that he has not mentioned when he gave Rs. 1,50,000/- to the accused in his affidavit.

Complainant has further stated that he knew the address of the accused's house but never visited his house. The accused was working as a driver. He never had any monetary transactions with the accused in past. He gave the accused an amount of Rs.1,50,000/- for his business. He sent a notice under section 138 of the NI Act to the accused’s residential address, it is true that signature on the cheque at Exh.26 and the signature on the acknowledgment slip at Exh.30 are different.

Complainant has further stated that he knew that accused was informer of his police station and thus he he met him. He used to come to Jamnagar from Rojhiya on a bike. It is true that he has not produced any document showing that agricultural land is in his name. It is true that no agricultural land is in his name. It is true that no agricultural land is in brother's name. It is true that he has not submitted any document showing that agricultural land is in the name of Garjendrasinh Jadeja. It is true that it is not reflected in bank statement that Rs. 10,000/- to 12,000/- per month are saved in his savings account. It is true that there was never an amount of more than Rs.50,000/- in his bank statement. It is true that as soon as the salary was credited to his bank account, he was used to withdraw that amount for his expenses on the second or third day. It is true that the accused was driving a car. It is true that Faizal Bhai Chavda is his friend. Faizal Bhai Chavda was working at City A Division Police Station at that time. He was working in the Crime Branch at City ‘A’ Division Police Station Jamnagar. It is true that in the Crime Branch, he did not have any interaction with people.

15. On perusal of record, it transpires that Complainant has produced copy of original cheque bearing No.133692 of Rs.1,50,000/- at Exh.26, Return memo of the State Bank of India at Exh.27, demand notice at Exh.28, Postal receipt at Exh.29 and Acknowledgment of RPAD at Exh.30.

16. As per provision contained under section 146 of The Negotiable Instrument Act, 1881, The Court shall on production of bank’s slip or memo having the official mark denoting that cheque has been dishonoured, presume fact of dishonour of such cheque. Section 146 dispensed with formal proof of documents referred thereby. Production of document having thereon endorsing that cheque has been dishonoured is sufficient and when document is produced, Court shall, presume fact of dishonour of cheque.

Complainant has produced copy of bank return memo at Exh.27 issued by State Bank of India which shows that cheque No.133692 was returned by reason of 'Funds insufficient'. Accused has not produced any evidence to disprove this fact. Thus, it is clear that said cheque was returned by the bank as unpaid by reason of 'Funds insufficient'.

17. On perusal of copy of demand notice at Exh.28, postal receipt at Exh.29 and Acknowledgment of RPAD at Exh.30, it appears that notice in writing demanding payment of cheque amount was given by complainant to accused on 08/01/2019. Said notice was given within 30 days from date of receipt of information from bank regarding return of cheque as unpaid. Postal receipt at Exh.29 shows that notice was sent by complainant to accused through registered post and Acknowledgment of RPAD certified that cover/notice was delivered to him.

18. Accused has appeared in witness box and deposed at Exh.53. Appellant/accused has taken a defence that he has not received any notice under Section 138B of the Negotiable Instrument Act. Hence, present case is not tenable in absence of valid and effective service of notice to accused.

In cross-examination, accused admitted that he was not residing at the place of address mentioned in the notice and he denied to identify his signature on Acknowledgment at Exh.30.

It is required to note that here in the case on hand, complainant has produced Acknowledgment at Exh.30 certified that cover/ notice was delivered to concerned and for that accused herein has put his signature as "લીયાકત ચાવડા". Accused has not produced any evidence that he had not put his signature on the Acknowledgment at Exh.30 or else-one put his signature on behalf of him.

Considering the cross-examination of accused as well as Acknowledgment at Exh.30, it is quite clear statutory-demanding notice was sent to the accused at his residential address, which was delivered to him accordingly. At this juncture, it is pertinent to note that Section 27 of the General Clauses Act, 1897 defines the meaning of service by post as follows ;

"Meaning of service by post," establishing that when a Central Act authorizes a document to be served by post, service is deemed effective if the letter is properly addressed, prepaid, and sent via registered post. It presumes delivery in the ordinary course of post."

