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|                                                                                   |               |   | 00         | 05     | 06   |

## IN THE COURT OF SESSIONS JUDGE, JAMNAGAR.

|                                |
|--------------------------------|
| Criminal Appeal No.104 of 2026 |
|--------------------------------|

### Appellant :-

#### The Proprietor of Dru Metals .....

- Savaliya Pranav Pankajbhai,  
Age : 40, Occupation : Business,  
Resident of R.C. No.24-P, No.22/1,  
Shivam Park-1, G.I.D.C.,  
Dared- Jamnagar.

### V E R S U S

### Opponents:-

- The State of Gujarat,  
Through : D.G.P.,Jamnagar.

#### The authorized person of Anand Extrusion .....

- Sohilbhai Nitinkumar Modi,  
Age : 30, Occupation : Business,  
Resident of Plot No.2/1/32 to 2/1/35,  
Anurag Infra Press, Spice -1,  
R.C. No.60, behind Essar Petrol Pump,  
Jamnagar.

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**Subject :-** Appeal U/s. 415 of The Bharatiya Nagarik Suraksha Sanhita, 2023

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**Appearance :-**

Mr.K.S.Dudhrejiya, learned advocate for Appellant /Accused.

**With**

Mr.M.B.Somaiya, learned advocate [LADC] as ‘**Amicus Curriae**’ for Appellant/accused.

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

Mr.M.H.Unnaddal , learned advocate for Complainant.

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

1. Appellant-accused has challenged impugned Judgment and conviction order dated 20/02/2026 passed by the Court of 5<sup>th</sup> Additional Chief Judicial Magistrate, Jamnagar in Criminal Case No.4971 of 2025 by which appellant/accused convicted for offence punishable under Section 138 of the Negotiable Instrument Act. Appellant/accused is convicted for one year of simple imprisonment for offence punishable under Section 138 of the Negotiable Instrument Act. It is also directed that in the event of failure of payment of compensation of Rs.7,56,018/-, accused has to undergo further simple imprisonment of the three months accordingly.

It may be noted that on 03/03/2026 while suspending the sentence, order was passed to deposit 20% amount of cheque. However, the appellant failed to comply within stipulated time period. Hence, this appeal has been heard on merits.

It is required to note that after getting bail, neither appellant/ accused nor his advocate remained present before the Court. Therefore, to provide opportunity of hearing, this Court

has ordered to allot legal representative as ‘Amicus Curriae’ from Legal Aid Defence Counsel, Jamnagar and in compliance of order passed below Exh.1 on 16/07/2026, learned LADC Mr.M.B.Somaiya has filed his appearance.

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

The complainant is engaged in the business of wholesale of brass-parts and brass scrap through a partnership firm named Anand Extrusion and the accused is engaged in the business of brass-parts therefore, the accused and the complainant in this case are known to each other and they have business relationship. Thereafter, the accused had purchased brass scrape worth Rs. 9,56,018/- from the complainant, out of which the accused had paid Rs.2,00,000/- to the complainant and Rs.7,56,018/- is outstanding and accused has acknowledged that debt by issuing a cheque bearing No.000082 for Rs.7,56,018/- on 28/04/2025 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 30/04/2025. On 13/05/2025, demand notice through advocate was issued to accused and same was refused by him. 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 :-**

| <b>Sr.No.</b> | <b>Details</b>                                | <b>Exhibit</b> |
|---------------|-----------------------------------------------|----------------|
| 1             | Affidavit of chief-examination of complainant | 3              |

**(B) Documentary Evidence :-**

| <b>Sr.No.</b> | <b>Particular of Documents</b>                | <b>Exhibit</b> |
|---------------|-----------------------------------------------|----------------|
| 1             | Cheque bearing No.000082                      | 9              |
| 2             | Cheque Return Memo                            | 10             |
| 3             | Copy of legal notice                          | 11             |
| 4             | Receipt of RPAD                               | 12             |
| 5             | Returned undelivered postal cover of notice   | 13             |
| 6             | Track consignment report of Postal Department | 14             |
| 7             | True Copy of Tax Invoice No.SC/40             | 15             |
| 8             | Authority Letter                              | 16             |

4. Accused has not remained present before trial Court after recording of plea and not defended his case in any manner.

5. On conclusion of trial, Trial Court, by impugned judgment and conviction order dated 20/02/2026 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. On behalf of Appellant/accused learned advocate Mr.K.S. Dudhrejiya alongwith Mr.M.B.Somaiya learned advocate (LADC) appeared, whereas on behalf State, learned Ad.PP

Mr.D.R.Trivedi appeared and Mr.M.H.Unnaddal appeared on behalf of complainant.

