

GJJM010015762025  CR A/221/2025	 सत्यमेव जयते	Filed on	:	30/04/2025		
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				01	03	02

IN THE HON'BLE COURT OF 3rd ADDL. SESSIONS JUDGE

Dist. : Jamnagar

Exh :- **38**

Criminal Appeal No. : 221/2025	
Appellant (Original Accused)	DEVKARANBHAI PITAMBARBHAI KANANI Age : 65 Years, Occupation : - Business Resi. : - Yogi Apartment, 7 th Floor, Ram-Setu Street, Ravapar Road, Opp. Hanumanji Dery, Morbi.
Versus	
Respondents (Respondent No.1 - Original Complainant)	1 CHIRAGBHAI BHARATBHAI VANK Age : 39 year years, Occupation : Business, Resi. : Suthar Street, Taluka- Jodiya, Dist.- Jamnagar.
	2 STATE OF GUJARAT Through : Ld. P.P., Jamnagar.

APPEARANCE :-

Ld. Advocate for the Appellant	Mr. J. H. Anadkat
Ld. Advocate for Respondent No. 1-Orig. Complainant	Mr. P.V. Anadkat
Ld. A.P.P. for the Respondent No. 2 - The State	Mr. D. A. Jivrajani

APPEAL UNDER SECTION 415 OF BHARATIYA NAGARIK SURAKSHA SANHITA (U/S 374(3) OF CODE OF CRIMINAL PROCEDURE) AGAINST CONVICTION FOR OFFENCE PUNISHABLE UNDER SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT, 1881, VIDE JUDGMENT AND ORDER DATED 03/04/2025 OF CRIMINAL CASE NO. 20/2020 PASSED BY LEARNED JUDICIAL MAGISTRATE FIRST CLASS, AT JODIYA.

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

[1]. The present Appellant is the original Accused and the Respondent No.1 is the original Complainant and they will be referred here-in-after by their original status as Accused and Complainant for the sake of brevity. The Respondent No. 2 is the State.

[2]. The Criminal Case No.20/2020 was filed against the present Appellant / Original Accused for the offence punishable under Section 138 of Negotiable Instruments Act, 1881, in the trial Court, by the Respondent No. 1 / Complainant. After conclusion of the trial, the Ld. Judicial Magistrate First Class, Jodiya, was pleased to pronounce the Judgment and Order dated 03/04/2025 in Criminal Case No.20/2020 and was pleased to record the conviction of the Accused under Section 255(2) of Criminal Procedure Code, 1973, for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 and the Accused was sentenced to simple imprisonment for a period of 2 years and compensation as fine of Rs.10,00,000/- and in case of default in payment of compensation, the accused will further suffer simple imprisonment for 3 Months. Being aggrieved and dissatisfied by the said Judgment and Order dated 03/04/2025, the present Appellant / Original Accused has preferred this appeal under Section 415 of B.N.S.S. (i.e. Section 374 of Code of Criminal Procedure, 1973).

[3]. After registering the appeal, notices were issued to the

Respondents. The Respondent No. 1 / Original Complainant had appeared through Ld. Advocate and opposed & strongly objected the appeal and submitted that the cheques in question were issued against the legal debts and liability and the order of the Ld. Trial Magistrate is just and proper and requested for not to interfere with the said order and to dismiss the appeal. The Respondent No.2 - State had appeared through the Ld. A.P.P. and supported the case of the Respondent No. 1 – Original Complainant and requested to dismiss the appeal.

[4]. For adjudication of this appeal, following points for determination, arises :-

:: POINTS FOR DETERMINATION ::

1	Whether the complainant has failed to prove beyond reasonable doubt that the Accused has committed the offence punishable under Section 138 of Negotiable Instruments Act, 1881?
2	Whether the Judgment and Order dated 03/04/2025 passed in Criminal Case No.20/2020 by Ld. Judicial Magistrate First Class, Jodiya, is erroneous or illegal or perverse or with material irregularity, which requires interference by this Court and whether the said Judgment and Order deserves to be quashed and set aside ?
3	What's Order ?

[5]. My findings, arrived at, of the above stated points, are as under :

-: FINDINGS :-

1	In NEGATIVE
2	In NEGATIVE
3	As per FINAL ORDER

[6]. I have heard the Ld. Advocate Mr. P. V. Anadkat for the Respondent No. 1 – Complainant and the Ld. A.P.P. Mr. D. A. Jivrajani for the State - Respondent No. 2, at great length. I have also considered the impugned Judgment and Order dated 03/04/2025 passed in Criminal Case No.20/2020 by Ld. Additional Judicial Magistrate First Class, Jodiya, and also gone through the evidence on record of the proceeding of the Criminal Case No.20/2020. The Stay granted by this Court vide Order dtd.02/05/2025 passed below Exh.-5 on condition to deposit 20% of the cheque amount i.e. Rs.1,00,000/- within 30 days. The Stay Order was neither complied with nor Accused is remaining present before the Court and therefore vide Order dtd.07/07/2026 passed below Exh.-37, the Stay granted vide Order dtd.02/05/2025 below Application at Exh.-5, was vacated. Further, the Accused / Appellant is not remaining present and even his Learned Advocate had not remained present for arguments and therefore, the Appeal is to be considered on merits and considering the grounds stated in the appeal memo.

[7]. The reasons, for the findings arrived at, of the above Points, are as under :

: REASONS :

POINT No. 1 to 3 :

(7.1). It is deposed by C.W. No. 1 – Chiragbhai Bharatbhai Vank in his examination-in-chief at Exh.-13 that the Accused had taken a hand loan of Rs.5,00,000/- and had also executed the Agreement at Exh.-37 on stamp paper of Rs.100/- in presence of the witnesses and against it, the Accused had given two cheques having cheque No. 604459 dtd.17/10/2021 & cheque No.604460 dtd.15/10/2019 each for Rs.2,50,000/-, of A/c. No. 66014216119 of State Bank of India, Jodiya Bazar Branch at Dist.- Jamnagar, for discharging the said liability, in favour of the Complainant, but both were returned unpaid. Thus, it is clearly established that the Cheques in question were given to discharge the legal debt and liabilities of the Accused.

(7.2). It is further deposed by C.W. No. 1 – Chiragbhai Bharatbhai Vank in his examination-in-chief at Exh.-13 that he had accordingly deposited the said Cheque No. 604459 at Exh.-29 in his bank, but the bank had returned the Cheque No. 604459 at Exh.-29 unpaid with return memo dated 17/10/2019 at Exh.-30 with the reason – ‘Funds Insufficient’ and also deposited the another Cheque No. 604460 at Exh.-31 in his bank, but

the bank had also returned the Cheque No. 604460 at Exh.-31 unpaid with return memo dated 15/10/2019 at Exh.-32 with the reason – ‘Funds Insufficient’. Hence, both the said return memo dated 17/10/2019 & dated 15/10/2019 at Exh.-30 & Exh.-32 alongwith Cheque No. 604459 & Cheque No. 604460 at Exh.-29 & Exh.-31 respectively, were then returned back unpaid to the Complainant. The oral evidence of the Complainant at Exh.-13 get fully corroborated from the return memo at Exh.-30 & Exh.-32.

(7.3). It is further deposed by C.W. No. 1 – Chiragbhai Bharatbhai Vank in his examination-in-chief at Exh.-13 that he had issued legal notice dated 04/11/2019 at Exh.-33 issued through his Ld. Advocate to the Accused, which was served. The said oral evidence get corroborations from legal notice at Exh.-33, Postal Payment Receipt at Exh.-34 and Postal RPAD Acknowledgment Card at Exh.-35. It is further deposed by C.W. No. 1 – Chiragbhai Bharatbhai Vank in his examination-in-chief at Exh.-13 that the Accused had given it's reply, but not had paid the amount of dishonoured cheques and therefore, the Complainant had filed criminal complaint.

(7.4). It is defense of Accused that the postman is being not examined to prove that notice was sent and is

served. If we go through Postal RPAD Acknowledgment Card at Exh.-35, then it clearly shows that the postman had went at given address & delivered it. Moreover, the Accused had given it's reply at Exh.-36. The postman is not required to examine in view of presumption under Section 114(e) of Indian Evidence Act, 1872. In light of provision made under Section 27 of General Clause Act and Section 114(e) of Indian Penal Code, 1872, notice send by prepaid Regd. A. D. Post at correct address, is deemed to be served.

(7.5). There is neither oral nor documentary evidence to show that the due amount of Rs.5,00,000/- is being paid up, to the original Complainant by the Accused. Under such set of evidences, the ingredients attracting the offence punishable under Section 138 of Negotiable Instructions Act, are being proved and therefore, the Ld. Trial Magistrate has correctly recorded the conviction of the Accused and sentence him.

(8.1). It is the defense of the Accused that there is no relation between the parties and therefore, the question will not arise for giving any hand loan to the Accused. It is deposed by C.W. No. 1 – Chiragbhai Bharabhai Vank at Exh.-13 that the Accused and the Complainant both are residing in Village Jodiya and they were having relations of

taking money for business and further deposed that his wife was elected member in Taluka Panchayat and he was director of A.P.M.C. of Jodiya Taluka and the Accused used to give for work to him and therefore, he is knowing the Accused since several years. Thus, the parties are knowing each other since several years. Hence, such defense of the Accused is not acceptable.

(8.2). It is the defense of the Accused that the complainant has not shown his capacity to give Rs.5,00,000/-. It seems that the Complainant is doing business and his wife was elected member of Taluka Panchayat and he was director of A.P.M.C. of Jodiya Taluka. Thus, complainant seems to be capable to give hand loan of Rs.5,00,000/-. Hence, such defense of the Accused is not acceptable.