Thus, Section 27 of the General Clauses Act, 1897, establishes a legal presumption that a properly addressed, stamped, and posted letter is deemed to have been served on the addressee at the time it would ordinarily be delivered, unless the contrary is proven. This presumption simplifies proving service in legal proceedings. Once the complainant proved that notice was properly addressed and dispatched by registered post, it is deemed to have been duly served under Section 27 of the General Clauses Act,1897. Now, burden shift upon accused to prove non-receipt of demand notice.

Moreover, accused has not adduced any evidence to disprove the fact of written notice sent by complainant at correct postal address of accused and its delivered to him. Thus, it is clear that demand notice for cheque amount was sent by complainant to accused through registered post and was delivered to accused.

Accused has not adduced any evidence to disprove the fact of written notice sent by complainant at correct postal address of accused. It is required to note that a demand notice as contained in a Section 138 NI Act, served upon accused as per Acknowledgment at Exh.30. The court presumes legal service, shifting the onus to the accused to prove that he did not receive it or that he had changed his address prior that. Thus, it is clear that demand notice for cheque amount was sent by complainant to accused through registered post and same has been delivered to him accordingly.

19. It is required to note that accused herein deposed at Exh.53 and stated that in September-2016 he obtained a loan from Aspire Home Finance Company, so he kept his cheque book with him on the dashboard of Car. At that time, some how, complainant took away his cheque and presented in bank. he identified his signature on cheque at Exh.26 and denied to identify other handwriting on the cheque.

In cross-examination, complainant has admitted that he has not filed any Police complaint regarding theft of cheque at Exh.26 and not made any application to bank regarding stop-payment of said cheque.

It is required to note that accused herein raised a defence that cheque at Exh.26 was stolen by complainant, which was kept on dashboard of his Car. On perusal of cross-examination of accused, it appears that accused has not produced any documentary evidence to prove it nor raised that defence by giving reply of notice to raise a probable defence, accused has to produce at-least copy of notice to bank about theft of cheque and should have requested bank to stop the payment of cheque in question.

20. On behalf of accused, Faizalbhai Mamadbhai Chavda deposed at Exh.57. Main contention of the deposition is that he knew the complainant as he was serving with him at City ‘A’ Division Police Station. He also knew accused Liyakat @ Yakub Kasambhai Chavda, who drives Eeco Car between Jamnagar to Dhrol. Liyakatbhai was not ‘informer’ of his Police Station. Complainant has told him that accused has taken a hand-loan from him.

From above deposition, it appears that said witness has no personal knowledge about the loan transaction took place between complainant and accused.

21. Accused has examined Bank Officer namely Abhinav Omkarnath Sharma at Exh.60. He deposed that he is working as Branch Manager. He explained the procedure of cheque return accordingly and produced Certificate under Bankers Book Evidence Act at Exh.62, Certificate under section 2(a)(b) of the Bankers Book Evidence Act at Exh,63 and Mirror Copy of Cheque Return Memo for cheque No.133692 at Exh.64. He further deposed that cheque return Memo at Exh.27 contained the round seal of bank and signature of branch manager.

On perusal of afore-noted deposition of bank witness, it appears that cheque return memo at Exh.27 was issued by bank and process of cheque return memo was done as per guidelines of R.B.I.

22. From above deposition of witnesses as well as documentary evidence, it is established that complainant had given Rs.1,50,000/- to accused as a hand-loan and cheque was given by accused towards legal debt to complainant and cheque in question was dishonoured due to 'Funds insufficient' and accused herein failed to rebut issuance of cheque. It may be noted that initial presumption is in favour of complainant and as per Section 139, onus is on accused to submit probable defence which may creates doubt about the legal debt.

For that it is required to refer the judgment in case of **Rangappa vs Sri Mohan, reported in AIR 2010- SC- 1898,** wherein Hon'ble Supreme Court has observed as under ;

" 14. In light of these extracts, we are in agreement with the respondent-claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat (supra) may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard or proof. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of `preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally

enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.