8. Learned advocate Mr.Somaiya on behalf of the appellant has argued that impugned judgment is bad in law and contrary to evidence and material on record as trial Court has passed impugned judgment and conviction order. Complainant has produced some documentary evidence, but are not proved by him and failed to prove his case, hence, appeal is required to be allowed. Trial Court has erred by not evaluating evidence in its true perspective. Therefore,taking this fact into consideration, impugned judgment and conviction order is required to be set aside by allowing present appeal.

9. 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.

9.1 Mr.Unnaddal, learned advocate for complainant argued 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.3 to prove transaction of goods sold 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. 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 28/04/2025 bearing No.000082 for sum of Rs.7,56,018/- was issued by accused in his favour towards discharge of legally enforceable liability?                                                                             |
| 2 | Whether impugned judgment and order dated 20/02/2026 passed by Trial Court in Criminal Case No.4971 of 2025 convicting appellant (accused) for offence punishable under section 138 of The Negotiable Instrument Act, 1881 is incorrect and required to be set-aside ? |
| 3 | What final order ?                                                                                                                                                                                                                                                     |

11. My findings of the above mentioned issues with reason are as under.

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

### **∴ REASONS ∴**

#### **Issue no. 1 ∴**

12. 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.

13. 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-3, wherein he has reiterated same facts in complaint. It is required to note that neither accused nor his learned advocate remained present before trial Court for the purpose of cross-examination of complainant.

14. On perusal of record, it transpires that Complainant has produced original cheque No.000082 at Exh.9, Return memo of the Kotak Mahindra Bank at Exh.10, Office copy of demand notice at Exh.11, Postal receipt at Exh.12, returned undelivered Postal Cover of legal notice at Exh.13 and Online Tracking Report of Postal Department at Exh.14. Accused has issued a cheque at Exh.9 on 28/04/2025 for Rs.7,56,018- which was returned by the Kotak Mahendra Bank on 30/04/2025 with endorsement of ' Funds Insufficient' and memorandum is placed on record vide Exh.10.

15. 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 official mark denoting that cheque has been dishonoured, presume the fact of dishonour of such cheque. Section 146 dispensed with formal proof of documents referred thereby. Production of the document having thereon denoting that cheque has been dishonoured is sufficient and when document is produced Court shall, presume the fact of dishonour of cheque.

Complainant has produced original bank return memo at Exh.10 issued by the Kotak Mahendra Bank which shows that cheque No.000082 was returned by reason of 'Funds Insufficient'. Accused has not brought 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'.

16. On perusal of copy of demand notice at Exh.11, receipt of RPAD at Exh.12 and returned undelivered postal cover of notice at Exh.13 with endorsement 'Refused' and Online tracking report of Postal Department at Exh.14, it appears that notice in writing demanding the payment of cheque amount was given by complainant to accused on 13/05/2025. 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.12 shows that notice was sent by complainant to accused through registered post at his address and undelivered postal cover of notice at Exh.13 with endorsement of 'Refused' and Online tracking report of Postal Department at Exh.14 certified that "item returned refused".

On perusal of legal notice at Exh.11 that same has been sent on the residential address and returned undelivered postal cover at Exh.14, shows that "item returned refused". From which it is quite clear statutory- demanding notice was sent to the accused at his residential address. It is required to note that the only requirement for the service of demand notice is that, the notice should have been sent to the correct address of the drawer. Since the mode of service is not prescribed by the law, it can be sent either by registered post or under certificate of posting or otherwise. The expressions 'Refuse', 'Left, not known', 'not



available in the house', 'house locked', shop closed etc., are all synonyms. Therefore, if the address of the drawer is proved to be correct, even if the notice is returned with the above remarks, then the notice is deemed to have been served on the drawer.

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.

It is required to refer the case between **Noorudheen Vs State of Kerala** passed in **Criminal Revision Petition No.865 of 2023, dated 29/07/2025**, wherein Hon'ble High Court of Kerala at Ernakulam has observed as follows ;

*"16. The counsel for the petitioner, relying on paragraphs 14 and 15 of the judgment in C.C.Alavi Haji's case (supra), submitted that the burden is on the accused to prove that the notice is not served to him. It will be better to extract paragraphs 14 and 15 of the above judgment:*

*"14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when*

*stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement refused or not available in the house or house locked or shop closed or addressee not in station, due service has to be presumed. [Vide Jagdish Singh vs. Natthu Singh ; State of M.P. Vs. Hiralal & Ors. And V.Raja Kumari Vs. P.Subbarama Naidu & Anr.] It is, therefore, manifest that in view of the presumption available under Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved.*