(8.3). It is defense of the Accused that he had repaid his amount more than the loan amount and the Cheques were given as a security and are being misused. The Accused has not denied that he received the hand loan of Rs.5,00,000/-, but as per his say, he had returned the same with interest. The Accused has neither stepped into witness-box nor produced any documentary evidence nor proved from cross-examination of C.W. No. 1 – Chiragbhai Bharabhai Vank at Exh.-13 that the Accused has repaid the said amount. The burden

lies on the Accused that he had paid the loan amount, but in the present case the Accused has failed to prove the same. There is nothing on record which shows that the Accused has made any police complaint or complaint to bank that the Cheques in question are being misused by the complainant. Hence, such defense of the Accused is not acceptable.

(8.4). It is the defense of the Accused that the amount in figure is returned in English and other details are written in Gujarati in both the cheques. The amount in figure and the amount in words tallies and there is no variation in the same. Under such circumstances, only because figure written in English and other details in Gujarati, it does not make any difference and is not fatal to the case of the complainant. Hence, such defense of the Accused is not acceptable.

(8.5). It is the defense of the Accused that in Cheque at Exh.-29 it is written as Chiragbhai B. Vank, whereas in Cheque at Exh.-31 it is written as Chiragbhai Bharatbhai Vank. The name of the complainant is Chiragbhai Bharatbhai Vank and therefore, in one Cheque, it is written so and in another cheque it is Chiragbhai B. Vank, wherein the name of the father is written in short of 'B.' instead of Bharatbhai, but both the persons are

same and the Cheque at Exh.-29 and Exh.-31 were given for discharge the legal debts. Hence, such defense of the Accused is not acceptable.

(8.6). It is the defense of the Accused that a promissory note at Exh.-37 is neither on stamp paper nor executed before the public notary. The Accused has not denied his signature. It reflects that the said agreement at Exh.-37 is on stamp paper which was purchased by the Accused and it clearly mentioned about giving hand loan of Rs.5,00,000/- and two cheques in question at Exh.-29 and Exh.-31 were given by the Accused for discharge of the same. If we go through, the said cheques, then the name of the Accused is printed at the place of making signature. Thus, the cheques are being issued to discharge the legal debts and liabilities. Hence, such defense of the Accused is not acceptable.

(8.7). It is the defense of the Accused that the name, address and mobile number of the witness of Agreement at Exh.-37 is not stated in complaint or affidavit of examination-in-chief. The Original document is produced at Exh.-37, wherein it reflect that Ashok Valji Parmar and R.R. Jadeja were witnesses to it. Hence, such defense of the Accused is not acceptable.

- (8.8). It is the defense of the Accused that there is no signature on first page of Promissory Note at Exh.-37, wherein the amount as well as cheque details are being stated. The Cheques details and amount stated on Page 1 at Exh.-37 do tallies with the cheques details of amount of the Cheques at Exh.-29 and Exh.-31. Hence, such defense of the Accused is not acceptable.
- (8.9). It is the defense of the Accused that they have given Reply at Exh.-36 of the Legal Notice, wherein they have stated that they have repaid the amount. Merely, stating in the reply of legal notice is not sufficient, but the Accused is required to be prove the same by evidence which the Accused has miserably failed to prove. Hence, such defense of the Accused is not acceptable.
- (8.10). It is the defense of the Accused that the Complainant had given the amount of Rs.5,00,000/- at the interest of 3% per annum. There is nothing on record that the Accused has paid any interest. Even as admitted in the Reply at Exh.-36 the Accused has received the amount of Rs.5,00,000/- and the Cheques at Exh.-29 and Exh.-31 are given to discharge the same and when the Accused failed to prove that they have repaid the same, such defense is not acceptable. Even the defense of paying of interest is not proved and

therefore, it cannot be acceptable. Hence, such defense of the Accused is not acceptable.

- (8.11). It is the defense of the Accused that the complainant has not shown in his income tax return that the loan of Rs.5,00,000/- was given as a loan to the Accused and therefore, he had not produced the income tax return. It is further defense of the Accused that no transaction in cash of more than Rs.20,000/- can be done as per income tax law. It is true that the cash transaction of more than Rs.20,000/- should not be done in cash, but if the same is being done so, then there may be violation of provisions of Income Tax Act for which the Competent Authority / Income Tax Authority can certainly take action against the complainant. If the complainant has not disclosed the loan amount given to the Accused in his income tax return, then also it may constitute the offence under provision of Income Tax Act for which the Income Tax Authority certainly take action against the complainant, but for the reasons that the said amount is not disclosed in the Income Tax Return or Cash transaction of more than Rs.20,000/- is being made, it cannot lead us to conclude that the Accused had not borrowed the money and that Accused had not given the cheque in question for discharge of their legal debt and liability. It may constitute a different offence

against income tax return, but it cannot be wiped out the offence punishable under Section 138 of Negotiable Instruments Act, 1881, committed by the present Accused. Hence, the said defense of the Accused is not acceptable.

(8.12). It is the defense of the Accused that the Complainant had not filed any other criminal complaint or civil suit. The Complainant can avail remedy of filing the criminal complaint under Section 138 of Negotiable Instruments Act, apart from filing civil suit for recovery of money. If the ingredient of offence punishable under Section 406 and 420 of I.P.C. are made out, then the complainant could also file a criminal complaint for the said offence, but only because civil suit or criminal complaint under Section 406 and 420 of I.P.C. is not filed, it can not be concluded that no offence under Section 138 of Negotiable Instruments Act is made out. Hence, the said defense of the Accused is not acceptable.

(9.1). It is the case of the Appellant / Accused that cheques were not given for discharge of liability. The legal liability under the cheque at Exh.-29 & Exh.-31 is corroborated by deposition of complainant at Exh.-13. The evidence clearly shows that the cheques in question were given for legal debt and were returned unpaid for 'Funds

Insufficient'. The Accused has not brought on record as to the cheques were given for purpose other than one stated in complaint and therefore the said defense of the Accused is not tenable in eyes of law

- (10.1). It is held in the decision delivered by the Hon'ble Gujarat High Court (Coram : Hon'ble Justice Mr. R. S. Gag, J) in case of ¹**RAVJIBHAI PRABHUDAS PATEL Vs. ADDITIONAL COLLECTOR COMPETENT AUTHORITY, U.L.C.** that when adverse inference could be drawn.
- (10.2). It is held in the decision delivered by the Hon'ble Gujarat High Court (Coram : Hon'ble Justice Ms. Bela M. Trivedi, J) in case of ²**M/s. BAJAJ FINANCE LIMITED Vs. POOJA NARAYAN KHETAN** that the Accused can raise probable defense even if no reply to notice is given.
- (10.3). It is held in the decision delivered by the Hon'ble Bombay High Court (Coram : Hon'ble Justice Mr. Shrihari P. Davare, J) in case of ³**GHANSHYAM KISAN UKIRADE Vs. SOU SUMAN KRISHNA PAWAR** that even if no reply to notice is given,

¹ **RAVJIBHAI PRABHUDAS PATEL Vs. ADDITIONAL COLLECTOR COMPETENT AUTHORITY, U.L.C.**

: 2007 (2) GLR 1690 (GUJ.) = SCA 5460/99, D/- 1-5-07

² **M/s. BAJAJ FINANCE LIMITED Vs. POOJA NARAYAN KHETAN**

: 2021(2) GLR 1757 (GUJ) = M.Cr.Appln. 18429/20, D/- 2-2-21

³ **GHANSHYAM KISAN UKIRADE Vs. SOU SUMAN KRISHNA PAWAR**

: 2011(2) CRIMES 725 (BOM.) = Cr.Appln, 4188/09, D/- 29/7/10

defense could be made out from cross-examination of complainant.

- (10.4). Moreover, the Complainant had already proved his complaint beyond reasonable doubt and the Accused has not rebutted the same and therefore submission of the Accused is not acceptable that Accused has not committed any offence. Moreover, the admitted facts are not required to be proved in view of Section 58 of Indian Evidence Act, 1872.
- (10.5). It is held in the decision delivered by the Hon'ble Karnataka High Court (Coram : Hon'ble Justice Mr. Pradeep D. Waingankar, J) in case of ⁴**L. RAJU Vs. GURAPPA REDDY** that existence of debt or liability was to be established by cogent and convincing evidence.
- (10.6). It is held in the decision delivered by the Hon'ble Gujarat High Court (Coram : Hon'ble Justice Mr. R. P. Dholaria, J) in case of ⁵**KESHAVLAL PRABHUDAS PATEL Vs. ASHOKBHAI BACHUBHAI MAGANBHAI PATEL** that where the complainant had failed to prove that cheque was issued for legally enforceable debt, whereas in present case legal debt of amount as stated in

⁴ **L. RAJU Vs. GURAPPA REDDY**

: 2015(4) CRIMES 430 (KARN.) = Cr.A. 13/10, D/- 9-7-15

⁵ **KESHAVLAL PRABHUDAS PATEL Vs. ASHOK BACHU MAGAN PATEL**

: 2020(2) GLR 1573 (GUJ.) = Cr.A. 24/07, D/- 13-9-19

(Cr.A. 221/2025 – S. 138 NIA, 1881 – 2Y+ C10L - BJ-D - 3rd ASJ, Jamnagar)

Cheques at Exh.-29 and Exh.-31 are duly proved by oral evidence of C.W. No. 1 – Chiragbhai Bharatbhai Vank at Exh.-13 and hence, the said authority will not be helpful to Accused in present case.

(10.7). It is held in the decision delivered by the Hon'ble Gujarat High Court (Coram : Hon'ble Justice Mr. D. H. Waghela, J) in case of ⁶**SURESHCHANDRA CHANDRASHANKAR JOSHI Vs. STATE OF GUJARAT** that it is to be proved beyond reasonable doubt that debt was legally recoverable on the date of cheque in question.

(10.8). It is held in the decision delivered by the Hon'ble Gujarat High Court (Coram : Hon'ble Justice Dr. A. P. Thaker, J) in case of ⁷**MAHESH BHANU VACHHANI Vs. STATE OF GUJARAT** that the Appellant Court to look into evidence adduced and to arrive at an independent conclusion as to whether proved beyond reasonable doubt or not and should give it's own reason for decision.