23. In view of the above oral as well as documentary evidence available on the record, complainant has stated that he had given a loan of Rs.1,50,000/- in cash and in discharge of that debt accused had issued a cheque No.133692 for the sum of Rs.1,50,000/-

In view of above loan transaction, accused had given a cheque No.133692 ,dated 11/12/2018 of Rs.1,50,000/- drawn on Indian Bank in favour of complainant. It is proved that on presentation of said cheque to bank by complainant for clearing, it was dishonoured and returned by bank as unpaid by reason of 'Funds insufficient'. It is also proved that demand notice for cheque amount was given by complainant to accused through registered post, but accused failed to make payment of cheque amount within 15 days of refusal of demand notice.

In the matter between **T.P. Murugan v. Bojan, (2018) 8 SCC 469**, that " *Once a cheque has been signed and issued in favour of holder of cheque, there is statutory presumption under S. 139 of NI Act that the cheque is issued in discharge of a legally enforceable debt or liability. However, said presumption is a rebuttable one. Issuer of cheque can rebut that presumption by adducing credible evidence that the cheque was issued for some other purpose like security for loan.*"

24. Appellant herein has raised a defence that complainant was not capable to give a hand-loan of Rs.1,50,000/- and complainant has not produced evidence to show his financial capacity. Complainant was working as Police Constable at that time and was drawing monthly salary at Rs.19,750/-. But, accused has not produced documentary evidence to show that complainant has

no capacity to give loan of Rs.1,50,000/- nor given a reply to notice by raising such contention.

Recently, Hon’ble Apex Court has observed and issued various guidelines with a view to increase the effectiveness of proceedings under Negotiable Instrument Act and to enforce the reliability of cheque to make of payment is commercial transactions in substitute of cash amount. Further, with regards to financial capacity of complainant, it is for accused to prove that it was lacking. And that accused should have raised his defence by giving reply to notice of complainant, but no reply was given. At this stage it is required to refer the case titled as **Sanjabij Tari Versus Kishore S.Borcar, reported in 2025 (0) AIJEL-SC 75934**, wherein Hon’ble Supreme Court has observed as follows ;

“ 15. In the present case, the cheque in question has admittedly been signed by the Respondent No.1-Accused . This Court is of the view that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arises against the accused. It is pertinent to mention that observations to the contrary by a two Judges Bench Criminal Appeal No.1755/2010 Page 5 of 19 in Krishna Janardhan Bhat vs. Dattatraya G. Hegde, (2008) 4 SCC 54 have been set aside by a three Judges Bench in Rangappa (supra).

16. This Court is further of the view that by creating this presumption, the law reinforces the reliability of cheques as a mode of payment in commercial transactions. When the evidence of PW-1 is read in its entirety, it can not be said that the appellant- complainant had no wherewithal to advance loan ;-

17. Needless to mention that the presumption contemplated under Section 139 of the NI Act, is a rebuttable presumption. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque [See: Bir Singh vs. Mukesh Kumar, (2019) 4 SCC 197].

18. The judgment of this Court in APS Forex Services Private Limited (supra) relied upon by learned counsel for the Respondent No.1-Accused only says that presumption under Section 139 of the NI Act is rebuttable and when the same is rebutted, the onus would shift back to the complainant to *prove his financial capacity, more particularly, when it is a case of giving loan by cash. This judgment nowhere states, as was sought to be contended by learned counsel for the Respondent No.1-Accused, that in cases of dishonour of cheques, in lieu of cash loans, the presumption under Section 139 of the NI Act does not arise.*

APPROACH OF SOME COURTS BELOW TO NOT GIVE EFFECT TO THE PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF NI ACT IS CONTRARY TO MANDATE OF PARLIAMENT.