*15. Insofar as the question of disclosure of necessary particulars with regard to the issue of notice in terms of proviso (b) of Section 138 of the Act, in order to enable the Court to draw presumption or inference either under Section 27 of the G.C. Act or Section 114 of the Evidence Act, is concerned, there is no material difference between the two provisions. In our opinion, therefore, when the notice is sent by registered post by correctly addressing the drawer of the cheque, the mandatory requirement of issue of notice in terms of Clause (b) of proviso to Section 138 of the Act stands complied with. It is needless to emphasise that the complaint must contain basic facts. notice to the drawer of the cheque. It is well settled that at the time of taking cognizance of the complaint under Section 138 of the Act, the Court is required to be prima facie satisfied that a case under the said Section is made out and the aforementioned mandatory statutory procedural requirements have been complied with. It is then for the drawer to rebut the presumption about the service of notice and show that he had no knowledge that the notice was brought to his address or that the address mentioned on the cover was incorrect or that the letter was never tendered or that the report of the postman was incorrect. In our opinion, this interpretation of the provision would effectuate the object and purpose for which proviso to Section 138 was enacted, namely, to avoid unnecessary hardship to an honest drawer of a cheque and to provide him an opportunity to make amends.”*

*18. Then the learned counsel for the petitioner relied on paragraph 17 of C.C. Alavi Haji's case (supra) and submitted that if notice is not received by the accused, he can pay the amount once the summons is received from the*

court. It will be better to extract paragraph 17 of C.C. Alavi Haji's case (*supra*), which reads thus :-

*“17. It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under S. 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under S. 138 of the Act, cannot obviously contend that there was no proper service of notice as required under S. 138, by ignoring statutory presumption to the contrary under S.27 of the G.C. Act and S. 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskaran's case (*supra*), if the 'giving of notice' in the context of Clause (b) of the proviso was the same as the 'receipt of notice' a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of S. 138 of the Act.”*

It is required to note that accused failed to adduce any evidence to disprove the fact of written notice sent by complainant at correct postal address of accused. Thus, it is clear that demand notice for cheque amount was sent by complainant to accused through registered post and was undelivered due to addressee refused to accept the cover. The demand notice returned undelivered with the endorsement “Refused” is legally deemed to be successfully served as it was dispatched by registered post to the correct address. Therefore, defence raised by accused regarding non-service of demand notice is not tenable.

17. Accused has not adduced any evidence to disprove the fact of written notice sent by complainant at the correct postal address of accused and its delivery at that address. Thus, it is

clear that demand notice for cheque amount was sent by complainant to accused through registered post and was delivered to her and no reply is given to that notice.

Furthermore, the Complainant has produced Tax Invoice dated 15/09/2024 at Exh..15, which specifies the business transaction between complainant and accused and the goods sold by complainant to accused worth Rs.9,56,08/-. As per statement of complainant, accused has paid Rs.2,00,000/- in cash and for remaining outstanding issued a cheque in question as discharge of said liability.

From above deposition as well as documentary evidence, it is established that cheque in question was dishonoured due to 'Funds Insufficient' and accused herein failed to rebut issuance of cheque.

17. For that it is required to refer 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.*

*15. Coming back to the facts in the present case, we are in agreement with the High Court's view that the accused did not raise a probable defence. As noted earlier, the defence of the loss of a blank cheque was taken up belatedly and the accused had mentioned a different date in the 'stop payment' instructions to his bank. Furthermore, the instructions to 'stop payment' had not even mentioned that the cheque had been lost. A perusal of the trial record also shows that the accused appeared to be aware of the fact that the cheque was with the complainant. Furthermore, the very fact that the accused had failed to reply to the statutory notice under Section 138 of the Act leads to the inference that there was merit in the complainant's version. Apart from not raising a probable defence, the appellant-accused was not able to contest the existence of a legally enforceable debt or liability. The fact that the accused had made regular payments to the complainant in relation to the construction of his house does not preclude the possibility of the complainant having spent his own money for the same purpose. As per the record of the case, there was a slight discrepancy in the complainant's version, in so far as it was not clear whether the accused had asked for a hand loan to meet the construction-related expenses or whether the complainant had incurred the said expenditure over a period of time. Either way, the complaint discloses the prima facie existence of a legally enforceable debt or liability since the complainant has maintained that his money was used for the construction-expenses. Since the accused did admit that the signature on the cheque was his, the statutory presumption comes into play and the same has not been rebutted even with regard to the materials submitted by the complainant."*

18. In view of above oral as well as documentary evidence available on record, complainant has proved that accused had issued a cheque bearing No.000082 for sum of Rs.7,56,018/-. It is also 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 the receipt of demand notice.