(10.9). It is held in the decision delivered by the Hon'ble Bombay High Court (Coram : Hon'ble Justice Mr. Abhay M. Thipsay, J) in case of ⁸**MEERA S.**

⁶ ***SURESHCHANDRA CHANDRASHANKAR JOSHI Vs. STATE OF GUJARAT***
: 2010(1) GLR 601 (GUJ) = Cr.A. 1118/09, D/- 7-10-09

⁷ ***MAHESH BHANU VACHHANI Vs. STATE OF GUJARAT***
: 2021(1) GLH 389 (GUJ.) = Cr.A. No.2070/05, D/- 21/7/20

⁸ ***MEERA S. CHIPLUNKAR Vs. ASHALATA RAWJI KONDKAR***
: 2017(1) CRIMES 349 (BOM.) = Cr.A. 888/2005, D/- 2-7-15

CH IPLUNKAR Vs. ASHALATA RAWJI KOND KAR that criminal case shall be proved beyond reasonable doubt and prosecution must succeed on its own merits.

(10.10). It is held in the decision delivered by the Hon'ble Kerala High Court (Coram : Hon'ble Mrs. Justice K. Hema, J) in case of ⁹KAMALAMMAL Vs. C. K. MOHANAN & Anr., that issuance of blank cheque cannot give rise to presumption that implied authority is given to holder of cheque to fill it up towards discharge of debt etc.

(10.11). The Ld. Advocate for the Complainant has relied on the decision delivered by the Hon'ble Gujarat High Court (Coram : Hon'ble Justice D. H. Waghela, J) in case of ¹⁰HITENBHAI PAREKH PROPRIETOR, PAREKH ENTERPRISES Vs. STATE OF GUJARAT, wherein held that **blank cheque** bearing signature of drawer delivered to payee. In such cases, **“there is an implied authority of the person receiving such cheque to complete it by filing the blanks”**. Amount so filled in would be the amount intended to be paid by the drawer.

(10.12). It is relevant at this stage to refer the provision made under Section 20 of Negotiable Instrument

⁹ KAMALAMMAL Vs. C. K. MOHANAN & Anr.
: 2007 Cri.L.J. 3124 = Cr.A. 275/01, D/- 18/07/06

¹⁰ HITENBHAI PAREKH PROPRIETOR, PAREKH ENTERPRISES Vs. STATE OF GUJARAT
: 2010(5) GLR 4136 = Cr.A. 1189/09, D/- 6/10/09

(Cr.A. 221/2025 – S. 138 NIA, 1881 – 2Y+ C10L - BJ-D - 3rd ASJ, Jamnagar)

Act, 1881, which is reproduced here-in-below :

Section 20 of Negotiable Instrument Act, 1881 :

(Inchoate stamped instruments) :-

Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments, then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount:

Provided that no person other than a holder in due course shall recover from the person delivering the instrument any thing in excess of the amount intended by him to be paid thereunder.

(10.13). The Ld. Advocate for the Complainant has relied on the decision delivered by the Hon'ble Supreme Court (Coram: Hon'ble Justice J. Rohinton Fali Nariman and Hon'ble Justice Ms. Indu Malhotra, JJ) in case of ¹¹T.P. MURGAN (D) THRO' LRs. Vs. BOJAN, wherein held that under Section 139 of the Negotiable Instruments Act, 1881, once a cheque has been signed and issued in favour of the holder, there is statutory presumption that it is issued in discharge of a legally enforceable debt or liability but this presumption is a rebuttable one, if the issuer of the cheque is able to discharge the burden that it was issued for some other purpose.

¹¹ T. P. MURGAN (D) THRO' LRs. Vs. BOJAN : CrA 950/18, D/- 31/7/18

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In the present case, the Appellant has failed to produce any credible evidence to rebut the statutory presumption.

(10.14). The Ld. Advocate for the Complainant has relied on the decision delivered by the Hon'ble Supreme Court (Coram: Hon'ble Justice Mrs. R. Banumathi and Hon'ble Justice Mrs. Indira Banerjee, JJ) in case of ¹²BIR SINGH Vs. MUKESH KUMAR, wherein held that if a signed blank cheque is voluntarily presented to the payee towards some payment, the payee may fill up the amount and other particulars and this in itself would not invalidate the Cheque and the onus would still be on the Accused to prove that the Cheque was not in discharge of a debt or liability by adducing evidence and if the Cheque is otherwise valid, the penal provisions would be attracted.

(10.15). It is relevant to reproduce the provision of presumption made under **Section 118, 119 and 139 of Negotiable Instrument Act, 1881** and are as follow :

Section 118 of N.I. Act :

(Presumptions as to negotiable instruments) :

Until the contrary is proved, the following presumptions shall be made : -

(a) of consideration; that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed,

¹² *BIR SINGH Vs. MUKESH KUMAR : 2019(1) G.L.H. 338 = CrA 230/2019, D/- 6/2/19*

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negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration ;

(b) as to date; that every negotiable instrument bearing a date was made or drawn on such date ;

(c) as to time of acceptance; that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity ;

(d) as to time of transfer; that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of endorsements; that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamp; that a lost promissory note, bill of exchange or cheque was duly stamped ;

(g) that holder is a holder in due course; that the holder of a negotiable instrument is a holder in due course: provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an SP offence or fraud or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

Section 119 of N.I. Act :

(Presumption on proof of protest) :

In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of its dishonour, unless and until such fact is disproved.

Section 139 of N.I. Act :

(Presumption in favour of holder) :

It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability.

(10.16). Even the legal presumption as to negotiable instrument is raised under Section 118 of the Negotiable Instrument Act, 1881. When presumption is raised under Section 118 of

Negotiable Instrument Act, 1881, the defense as to date, place, time, will have no merits. The decisions delivered in case of ¹³KAMLA S. Vs. VIDHYADHARAN M. J., ¹⁴C. ANTONY Vs. K. G. RAGHAVANWAIR, will not assist to Accused looking the facts of present case.

(10.17). The Ld. Advocate for the Original Complainant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice Ms. Indu Malhotra and Hon'ble Justice Ajay Rastogi, JJ) in case of ¹⁵SUMETI VIJ Vs. M/s. PARAMOUNT TECH FAB INDUSTRIES, wherein held that there is a presumption of consideration on proof of issuance of cheque and onus shifts to Accused to rebut presumption that cheque is not issued for discharge of any debt or liability and considering that, Accused not led any evidence in support of his defense, he failed to rebut presumption under Section 139 of N.I. Act and the conviction was confirmed.

(10.18). It is defense of the Accused that signed blank cheque was given as security cheque. The Ld. Advocate for the Complainant has relied on the decision delivered by the Gujarat High Court (Coram : Hon'ble Justice S. G. Shah, J) in case of

¹³ *KAMLA S. Vs. VIDHYADHARAN M.J. : 2008(1) GLR 423 (SC)*

¹⁴ *C. ANTONY Vs. K.G. RAGHAVANWAIR : 2001(10) SRJ 470*

¹⁵ *SUMETI VIJ Vs. M/s. PARAMOUNT TECH FAB INDUSTRIES : 2021(3) GLR 2536 = Cr.A. 292/21, D/- 9/3/21*

¹⁶**ALOKBHAI PRAVINCHANDRA DESAI Vs. JAYENDRABHAI BHOGILAL THAKKAR,** wherein the defense of issuing cheque as security, was rejected.

(10.19). It is held in the decision delivered by the Hon'ble Kerala High Court (Coram : Hon'ble Justice K.P. Jyothindranath, J) in case of ¹⁷**K. ASHOK NAIR Vs. C.V. VICHITHRAN,** wherein the products of the complainant's firm was supplied to the parties and the liability to collect the amount lies upon the commission agent. It was held that there is nothing to show that the said amount was actually received by the respondent / Accused and there is a legal liability to pay the said amount. In present case, legal liability is already proved, which is not rebutted by any reliable evidence. Being different facts & circumstances, the said authority will not be helpful to the Accused in light of facts of present case.

(10.20). The Ld. Advocate for the Original Complainant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Chief Justice N. V. Ramana, Hon'ble Justice Surya Kant and Hon'ble Justice A. S. Bopanna, JJ) in case of ¹⁸**TRIYAMBAK S. HEGDE Vs. SRIPAD,** wherein

¹⁶ *ALOKBHAI PRAVINCHANDRA DESAI Vs. JAYENDRABHAI BHOGILAL THAKKAR : 2016(3) Cr.LR 876 = 2017(1) GLH 288 = Cr.R.A. 101/16, D/- 23/09/16*

¹⁷ *K. ASHOK NAIR Vs. C.V. VICHITHRAN : 2018 JW (Ker) 796 = Cr.A. 2084/05, D/- 3/1/18*

¹⁸ *TRIYAMBAK S. HEGDE Vs. SRIPAD : Cr.A. 849/11 & 850/11, D/- 23/09/21*

observed that keeping all aspects in view, the case put forth by the respondent does not satisfy the requirement of rebuttal even if tested on the touchstone of preponderance of probability. Therefore, in the present facts, it cannot be held that the presumption which had arisen in favour of the appellant had been successfully rebutted by the respondent herein.

(10.21). It is held in the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice R. V. Raveendran and Hon'ble Justice J. M. Panchal, JJ) in case of ¹⁹**KUMAR EXPORTS Vs. SHARMA CARPETS** that when contrary not proved by respondent, presumption stood rebutted.

(10.22). It is held in the decision delivered by the Hon'ble Delhi High Court (Coram : Hon'ble Justice V. K. Jain, J) in case of ²⁰**S. K. JAIN Vs. VIJAY KALRA**, that to rebut the statutory presumption, an Accused is not expected to prove his defense beyond reasonable doubt.