19. Recently, the Kerala High Court in P.C. Hari vs. Shine Varghese & Anr., 2025 SCC OnLine Ker 5535 has taken the view that a debt created by a cash transaction above Rs. 20,000/- (Rupees Twenty Thousand) in violation of the provisions of Section 269SS of the Income Tax Act, 1961 (for short 'IT Act, 1961') is not a 'legally enforceable debt' unless there is a valid explanation for the same, meaning thereby that the presumption under Section 139 of the Act will not be attracted in cash transactions above Rs. 20,000/- (Rupees Twenty Thousand).

20. However, this Court is of the view that any breach of Section 269SS of the IT Act, 1961 is subject to a penalty only under Section 271D of the IT Act, 1961. Further neither Section 269SS nor 271D of the IT Act, 1961 state that any transaction in breach thereof will be illegal, invalid or statutorily void. Therefore, any violation of Section 269SS would not render the transaction unenforceable under Section 138 of the NI Act or rebut the presumptions under Sections 118 and 139 of the NI Act because such a person, assuming him/her to be the payee/holder in due course, is liable to be visited by a penalty only as prescribed. Consequently, the view that any transaction above Rs.20,000/- (Rupees Twenty Thousand) is illegal and void and therefore does not fall within the definition of 'legally enforceable debt' cannot be countenanced. Accordingly, the conclusion of law in P.C. Hari (supra) is set aside.

21. This Court also takes judicial notice of the fact that some District Courts and some High Courts are not giving effect to the presumptions incorporated in Sections 118 and 139 of NI Act and are treating the proceedings under the NI Act as another civil recovery proceedings and are directing the complainant to prove

the antecedent debt or liability. This Court is of the view that such an approach is not only prolonging the trial but is also contrary to the mandate of Parliament, namely, that the drawer and the bank must honour the cheque, otherwise, trust in cheques would be irreparably damaged.

29. Furthermore, the fact that the accused has failed to reply to the statutory notice under Section 138 of the NI Act leads to an inference that there is merit in the Appellant-Complainants version. This Court in Tedhi Singh vs. Narayan Dass Mahant, (2022) 6 SCC 735 has held that the accused has the initial burden to set up the defence in his reply to the demand notice that the complainant did not have the financial capacity to advance the loan. The relevant portion of the said judgment is reproduced hereinbelow:- 10. The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the *courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence. (emphasis supplied)*

30. This Court in MMTC Ltd. and Another vs. Medchl Chemicals & Pharma (P) Ltd. and Another, (2002) 1SCC 234 has specifically held that when a statutory notice is not replied, it has to be presumed that the cheque was issued towards the discharge of liability."

25. In view of aforesaid discussions, impugned judgment and conviction order passed by the learned Trial Court convicting accused for offense punishable under section 138 of The Negotiable Instrument Act, 1881 is legal and correct and no interference is required. Sentence awarded by the Trial Court is also correct. Hence, issue no.1 and 2 are decided in accordingly and for issue No.3 following final order is hereby passed ;

:-: F I N A L = O R D E R :-:

1. The present appeal is hereby **dismissed.**

2. The impugned Judgment and conviction order passed by 10th Additional Chief Judicial Magistrate, Jamnagar in Criminal Case No.1783 of 2019 dated 19/01/2024 is hereby **confirmed.**

3. Bail bonds executed by appellant/original accused hereby stands cancelled.

4. Nazir, Sessions Court, Jamnagar is hereby directed to release amount of **Rs.60,000/- (Rupees Sixty Thousand only)** in favour of **Opponent No.2- Complainant** namely **Hitendrasinh Gajendrasinh Jadeja** after due confirmation and verification, if

not withdrawn already.

5. The Record and proceedings of the Criminal Case No.1783 of 2019 be sent back to the Trial Court alongwith one true copy of this judgment immediately.

Pronounced and signed today in open Court on this 16th day of March -2026.

Digitally signed by
NEHAL RAJESHBHAI JOSHI
on 16/03/2026 17:38:57 IST.

(Nehalkumar Rajeshbhai Joshi)
Sessions Judge, Jamnagar
Code No.: GJ01318

Date: -16/03/2026
Place: - Jamnagar.
A J RAVAL/PS