In the matter between **T.P. Murugan v. Bojan, (2018) 8 SCC 469**, it is observed as follows ;

*“ 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.”*

19. It is required to note that complainant is holder in due course and thereby, presumption under Section 139 of Negotiable Instrument Act is drawn in favour of complainant that the cheque has been issued for legal debt and liability. Hence, it is required to draw presumption in favour of the complainant as envisaged in Section 139 of the Negotiable Instrument Act.

At this juncture, it is required to refer the judgment of **Bir Singh Vs Mukesh Kumar**, reported in **AIR ONLINE-2019-SC-577**, wherein Hon’ble Apex Court has observed as follows ;

*“ 23. Section 139 introduces an exception to the general rule as to the burden of proof and shifts the onus on the accused. The presumption under Section 139 of the Negotiable Instruments Act is a presumption of law, as distinguished from presumption of facts. Presumptions are rules of evidence and do not conflict with the presumption of innocence, which requires the prosecution to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law and presumptions of fact unless the accused adduces evidence showing the reasonable possibility of the non- existence of the presumed fact as held in Hiten P.Dalal (supra).*

*24. Presumption of innocence is undoubtedly a human right as contended on behalf of the respondent-accused, relying on the judgments of this Court in Ranjitsing Brahmajeetsing Sharma Vs State of Maharashtra and Anr.5 and Rajesh Ranjan Yadav @ Pappu Yadav Vs CBI, through its Director 6. However the guilt may be established by recourse to presumptions in law*

and presumptions in facts, as observed above.

25. In *Laxmi Dyechem Vs State of Gujarat & Ors.*, this Court reiterated that in view of Section 139 it has to be presumed that a cheque was issued in discharge of a debt or other liability but the 5 (2005) 5 SCC 294 6 (2007) 1 SCC 70 7 (2012) 13 SCC 375 presumption could be rebutted by adducing evidence. The burden of proof was however on the person who wanted to rebut the presumption. This Court held “however, this presumption coupled with the object of Chapter XVII of the Act leads to the conclusion that by countermending payment of a post dated cheque, a party should not be allowed to get away from the penal provision of Section 138 of the Act”.

26. In *Kumar Exports Vs Sharma Carpets*, this Court reiterated that there is a presumption that every negotiable instrument duly executed, is for discharge of a debt or liability, but the presumption is rebuttable by proving the contrary. In the facts and circumstances of the case it was found that the cheque in question was towards advance for purchase of carpets, which were in fact not sold by the payee of the cheque to the drawer, as proved from the deposition of an official of the Sales Tax Department, who stated that the payee had admitted that he had not sold the carpets.

27. In *K.N.Beena Vs Muniyappan and Another*, this Court held that in view of the provisions of Section 139 of the Negotiable Instruments Act read with Section 118, thereof, the Court had to presume that the cheque had been issued for discharging a debt or liability. The said presumption was rebuttable and could be rebutted by the accused by proving the 8 (2009) 2 SCC 513 9(2001) 8 SCC 458 contrary. But mere denial or rebuttal by the accused was not enough. The accused had to prove by cogent evidence that there was no debt or liability. This Court clearly held that the High Court had erroneously set aside the conviction, by proceeding on the basis that denials/averments in the reply of the accused were sufficient to shift the burden of proof on the complainant to prove that the cheque had been issued for discharge of a debt or a liability. This was an entirely erroneous approach. The accused had to prove in the trial by leading cogent evidence that there was no debt or liability.

28. In *R.Vijayan Vs Baby and another*, this Court observed that the object of Chapter XVII of the Negotiable Instruments Act, is both punitive as also compensatory and restitutive. It provides a single forum and single proceeding for enforcement of criminal liability by reason of dishonour of cheque and for enforcement of the civil liability for realization of the cheque amount, thereby obviating the need for the creditor to move two different fora for relief. This Court expressed its anguish that some Magistrates went by the traditional view, that the criminal proceedings were for imposing punishment and did not exercise discretion to direct payment of compensation, causing considerable difficulty to the complainant, as invariably the limitation for filing civil cases would expire by the time the criminal case was decided. 10 (2012) 1 SCC 260

29. In *R.Vijayan Vs Baby and another (supra)* this Court observed that unless there were special circumstances, in all cases of conviction, the Court should uniformly exercise the power to levy fine up to twice the cheque amount and keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss, direct

*payment of such amount as compensation. This Court rightly observed that uniformity and consistency in deciding similar cases by different courts not only increases the credibility of the cheque as a Negotiable Instrument but also the credibility of the Courts of Justice."*

20. Learned advocate for appellant/accused raised a defence that trial Court has not provided opportunity to accused herein to submit evidence or cross-examination of complainant and also not given opportunity to record his further statement. As per his contention all proceedings before the trial court were held in absence of accused. Hence, he prayed to remand the matter.