(10.23). It is held in the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice D. Y. Chandrachud and Hon'ble Justice M. R. Shah, JJ) in case of ²¹**ANSS RAJASHEKAR Vs.**

¹⁹ ***KUMAR EXPORTS Vs. SHARMA CARPETS***

: AIR 2009 SC 1518 = 2009(2) SCC 513 = Cr.A. 2045/08, D/- 16/12/08

²⁰ ***S. K. JAIN Vs. VIJAY KALRA*** : 2014 (1) DCR 547 : Cr.A. 1011/13 D/- 6/3/14

²¹ ***ANSS RAJASHEKAR Vs. AUGUSTUS JEB A ANANTH***

: AIR 2019 SC 942 = Cr.A. 95/19, D/- 18/01/19

AUGUSTUS JEBA ANANTH that situation of failure of Complainant to establish source of funds alleged to be utilized for disbursal of loan to Accused, is explained. In the said case, presumption under Section 139 of Negotiable Instrument Act, 1881, was duly rebutted and there was an absence of a legally enforceable debt, whereas in present case, the facts are different and therefore it is not helpful to Accused in present case.

(10.24). It is held in the decision delivered by the Hon'ble Gujarat High Court (Coram : Hon'ble Justice A. L. Dave, J) in case of ²²**ZUBEDABAI ABDULBHAI Vs. GANGARAM MOTIRAM**, that when the evidence of execution is not believed or accepted, no question of drawing presumption and the arguments regarding presumption under Section 118 of N.I. Act cannot be accepted and burden of proof lies on the shoulder of complainant. In present case, it is admitted that the cheques in question bears the signature of the Accused and therefore, such defense is not tenable and hence, the said authority will not be helpful to the Accused in present case.

(10.25). It is held in the decision delivered by the Hon'ble Gujarat High Court (Coram : Hon'ble Justice V. P.

²² ***ZUBEDABAI ABDULBHAI Vs. GANGARAM MOTIRAM***
: 2000 (0) GLHEL-HC 214081 = 2001(2) GCD 1326 = S.A. 284/84, D/- 30/06/2000
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Patel, J) in case of ²³**D.M. FINANCE (PARTNERSHIP FIRM) JAYESH D. THAKKAR Vs. STATE OF GUJARAT**, that initial burden of proof is on Complainant to prove that cheques have been issued for discharge of any debt or other liability and the Complainant has to prove only that cheques are drawn by Accused and the Court has to presume case of Complainant under Section 139 of N.I.Act unless the contrary is proved. However, such presumption is rebuttable in nature and burden is on Accused to lead the evidence to rebut such presumption. Complainant has initially proved the cheque was drawn by Accused in aid of presumption under Section 118(a), 139 of N.I.Act and shifted onus on Accused. The Accused has relied upon cross examination of Complainant, documentary evidence produced by Complainant and oral and documentary evidence produced on his behalf and shifted burden again on Complainant. But in present case, the presumption raised under Section 118(a), 139 of Negotiable Instrument Act, is not rebutted by Accused and therefore, such defense is not tenable and hence, the said authority will not be helpful to the Accused in present case.

(10.26). It is held in the decision delivered by the Hon'ble Gujarat High Court (Coram : Hon'ble Justice

²³ ***D.M. FINANCE (PARTNERSHIP FIRM) JAYESH D. THAKKAR Vs. STATE OF GUJARAT : 2000(0) AIJEL-HC 242203 = 2020(4) GLR 3204 = Cr.A. 2602/09, D/- 29/05/20***

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Bankim N. Mehta, J) in case of ²⁴**MANISH KUMAR RAMESHCHANDRA SHAH Vs. STATE OF GUJARAT** that if the Accused is able to raise an probable defense which creates doubt about the existence of a legally recoverable debt or liability, the prosecution can fail. The Accused can rely upon the materials submitted by the complainant in order to raise such defense. If the Accused is able to rebut the presumption and raise probable defense the burden shifts on the complainant to prove the existence of a legally recoverable debt and the cheque was given towards discharge of such debt. It is held in the decision delivered by the Hon'ble Gujarat High Court (Coram : Hon'ble Justice Bankim N. Mehta, J) in case of ²⁵**DILAWARSINH MODUBHA ZALA Vs. STATE OF GUJARAT** that complainant failed to prove that cheque in question was given towards discharge of existing recoverable debt. Accused was able to rebut presumption under Section 139 and raise probable defense. It is held in the decision delivered by the Hon'ble Gujarat High Court (Coram : Hon'ble Justice Bankim N. Mehta J) in case of ²⁶**KAPADVANJ PEOPLES CO-OPERATIVE BANK Ltd. Vs. JAYANTIBHAI TALASAJI MARAWADI**, that it is difficult to

²⁴ ***MANISH KUMAR RAMESHCHANDRA SHAH Vs. STATE OF GUJARAT***
: ACR 2012(I) 285 GUJ = Cr.A. 572/98, D/- 2/3/12

²⁵ ***DILAWARSINH MODUBHA ZALA Vs. STATE OF GUJARAT***
: 2012 Cr.L.J. (NOC) 495 GUJ = Cr.A. 2086/10, D/- 12/1/12

²⁶ ***KAPADVANJ PEOPLES CO-OPERATIVE BANK Ltd. Vs. JAYANTIBHAI TALASAJI MARAWADI & Anr.***
: ACR 2012(I) 271 GUJ = Cr.A. 2344/09, D/- 1/3/12

ascertain that what amount was outstanding and the Accused was able to raise probable defense that there was no legal enforceable debt on the day of issuance of the cheque. It is further held that if the Accused is able to raise probable defense with regard to existence of a legally recoverable debt or liability, the burden shifts on the prosecution to prove that the cheque in question was given towards legally recoverable debt or liability. In present case, the Accused has not rebutted the presumption raised under Section 118 & 139 of Negotiable Instrument Act, 1881, as revealing from evidence on record and hence, the said authorities will not be helpful to the Accused in present case.

(10.27). The Ld. Advocate for the Complainant has relied on the decision delivered by the Hon'ble Gujarat High Court (Coram : Hon'ble Justice S. G. Shah, J) in case of ²⁷**INDRAVADAN NAVNEETLAL SHETH Vs. STATE OF GUJARAT** wherein held that practically when petitioner has failed to prove any cogent and reliable evidence, so as to rebut statutory presumption, only because he has put forward some defense and probabilities, it would not rescue him from the conviction. Thereby, it seems that practically only probable defense under Section 138 may be non-issuance of cheque or lost

²⁷ **INDRAVADAN NAVNEETLAL SHETH Vs. STATE OF GUJARAT**
: 2017(1) GLR 266 = Cr.R.A. No. 542/11, D/- 29/7/16

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cheque found by the Complainant & thereby no relationship between the parties or any other similar defense, so as to believe that Accused has never issued an cheque in favour of the Complainant to clear any legal debt, which is never pleaded or proved by the petitioner.

(10.28). When the legal presumption under Section 118, 119 and 139 of Negotiable Instrument Act, 1881, is raised and the Accused has failed to rebut the said presumption, as in present case, then the onus of proof does not shift back to Complainant and hence the decisions delivered in the case of ²⁸K. PRAKASAN Vs. P.K. SUNDARAN, ²⁹M.S. NARAYANA MENON Vs. STATE OF KERALA, ³⁰SURYALAXMI COTTON MILLS Vs. RAJVIR INDUSTRIES LTD., will not assist the case of Accused. It is held in decision delivered in case of ³¹GIRISH NATVAR PATEL Vs. STATE OF GUJARAT, when the presumption under Section 139 of Negotiable Instrument Act, 1881, can be raised. It is held in decision delivered in case of ³²A. V. MURTHY Vs. B. S. NAGABASAVANNA that presumption as to negotiable instruments of consideration is in favour holder.

²⁸ *K. PRAKASAN Vs. P.K. SUNDARAN : 2008(1) GLJ 362*

²⁹ *M.S. NARAYANA MENON Vs. STATE OF KERALA : 2006(3) CRIMES 117*

³⁰ *SURYALAXMI COTTON MILLS Vs. RAJVIR INDUSTRIES LTD. : 2008(1) CRIMES 165*

³¹ *GIRISH NATVAR PATEL Vs. STATE OF GUJARAT : 2006(1) GLR786=2006(1) GLH530=2006 Cr.L.J. 3378*

³² *A. V. MURTHY Vs. B. S. NAGABASAVANNA : 2002(2) SCC 642 = AIR 2002 SC 985 = 2002 Cr.L.J. 1479*

(10.29). The Hon'ble Allahabad High Court has held in it's decision delivered in case of ³³SHAMSUL ISLAM Vs. 15th ADDL. DISTRICT JUDGE, KANPURNAGAR that there is presumption that the amount was due and it was for the Accused to prove that the debt was already discharged as provided by Section 139 of Negotiable Instrument Act, 1881. The Hon'ble Supreme Court of India has held in it's decision delivered in case of ³⁴K. N. BEENA Vs. MUNIYAPPAM that under Section 139 of Negotiable Instrument Act, 1881, the Court has to presume, in a complaint under Section 138 of Negotiable Instrument Act, 1881 that the cheque had been issued for a debt or liability. There is therefore no requirement that the Complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability was on the respondents and this they have to discharge in the trial. The said ratio is also laid down in the decision delivered in cases of ³⁵M.M.T.C. LTD. Vs. MEDCHL CHEMICALS AND PHARMA (P) LTD. and ³⁶STEEL AUTHORITY OF INDIA LTD. Vs. B.D. AGGARWAL & SONS LTD.

(10.30). The Hon'ble Andhra Pradesh High Court has held

³³ *SHAMSUL ISLAM Vs. 15th ADDL. DISTRICT JUDGE, KANPURNAGAR : 2002 Cr.L.J. 4564 (ALL.)*

³⁴ *K. N. BEENA Vs. MUNIYAPPAM : 2001 Cr.L.J. 4745 (S.C.) = (2001)8 SCC 458 = 2002 SCC (Cr.) 14*

³⁵ *M.M.T.C. LTD. Vs. MEDCHL CHEMICALS AND PHARMA (P) LTD.*

: AIR 2002 SC 182=(2002)1 SCC 234=2002 CrLJ 266

³⁶ *STEEL AUTHORITY OF INDIA LTD. Vs. B.D. AGGARWAL & SONS LTD. : 2002 Cr.L.J. 382 (P.&H.)*

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the ratio in it's decision delivered in case of ³⁷**M. G. BROTHERS AUTOMOBILES LTD. Vs. B. MASTHAN REDDY** that once issuance of cheque is admitted, it is for the drawer to rebut presumption under Section 139 of N.I. Act by proving that the said cheque was not issued towards a legally enforceable liabilities. The Hon'ble Madras High Court has held the ratio in it's decision delivered in case of ³⁸**RAGHUNATHAN Vs. SELVARAJAN** that the burden of proving that a cheque has not been issued for a debt or liability is on the Accused. The Hon'ble Andhra Pradesh High Court has held the ratio in it's decision delivered in case of ³⁹**N. NASINGARAO Vs. SRINIVASA CHARY** that when the Complainant is examined after several years, certain discrepancies in his cross-examination cannot be taken as circumstances to rebut presumption under Section 139 of Negotiable Instrument Act, 1881 and it is proper to conclude that cheque is supported by legally enforceable debt owned by Accused to Complainant.

(10.31). The Hon'ble Bombay High Court has held the ratio in it's decision delivered in case of ⁴⁰**GOA HANDICRAFTS, RURAL & SMALL SCALE**

³⁷ *M. G. BROTHERS AUTOMOBILES LTD. Vs. B. MASTHAN REDDY*
: 2006(1) D.C.R. 375 = Cr.A. No. 323/01 Dt. 09/11/2005

³⁸ *RAGHUNATHAN Vs. SELVARAJAN* : 2003(3) D.C.R. 615 = 2002 Cr.L.J. 3848

³⁹ *N. NASINGARAO Vs. SRINIVASA CHARY*
: 2011 A.C.D.281 (A.P.) = Cr. Appeal No. 234/07 Dt. 21/07/10

⁴⁰ *GOA HANDICRAFTS, RURAL & SMALL SCALE INDUSTRIES DEVELOPMENT CORPORATION LTD. Vs. M/s. SAMUDRA ROPES PVT. LTD. & ORS.*
: 2006(1) D.C.R. 45 = Cr. Appeal No. 13/2004 Dt. 29/06/2005 (Panaji Bench)

INDUSTRIES DEVELOPMENT CORPORATION LTD. Vs. M/s. SAMUDRA ROPES PVT. LTD. & ORS. that it is upon the Accused to rebut the presumption beyond reasonable doubt. The Hon'ble Madras High Court has held the ratio in it's decision delivered in case of ⁴¹**D. CHANDRASEKARAN Vs. M. MUTHUKUMARASAMY** that mere denial or rebuttal by Accused through his notice is not at all sufficient, qua the presumption raised under Section 118 & 139 of N.I. Act. The Hon'ble Karnataka High Court has held the ratio in it's decision delivered in case of ⁴²**DR. B.V. SAMPATHKUMAR Vs. Ms. DR. K.G.U. LAKSHMI** that when once issue of cheque is proved, a presumption under Section 139 of N.I. Act would arise. The Hon'ble Kerala High Court has held the ratio in it's decision delivered in case of ⁴³**R. SIVARAMAN Vs. STATE OF KERALA** that Court has to presume that cheque had been issued for a debt or liability and burden of proving that cheque had not been issued in discharge of a debt or liability is on Accused unless rebutted. The Hon'ble Gujarat High Court has held the ratio in it's decision delivered in case of ⁴⁴**GIRISH NATVAR PATEL Vs. STATE OF GUJARAT** and

⁴¹ ***D. CHANDRASEKARAN Vs. M. MUTHUKUMARASAMY***
: 2006(2) D.C.R. 161 = Cr.R.C. No. 372/05 to 374/05 Dt. 21/03/06

⁴² ***DR. B. V. SAMPATHKUMAR Vs. Ms. DR. K.G.U. LAKSHMI***
: 2006(2) D.C.R. 665 = Cr.Appeal No. 1115/99 Dt. 03/02/2006

⁴³ ***R. SIVARAMAN Vs. STATE OF KERALA*** : 2006(2) D.C.R. 514 = Cr.A. No. 465/00 Dt. 26/05/06

⁴⁴ ***GIRISH NATVAR PATEL Vs. STATE OF GUJARAT***
: 2006(1) D.C.R. 594 = Cr.Appeal No. 732/04 Dt. 25/11/05

in case of ⁴⁵**PRAJAPATI OIL INDUSTRY Vs. STATE OF GUJARAT** that burden lies upon the Accused to rebut presumption by cogent and convincing evidence. The Hon'ble Supreme Court of India has held the ratio in it's decision delivered in case of ⁴⁶**M/s. KUMAR EXPORTS Vs. M/s. SHARMA CARPETS** that presumption under Section 118 & 139 of Negotiable Instrument Act, 1881, is that cheque was for discharge of debt / liability. The Hon'ble Supreme Court of India has held the ratio in it's decision delivered in case of ⁴⁷**K. R. INDIRA Vs. Dr. G. ADINARAYANA** that the burden will be on the Accused to disprove the presumptions under Section 138 and 139 of Negotiable Instrument Act, 1881. Unless the burden is disproved by oral and documentary evidence, the statutory presumption as proved under Sections 118, 138 and 139 of Act, the Accused cannot escape from the criminal liability. The Hon'ble Supreme Court of India has held the ratio in it's decision delivered in case of ⁴⁸**HITEN P. DALAL Vs. BRATINDRANATH BANERJEE** that the presumption under Section 118 and 139 of Negotiable Instrument Act, 1881 that the Accused issued the cheque and the negotiable instrument for consideration and in the discharge of a legally recoverable debt can be drawn. It is on the

⁴⁵ ***PRAJAPATI OIL INDUSTRY Vs. STATE OF GUJARAT : 2004(1) GLH 365 = 2004(2) GCD 1475***

⁴⁶ ***M/s. KUMAR EXPORTS Vs. M/s. SHARMA CARPETS : 2011 A.C.D. 427 (SC) : Cr.Appeal No. 2045/08 Dt.16/12/08***

⁴⁷ ***K. R. INDIRA Vs. Dr. G. ADINARAYANA : 2003 SCC (Cri) 2002***

⁴⁸ ***HITEN P. DALAL Vs. BRATINDRANATH BANERJEE : 2001 (6) SCC 16***

Accused to rebut these presumptions. The Hon'ble Supreme Court of India has held the ratio in it's decision delivered in case of ⁴⁹M/s. ELECTRONIC TRADE & TECHNOLOGY DEVELOPMENT CORPORATION LTD. Vs. M/s. INDIAN TECHNOLOGISTS & ENGINEERS (ELECTRONICS) PVT. LTD. that it is for the Accused to show that there is no existing or subsisting debt or liability in respect of the cheque issued and the burden of proof of non-existence of such debt or liability is on the Accused. The Hon'ble Supreme Court of India has held the ratio in it's decision delivered in case of ⁵⁰RANGAPPA Vs. MOHAN that existence of legally recoverable debt or liability is matter of presumption under Section 139 of Negotiable Instrument Act, 1881 and the presumption mandated by Section 139 of Negotiable Instrument Act, 1881, includes the existence of legally enforceable debt or liability.

(10.32). The Hon'ble Karnataka High Court has held the ratio in it's decision delivered in case of ⁵¹L. MOHAN Vs. V. MOHAN NAIDU that the Court has to presume that the cheque has been issued for discharging the debt or liability and if Accused claim that he had paid up the amount than the Accused must prove the same. The Accused has

⁴⁹ *M/s. ELECTRONIC TRADE & TECHNOLOGY DEVELOPMENT CORPORATION LTD. Vs. M/s. INDIAN TECHNOLOGISTS & ENGINEERS (ELECTRONICS) PVT. LTD. : AIR 1996 SC 2339*

⁵⁰ *RANGAPPA Vs. MOHAN : 2011 A.C.D. 7 (SC) = Cr. Appeal no. 1020/10 Dt. 7/5/10*

⁵¹ *L. MOHAN Vs. V. MOHAN NAIDU : 2004(2) D.C.R. 605 = 2004 Cr.L.J. 3177*

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neither proved that there was no existing debt or liability at the time of presentation of the cheque nor brought any evidence on record showing that there was sufficient fund in his account when the cheque in question was presented for honouring.

(10.33). The Ld. Advocate for the Complainant has vehemently argued that the ingredients of the offence punishable under Section 138 of Negotiable Instruments Act, 1881, is that the cheque was given and the same is dishonoured and there is no payment of cheque amount even on issuance of notice. The Ld. Advocate for the Complainant has submitted that all the ingredients of Section 138 of Negotiable Instrument Act, 1881, is being complied with and therefore, the Ld. Trial Judge has correctly held the Accused guilty for the offence punishable under Section 138 of Negotiable Instrument Act, 1881.

(10.34). It is held in the decision delivered by the Hon'ble Calcutta High Court (Coram : Hon'ble Justice Pratibha Bonnerjea, J) in case of ⁵²**TRADERS SYNDICATE Vs. UNION OF INDIA** that when no cross-examination preferred on the point, the Court can hold that defendant accepts plaintiff's case on the point in entirety. No dispute on the point can be raised in argument. In present case,

⁵² **TRADERS SYNDICATE Vs. UNION OF INDIA**
: AIR 1983 Calcutta 337 = Suit No. 831/68, D/- 21/07/82

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there is neither defense nor cross-examination is done, as to the Accused had not signed the cheque in question and therefore, such defense is not tenable and hence, the said authority will not be helpful to the Accused in present case.