21. It is further say of appellant/accused that proceedings before trial Court were conducted in an ex-parte manner inasmuch as the accused was not granted sufficient opportunity to defend himself. On perusal of record, it appears that before trial Court, accused appeared on 06/10/2025 personally and his plea was recorded on the same day. Thereafter, accused did not remain present before trial Court. hence, trial Court has closed the right of accused to cross-examine complainant.

Thereafter, complainant has filed application at Exh.20 to close the right of accused to record Further Statement u/s. 351 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and same is allowed by trial Court accordingly.

It further appears that though sufficient opportunity was granted to the accused before the trial Court, but he did not avail opportunities. The accused was granted opportunities by the trial Court to carry out cross-examination of complainant; however, no action was taken by him. In fact, accused and his advocate had remained absent in the proceedings before the trial Court, hence, trial Court had no other alternative but, to decide the case



in the absence of accused and/or his advocate.

From above set of facts, it appears that looking to the conduct of accused, he did not remain present on next adjourned date after getting his plea recorded on the earlier date and not cross-examination of complainant was carried out in spite of being afforded with sufficient opportunities, that was a deliberate delay tactics adopted by the accused. It is required to note that there is nothing to suggest that accused had filed any application requesting trial Court to grant him an opportunity to conduct cross-examination of complainant or record his Further Statement u/s. 351 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Therefore, trial Court was left with no other option but to conduct trial in the absence of accused who had deliberately or voluntarily chosen to evade trial proceedings. Moreover, accused had not produced any evidence in his defence and not produced any documents or showing reasons for absence from proceedings. Hence, trial Court has rightly conducted trial in absence of accused.

At this juncture, it is required to refer the case law titled as **Manoj Vasudev Sompura Vs State of Gujarat, reported in 2023 (0) AIJEL-247313**, wherein Hon'ble Gujarat High Court has observed as follows ;

*“ 14. Considering the facts and circumstances of the case, this Court is of the opinion that the trial Court was completely justified in passing the impugned judgment and order. The decision to not conduct cross-examination of the complainant in spite of repeated opportunities and to not remain present on the next date of trial when his Further Statement u/s. 313 of Cr.P.C. recorded on the earlier date was to be exhibited was a deliberate, intentional and conscious decision on the part of the petitioner. It was not that the petitioner was not aware about the stage of trial proceedings. However, deliberately, the petitioner had chosen to remain absent from the trial proceedings from the date his Further Statement u/s. 313 of Cr.P.C. was recorded but before it could be exhibited.”*

22. 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.”*

23. It may be noted that, even otherwise, except request of remand, no grounds are mentioned to show the defence of appellant. And, just for the sake of remanding the matter it can not be remanded. The accused should point out reasonable defence, which he would have and could have raised, provided he is given the opportunity and in such circumstances, only matter can be remanded. But, when accused remained absent before the trial Court, and does not participate or give any evidence, then he can not be allowed to raise the grudge or grievance before appeal Court that he is not given opportunity to submit evidence. The trial Court are not supposed to wait till sine die for the accused to appear at his leisure, the law will not hear the person who is sleeping over his rights. Impugned judgment and order passed by Trial Court convicting accused for offense punishable under section 138 of The Negotiable Instrument Act, 1881 is correct and no interference is required. Sentence awarded by Trial Court is legal and correct. Hence, issue no.1 and 2 are decided in accordingly and for issue No.3 following final order is hereby passed ;

**::: FINAL=ORDER :::**

1. The present appeal is hereby **dismissed**.
2. The impugned Judgment and conviction order passed by the Court of 5<sup>th</sup> Additional Chief Judicial Magistrate, Jamnagar in Criminal Case No.4971 of 2025, dated 20/02/2026 is hereby **confirmed**.
3. Bail bonds executed by appellant/original accused hereby stands cancelled.
4. The Record and proceedings of the Criminal Case No.4971 of 2025 be sent back to the Trial Court alongwith one true copy of this judgment.

Pronounced and signed today in open Court on this 06<sup>th</sup> day of August -2026.

Date: -06/08/2026  
Place: - Jamnagar.  
A J RAVAL/PS

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