(10.35). It is held in the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice V. Ramaswami and Hon'ble Justice G. K. Mitter and Hon'ble Justice C. A. Vaidialingam, JJ) in case of ⁵³**BAIDYANATH PRASAD SRIVASTAVA Vs. STATE OF BIHAR** that it has committed breach of proviso to Section 342-A by commenting on failure of Accused to give evidence and by drawing a presumption against him, both of which were illegal under Clause (b) of proviso to Section 342-A of Criminal Procedure Code. It was matter of offence punishable under Section 467 of I.P.C. and not under Section 138 of N.I. Act, where there is statutory presumption under Section 118 and 139 of N.I. Act and hence the same will not be helpful to Accused in present case.

(10.36). It is held in the decision delivered by the Hon'ble Gauhati High Court (Coram : Hon'ble Justice C. R. Sarma, J) in case of ⁵⁴**RUMI HAZARIKA Vs. ANIRBAN HATIKAKOTY** that when the

⁵³ ***BAIDYANATH PRASAD SRIVASTAVA Vs. STATE OF BIHAR***
: 1968 Cr.L.J. 1650 Cr.A. 47/66, D/- 30/04/68

⁵⁴ ***RUMI HAZARIKA Vs. ANIRBAN HATIKAKOTY***
: 2015 (4) GLT 884 = 2016(2) DCR 182 = Cr.A. 87/08, D/- 12/10/15

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Complainant has failed to prove the version of complaint under Section 138 of N.I. Act, drawing adverse inference against Complainant is just and proper. In present case, the Complainant has proved the required ingredients of Section 138 of Negotiable Instrument Act, 1881 and hence, the said authority will not be helpful to the Accused in present case.

(10.37). It is held in the decision delivered by the Hon'ble Calcutta High Court (Coram : Hon'ble Justice Anil K. Sen and Hon'ble Justice Prabir Kumar Majumdar, JJ) in case of ⁵⁵HIMJIT CONSTRUCTION Vs. TARUN SARKA that where there exists obligation on the party to produce documents, the non-production can very well justify the Court to raise an adverse inference even though such evidence had not been specifically called for by the opposite party. It is held in the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice J. C. Shah and Hon'ble Justice V. Ramaswami and Hon'ble Justice G. K. Mitter, JJ) in case of ⁵⁶GOPAL KRISHNAJI KETKAR Vs. MOHAMED HAJI LATIF & Ors. that when a party in possession of best evidence, which would throw light on the issue in controversy withholding it, the

⁵⁵ *HIMJIT CONSTRUCTION Vs. TARUN SARKA*

: AIR 1985 Calcutta 200 = A.F.A.D No. 215/83, D/-22/02/84

⁵⁶ *GOPAL KRISHNAJI KETKAR Vs. MOHAMED HAJI LATIF & Ors.*

: AIR 1968 SC 1413 = C.A. 954/65, D/- 19/04/68

Court ought to draw an adverse inference against him notwithstanding that onus of proof does not lie on him and the party cannot rely on abstract doctrine of onus of proof or on the fact that he was not called upon to produce it. In present case, the Complainant has produced required document to prove commission of offence and hence, the said authorities will not be helpful to the Accused in present case.

(10.38). It is held in the decision delivered by the Hon'ble Gujarat High Court (Coram : Hon'ble Justice Bankim N. Mehta, J) in case of ⁵⁷**DILAWARSINH MODUBHA ZALA Vs. STATE OF GUJARAT & Ors.** The Hon'ble Bombay High Court has held the ratio in its decision delivered in case of ⁵⁸**SANTAM FINANCERS & REAL ESTATE PVT. LTD. Vs. SHRI DEVAPA A. SARVI** that presumption is rebuttable by Accused either by leading evidence or bringing facts on record in cross-examination which could make the case of Complainant improbable and burden of proof is on drawer to prove that cheque issued towards security and not for encashment. In said case, the Accused was able to rebut the presumption, wherein the facts of the present case, does not establish the rebuttal of presumption. It is held in

⁵⁷ ***DILAWARSINH MODUBHA ZALA Vs. STATE OF GUJARAT & Ors.***
: 2012 Cr.L.J. (NOC) 495 (GUJ) = Cr.A. 2086/10, D/- 12/1/12

⁵⁸ ***SANTAM FINANCERS & REAL ESTATE PVT. LTD. Vs. SHRI DEVAPA A. SARVI*** : 2005(2) D.C.R. 65

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the decision delivered by the Hon'ble Karnataka High Court (Coram : Hon'ble Justice Mohamed Anwar, J.) in case of ⁵⁹B. P. VENKATESULU Vs. K. P. MANI NAYAR, but the same will not be helpful to the Accused as in the present case the presumption raised is not rebutted.

(10.39). The Ld. Advocate for the Complainant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice K. T. Thomas and Hon'ble Justice S. N. Variava, JJ) in case of ⁶⁰K. N. BEENA Vs. MUNIYAPPAN & Anr., wherein it was held that conviction cannot be set aside on the ground of not proving that cheque was given for any debt or liability and the burden to prove non-consideration for dishonoured cheque is on the Accused.

(10.40). The Ld. Advocate for the Complainant has relied on the decision delivered by the Hon'ble Supreme Court (Coram: Hon'ble Justice J. Chelameswar and Hon'ble Justice Pinaki Chandra Ghose, JJ) in case of ⁶¹T. VASANTHAKUMAR Vs. VIJAYAKUMARI, wherein controversy was with respect to Section 139 of Negotiable Instrument Act, 1881, as to whether Complainant has to prove existence of a legally enforceable debt before the

⁵⁹ B. P. VENKATESULU Vs. K. P. MANI NAYAR
: 2001(1) ALD Cri 544 = 2001 104 CompCas 348 Kar = 2001 CrLJ 745 = D/- 28/11/00

⁶⁰ K. N. BEENA Vs. MUNIYAPPAN & Anr. : 2001 DCR 47 = CrA 1066/01, D/- 18/10/01

⁶¹ T. VASANTHAKUMAR Vs. VIJAYAKUMARI
: 2015(8) SCC 378 = AIR 2015 SC 2240 = CrA 728/15, D/- 28/4/15

presumption under Section 139 of the Act, starts operating and burden shifts to the Accused. It is being held that **since the cheque as well as the signature has been accepted by the Accused-Respondent, the presumption under Section 139 of Negotiable Instrument Act, 1881, would operate.** Thus, the **burden was on the Accused to disprove the cheque or the existence of any legally recoverable debt or liability.**

(10.41). As discussed above, such defense is not tenable, in view of above discussed authority. From the deposition of witness, it is crystal clear that the cheque in question was deposited in bank and was returned for the reason – **Funds Insufficient**. The said oral deposition also get corroboration from cheque return memo, which also shows that cheque was returned unpaid for the reason – Funds Insufficient. It is proved facts that Accused had issued the cheque in question and having his signature there in the cheque. It is well settled that when the cheque is returned unpaid for the reason – Funds Insufficient, then it falls within the purview of offence punishable under Section 138 of Negotiable Instruments Act, 1881.

(10.42). The Ld. Advocate for the Complainant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice Abhay Manohar

Sapre and Hon'ble Justice Dinesh Maheswari, JJ) in case of ⁶²ROHIT JIVANLAL PATEL Vs. STATE OF GUJARAT & Anr., wherein Accused had not denied his signature on the cheques in question and cheques had been drawn in favour of the Complainant on a bank account maintained by the Accused and cheques were presented to the Bank concerned within their validity period and were returned unpaid for the reason of either the balance being insufficient or the account being closed. It is held that all the basic ingredients of Section 138 as also of Section 118 and 139 of Negotiable Instruments Act, 1881, satisfied and presumption arises that the cheque was drawn for consideration and the holder of the cheque i.e. Complainant, received the same in discharge of an existing debt.

(10.43). The Ld. Advocate for the Complainant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice K.T. Thomas and Hon'ble Justice M.B. Shah, JJ) in case of ⁶³NEPC MICON LTD. Vs. MAGMA LEASING LTD., wherein held that Account Closed would be offence under Section 138 of Negotiable Instrument Act, 1881, as there was insufficient or no fund to honour the cheque in 'that account' –

⁶² ROHIT JIVANLAL PATEL Vs. STATE OF GUJARAT & Anr.
: AIR 2019 SC 1876 = 2019(1) Crimes 291 = CrA 508/19, D/- 15/3/19

⁶³ NEPC MICON LTD. Vs. MAGMA LEASING LTD.
: AIR 1999 SC 1952= 1999(4) SCC 253= 1999 CrLJ 2883=1999 DCR 16 (SC)=CrA 481/99,29/4/99
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Dishonour of cheque by a bank on ground that account is closed would be covered by the phrase “amount of money standing to the credit of that account is insufficient to honour the cheque”. It is held in decision delivered in case of ⁶⁴HASHMIKANT M. SETH Vs. STATE OF GUJARAT that in view of statement and object of the Act it would amount to an offence when cheque is returned with endorsement – “Account Closed” / “Stopped Payment”.

(10.44). The Complainant has deposed on oath by filing affidavit of examination-in-chief. Issue is whether it is admissible in view of provision of Section 145 of Negotiable Instrument Act, 1881. Answer is in affirmative in light of following decision of the Hon'ble Gujarat High Court and the Hon'ble Supreme Court of India. The Hon'ble Gujarat High Court has held the ratio in it's decision delivered in case of ⁶⁵SHUBH LAXMI ENTRPRISES Vs. VIPUL S. LASKRI that the Accused chose to examine himself on oath by filing affidavit, which the Court had granted and there was no illegality in the order. The contention was negatived that Section 145 of Negotiable Instrument Act, 1881, permits only Complainant to give evidence by affidavit. The Hon'ble Supreme Court of India has

⁶⁴ HASHMIKANT M. SETH Vs. STATE OF GUJARAT
: 2004(2) GLH 783 = 2005(1) GLR 638 = 2004 Cr.L.J. 3628

⁶⁵ SHUBH LAXMI ENTRPRISES Vs. VIPUL S. LASKRI : 2004(4) GLR 3309

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held the ratio in it's decision delivered in case of ⁶⁶M/s. MANDVI CO-OP. BANK LTD. Vs. NIMESH B. THAKORE that person giving evidence on affidavit under provision of Section 145 of Negotiable Instrument Act, 1881, can only be subjected to cross-examination as to facts stated in affidavit and it is not open to any party to insist that before cross-examination, he must first depose in examination-in-chief.

(10.45). It is defense of Accused that cheque in question is undated / post dated cheque. Such defense has no merits as cheque become due only date stated on cheque. The Hon'ble Supreme Court of India held in it's decision delivered in case of ⁶⁷ASHOK YESHWANT BADA VE Vs. SURENDRA MADHAVRAO NIGHOJAKAR that post dated cheque becomes a cheque within the meaning of Section 138 of Negotiable Instrument Act, 1881, on the date which is written thereon and the 6 months' period has to be reckoned for the purposes of proviso (a) to Section 138 of Negotiable Instrument Act, 1881, from the said date. It is held in the decision delivered in case of ⁶⁸SHRI ISHAR ALLOYS STEELS LTD. Vs. JAYASWALS NECO LTD. and ⁶⁹GEETA Vs. STATE OF U.P. that in

⁶⁶ *M/s. MANDVI CO-OP. BANK LTD. Vs. NIMESH B. THAKORE*
: 2011 A.C.D. 105 (SC) = Cr.Appeal No. 72/10 Dt. 11/1/10

⁶⁷ *ASHOK YESHWANT BADA VE Vs. SURENDRA MADHAVRAO NIGHOJAKAR*
: AIR 2001 SC 1315 : 2001 CrLJ 1674

⁶⁸ *SHRI ISHAR ALLOYS STEELS LTD. Vs. JAYASWALS NECO LTD.* : AIR 2001 SC 1161

⁶⁹ *GEETA Vs. STATE OF U.P.* : 2007 Cr.L.J. 2222

post-dated cheque the six month period for presentation has to be reckoned from the date written on cheque and post-dated cheque becomes a cheque under the Act on the date which is written on the said cheque and till that date it is only a bill of exchange.

(10.46). Now if the Accused had paid any amount in the present Complaint, then he would never make mistake of not taking in writing that the amount is being paid-up and to take the original Cheque in question back in his custody. The original cheque in question is produced from the custody of the Complainant. Thus, it is clear that the cheque which was issued by the Accused w towards the discharging of the liability under cheque, which was returned unpaid for the reason – **Funds Insufficient** and inspite of issuing of legal notice, the Accused had not paid the amount of cheque, which constitute the offence punishable under Section 138 of Negotiable Instruments Ac, 1881 and the Hon'ble Trial Court has not made any error in convicting the Accused and imposing sentence upon him and therefore, it does not require any interference by this Court.

(10.47). It is held in the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice Kailesh

Gambhir, J) in case of ⁷⁰VEENA RANI CHHABRA Vs. MANJU ROHIDA that in criminal trials, the guilt of Accused has to be proved beyond any shadow of doubt. It is further held that admission on the part of the respondent in her reply may be of some benefit to the appellant in a civil case, but the same cannot be help the appellant so far as criminal case is concerned. It is held in the decision delivered by the Hon'ble Karnataka High Court (Coram : Hon'ble Justice B. V. Pinto, J) in case of ⁷¹H.P. MOODALAPPA V/s. CHOWRAPPA that if the Court entertains a doubt, which is of legal nature, normally criminal Courts would not tend to convict the Accused person or rather it would give benefit of doubt to the Accused. In present case, the Complainant has proved the required ingredients of Section 138 of Negotiable Instrument Act, 1881, beyond reasonable doubt and hence, the said authority will not be helpful to the Accused in present case.

(10.48).It is held in the decision delivered by the Hon'ble Bombay High Court (Coram : Hon'ble Justice Manish Pitale, J) in case of ⁷²SANJAY YADHAVRAOJI MAKODE VS. SUHAS PRAKASHJI DHOTE that it is trite law that when two views are possible, the one accrues in favour

⁷⁰ VEENA RANI CHHABRA Vs. MANJU ROHIDA

: 2008 Legal Eagle (DCR) 339 = Cr.M.C. 933/05, D/- 16/09/08

⁷¹ H.P. MOODALAPPA V/s. CHOWRAPPA : 2012 Cr.L.J. 804 = Cr.A. 1415/04, D/- 10/3/11

⁷² SANJAY YADHAVRAOJI MAKODE VS. SUHAS PRAKASHJI DHOTE

: 2018 JW (Bom) 1354 = Cr.Appln. No. 346/17, D/- 10/7/18

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of Accused must be adopted. In present case, legal presumption is not rebutted and the defense of Accused is not supported by any oral or documentary evidence. Being different facts & circumstances, the said authority will not be helpful to the Accused in light of facts of present case.

(10.49). The Ld. Advocate for the Complainant has relied on the decision delivered by the Hon'ble Punjab & Haryana High Court (Coram : Hon'ble Justice Gurdev Singh, J) in case of ⁷³**GURDEV SINGH Vs. M/s. PUNJAB AGRICULTURAL TRADERS**, wherein held that when the cheque was issued by the Accused in discharge of legally enforceable debt, which on presentation to his banker was dishonored on account of insufficient funds in his account and he failed to pay the amount of that cheque to the Complainant inspite of issuance of legal statutory notice, then the offence punishable under Section 138 of Negotiable Instrument Act, 1881, is committed.

(10.50). The Ld. Advocate for the Complainant has relied on the decision delivered by the Hon'ble Delhi High Court (Coram : Hon'ble Justice A. K. Pathak, J) in case of ⁷⁴**THE JAMMU & KASHMIR BANK**

⁷³ ***GURDEV SINGH Vs. M/s. PUNJAB AGRICULTURAL TRADERS***
: 2012(1) Crimes 585 = Cr.Rev. 67/06, D/- 10/3/11

⁷⁴ ***THE JAMMU & KASHMIR BANK Vs. ABISHEK MITTAL***
: 2012(1) DCR 189 = Cr.A. 294/11, D/- 26/12/05

Vs. ABISHEK MITTAL, wherein held that it is thus, clear that for whatever reasons if a cheque is drawn on an account maintained by a drawer with its bank in favour of any person for the discharge of “any debt or other liability”, the ingredients of offence under Section 138 of the Negotiable Instrument Act, gets attracted in case the cheque is returned dishonored for insufficiency of funds and the cheque amount remains unpaid within the statutory period, despite service of notice. Legislature has been careful enough to record not only discharge in whole or in party of any debt but the same also includes other liability as well. The words ‘any’ and ‘other liability’ used in the Section assumes importance in the sense that if a cheque is issued by a person to discharge any debt or other liability of another person, it would attract the penal consequences under Section 138 of the Act. It is further held that the Section 138 of Act provides that a person guilty for the offence be punished with **imprisonment** for a term which may be **extended to two years** or with **fine** which may extend to **twice the amount of cheque** or **with both**.

(10.51). The Ld. Advocate for the Complainant has relied on the decision delivered by the Hon’ble Supreme Court (Coram : Hon’ble Justice Ranjana Prakash Desai and Hon’ble Justice Aftab Alam, JJ) in case

of ⁷⁵**R. MOHAN Vs. A. K. VIJAYAKUMAR**, wherein held that order to pay compensation may be enforced by awarding sentence in default, for offence punishable Section 138 of Negotiable Instruments Act, 1881 and order passed by Magistrate, awarding sentence in default of payment of compensation under Section 357(3) of Cr.P.C., was restored.

(10.52). The Ld. Advocate for the Complainant has relied on the decision delivered by the Hon'ble Supreme Court (Coram : Hon'ble Justice R. V. Raveendran & Hon'ble Justice R. M. Lodha, JJ) in case of ⁷⁶**R. VIJAYAN Vs. BABY & Anr.**, wherein held that the Courts should in all cases of conviction, uniformly levy fine upto twice the cheque amount and direct payment of compensation to complainant equal to cheque amount plus 9% simple interest.

(10.53). The Negotiable Instrument Act, 1881, is a Special Act, which will always override the provision made in general act / code – Criminal Procedure Code. The Ld. Magistrate is bound to impose sentence of imprisonment / fine / award compensation on conviction under Section 138 of Negotiable Instrument Act, 1881, considering

⁷⁵ **R. MOHAN Vs. A. K. VIJAYAKUMAR**
: 2012(8) SCC 721 = 2013(1) GLR 222 = Cr.A. 883/12, D/- 3/07/12

⁷⁶ **R. VIJAYAN Vs. BABY & Anr.**
: AIR 2012 SC 528 = 2012(1) SCC 260 = 2012(2) GLR 1353 = Cr.A. 1902/11, D/- 11/10/11

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above referred authorities more particularly of ⁷⁷**R. VIJAYAN Vs. BABY & Anr.**, delivered by the Hon'ble Supreme Court.

(10.54). Now, let us travel through the provision of Section 138 & 142 of Negotiable Instrument Act, 1881, to see when cause of action arose to file complaint under Section 138 of Negotiable Instrument Act, 1881 and time-limit to file complaint for offence punishable under Section 138 of Negotiable Instrument Act, 1881:

Section 138 of Negotiable Instrument Act, 1881 :

Dishonour of cheque for insufficiency, etc., of funds in account :

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is **returned by the bank unpaid** either because of the amount of money standing to the credit of that 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 that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two year, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a). the **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;**

(b). the payee or the holder in due course of the cheque as the case may be, 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 thirty days of the receipt of information** by him from the bank

⁷⁷ **R. VIJAYAN Vs. BABY & Anr.**
: AIR 2012 SC 528 = 2012(1) SCC 260 = 2012(2) GLR 1353 = Cr.A. 1902/11, D/- 11/10/11
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regarding the return of the cheque as unpaid and;

(c). the **drawer** of such cheque **fails to make the payment** of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, **within fifteen days of the receipt of the said notice**.

Clause (b) of Section 142 of Negotiable Instrument Act, 1881 :

(b). such complaint is made within one month of the date on which the cause of action arises under Clause (c) of the proviso to Section 138 of Negotiable Instrument Act, 1881.

(10.55). The summary of provisions made in clause (a), (b) and (c) of proviso to Section 138 and Clause (b) of Section 142 of Negotiable Instrument Act, 1881, with relevant fact of present case, are as follow :

Sr. No.	Section	Provision	Details as per Fact of present Case	Compliance of provision
(1)	138(a)	Cheques have been presented to the bank within a period of six months or within the period of its validity.	➤ Cheque date : 15/10/2019 & 17/10/2019	YES
(2)	138(b)	Demand notice within thirty days of the receipt of information regarding the return of the cheques as unpaid.	• Date of dishonour : 15/10/2019 & 17/10/2019 • Date of Demand Notice : 04/11/2019	YES
(3)	138(c)	drawer of cheques fails to make the payment of cheque amount, within fifteen days of the	• Date of deemed service of notice : 05/11/2019 • 15 days payment	YES

		receipt of the said notice.	period : 05/11/2019 to 19/11/2019	
(4)	142(b)	Complaint is made within one month of the date on which the cause of action arises under Clause (c) of the proviso to Section 138 of Negotiable Instrument Act, 1881.	• 30 Days period : 20/11/2019 to 19/12/2019 • Date of complaint : 18/12/2019	YES

(10.56). Thus, the provisions made in clause (a), (b) and (c) of proviso to Section 138 and Clause (b) of Section 142 of Negotiable Instrument Act, 1881, in light of facts of present case is duly complied with.

(10.57). The facts and alleged offence is not under the clouds of doubt and evidences are coming forth on the record to believe the guilt of Accused and no reasonable doubt is created with regards to the alleged offence committed by the present Accused and in light of such facts, the Accused is not entitled to get benefit of doubt, but on the contrary due to sufficient evidences on record, the Accused is liable to be convicted. The proved facts on record of this Case, clearly proves the guilt of Accused beyond reasonable doubt and Accused cannot be acquitted or else it will be mockery of law. Based on oral as well as documentary evidences on record, it does prove beyond reasonable doubt that the Accused has committed

an offence punishable under Section 138 of the Negotiable Instrument Act, 1881. It is held in a decision delivered in case of ⁷⁸**DALMIA CEMENT (BHARAT) LTD. Vs. GALAXY TRADERS & AGENCIES LTD.** that efforts to defeat the objectives of law by resorting to innovative measures and methods are to be discouraged.

(10.58). Merely because there is minor contradiction, the whole evidence of Complainant which otherwise inspire confidence of Court, could not be thrown away. On the contrary, there is clear admission on the part of the Accused that the cheque in question was signed and issued. The Hon'ble Gujarat High Court has held the ratio in it's decision delivered in case of ⁷⁹**JYANTILAL KUBERDAS SHARMA Vs. STATE OF GUJARAT** that the Court has to search truth while appreciating evidence and proof beyond reasonable doubt is only guideline but is not full and complete standard. While appreciating evidences, confidence of the Court is built up that Accused is guilty of alleged offence, he can not be acquitted on ground of proof beyond reasonable doubt because it will be mockery of criminal justice.

(10.59). The Hon'ble High Court of Gujarat held in it's

⁷⁸ ***DALMIA CEMENT (BHARAT) LTD. Vs. GALAXY TRADERS & AGENCIES LTD.***
: AIR 2001 SC 676=2001 SCC(Cr.) 1103

⁷⁹ ***JYANTILAL KUBERDAS SHARMA Vs. STATE OF GUJARAT : 2007(1) G.L.R. 99***

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decision delivered in case of ⁸⁰**ASHOK SOMALAL THAKKAR Vs STATE OF GUJARAT**

that even when major portion of evidence of a witness is found unreliable, the remaining part of evidence if inspired confidence and sufficient to prove the guilt of the Accused, the conviction can be based there upon. It is duty of the Court to separate the grain from the chaff and to find in each case as to what extent the evidence is acceptable. The doctrines of FALSUS IN UNO, FALSUS IN OMNIBUS merely involves the question of weightage in a given set of circumstances and not to mandatory rules of evidence, it has to apply in each case as to what extent the evidence is worthy of acceptance and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of rule that it must be disregarded in all respects. The testimonies of witnesses as well as documentary evidences in present case do inspire confidence of this Court that offence is committed by Accused and it could be relied. When the testimony of Complainant is natural and credit-worthy and delivery of cheque by Accused to Complainant for discharge of legal debt is not doubtable, it could not be discarded merely on grounds of doubt.

⁸⁰ ***ASHOK SOMALAL THAKKAR Vs STATE OF GUJARAT : 2007(2) G.L.H. 520 = 2007(3) G.L.R. 2114***
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(10.60). The Gujarat High Court has held in the case of ⁸¹KARUBHAI Vs. STATE OF GUJARAT that there are no strict rules for the reliability of the witnesses but one has to take decision after appreciation of over all evidence on record and several factors are required to be considered like demeanor of the witnesses, the statements recorded before the court, enmity between the parties etc. and thereafter, the appreciation is to be done. On appreciating evidence in the present case, the alleged offence is proved beyond reasonable doubt against the Accused and the Complainant has proved the case beyond reasonable doubt qua the Accused as reflected from the records.

(10.61). The Hon'ble Supreme Court of India has held the ratio in it's decision delivered in case of ⁸²BINAYKUMARSINH Vs. STATE OF BIHAR that deposition of even one witness is sufficient to convict the Accused.

(10.62). The Hon'ble Gujarat High Court has held the ratio in it's decision delivered in case of ⁸³M.S. RAGHUNATHAN Vs. RAJESH SHAH & Co. that object of introducing the provision is to enhance credibility of the negotiable instrument and to

⁸¹ *KARUBHAI Vs. STATE OF GUJARAT : 2007[1] G.L.H. 411*

⁸² *BINAYKUMARSINH Vs. STATE OF BIHAR : A.I.R. 1997 S.C. 322*

⁸³ *M.S. RAGHUNATHAN Vs. RAJESH SHAH & Co. : 2005(2) GLR 1750 = 2005(1) GCD 573*

inculcate faith in the efficacy in banking operation.

(10.63). As per the provision of the Indian Evidence Act, it is a bounded duty and the law casts the burden of proof to prove the case beyond reasonable doubt on the Complainant and once the Complainant discharged his said burden of proof as in present case and proved the alleged offence beyond reasonable doubt, it is for the Accused to prove contrary to it and onus of proof is shifted on Accused to prove his innocence, but the Accused in present case has miserably failed to prove so. Under such circumstances, no doubt regarding the alleged offence punishable under Section 138 of the Negotiable Instrument Act, 1881, is committed by the Accused arises. It is the settled principles of criminal justice that let one hundred Accused be acquitted but one innocent should not be convicted. But it is also equally true that no guilty person shall escape from hands of law or else it will amount to mockery of law. Taking into consideration the provision the criminal jurisprudence and the Indian Evidence Act, if the oral as well as documentary evidences of the present case are appreciated, then based on the said evidences, the Accused deserves to be convicted for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881 and

the said evidences could be said to be sufficient. Thus, when the alleged offence punishable under Section 138 of the Negotiable Instrument Act, 1881, is proved beyond reasonable doubt and evidences are sufficient to convict the Accused, then it will be just, proper, reasonable and legal to convict him. Considering facts and circumstances of the case and the dictum laid down by the Hon'ble Apex Court and various Hon'ble High Courts of India in the decision referred here-in-above, this Court is of the view that the Accused has committed offence punishable under Section 138 of the Negotiable Instrument Act, 1881.

(10.64). All the these issues are being already discussed at length and answered by the Ld. Trial Judge. When the Court is having concurrent view, then the said reasoning are not required to be repeated and this Court concur with the finding arrived at by the Ld. Trial Judge and therefore, the said reasoning are not repeated again.

(10.65). In view of the above discussion, there remains no doubt that Accused had committed the offence punishable under Section 138 of Negotiable Instruments Act, 1881 and the Ld. Trial Judge has correctly recorded the conviction and imposed the reasonable sentence and therefore, it does not require any interference by this Court, but

deserves to be confirmed and hence, I answer the POINT No. 1 & 2 in NEGATIVES and answer the POINT No. 3 by passing following FINAL ORDER :

-: FINAL ORDER :-

- The appeal is hereby dismissed.
- The Judgment and Order dated 03/04/2025 passed in Criminal Case No. 20/2020, by Hon'ble Judicial Magistrate First Class, Jodiya, Dist.-Jamnagar, is hereby confirmed.
- The Hon'ble Trial Court shall issue arrest / sentence warrant immediately qua Appellate / Accused, to undergo the sentence of imprisonment as ordered by it.
- Yadi, alongwith the Copy of this Judgment and Order as well as the Record and Proceeding of Criminal Case No. 20/2020, is ordered to be sent back to the concerned Hon'ble Magistrate, forthwith.
- The amount, if any, deposited by Accused in the Hon'ble Trial Court or the Hon'ble Sessions Court, Jamnagar & are yet not withdrawn by Complainant, then it shall be paid to Original Complainant, but shall be disbursed only, subject to any order if

passed in future, by the Hon'ble High Court of Gujarat, in proceeding challenging this order.

- It is ordered to provide the copy of this Judgment and Order immediately to the Appellant – Convict, as when he appear and ask for it, as per provision made under Section 404 of B.N.S.S. (Section 363(1) of Code of Criminal Procedure, 1973), free of cost.
- The Appellant / Accused shall pay the cost of Rs. 5,000/- to Respondent No. 1 / Original complainant.

Signed, pronounced and declared in Open Court on this 1st day of August, 2026, at Jamnagar.

Date : 01/08/2026
Place : Jamnagar

(**Rasikkumar V. Mandani**)
3rd Additional Sessions Judge
Jamnagar. (Code : GJ00715)

/// ASM+Sf ///