Exhibit	:	**41**
Filed on	:	06/05/2024
Decided on	:	24/06/2026
Duration	:	**Y**-02, **M**-01, **D**-18

IN THE COURT OF SESSIONS JUDGE, JAMNAGAR.

Criminal Appeal No.206 of 2024

Appellant :-

1. Nikhil Bharatbhai Gondiya,
   Age : 35, Occupation : Business,
   Resident of Flat No.501,
   Sammip Apartment,
   Patel Colony, Street No.7,
   Jamnagar.

V E R S U S

Opponents:-

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

Proprietor of Goswami and Company …..

2. Kaushikgiri Bhagwangiri Goswami,
   Resident of 201, Vallabh,
   Opposite Niraj Vora Hospital,
   Valkeshvari Nagri, Plot No.43,
   Phase-3, Jamnagar.

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

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Appearance :-

Mr.S.C.Daudiya, learned advocate for Appellant /Accused.

With

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

Mr.D.R.Trivedi, learned Ad.PP for the Opponent No.2/State.

Mr.R.D.Gosai, learned advocate for Complainant.

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:-: <u>J U D G M E N T</u> :-:

1. The appellant-accused has challenged Judgment and conviction order dated 06/04/2024 passed by the Court of 3rd Additional Chief Judicial Magistrate, Jamnagar in Criminal Case No.2023 of 2020, by which appellant/accused convicted for the offence punishable under Section 138 of the Negotiable Instrument Act. The appellant/accused is convicted for one year of simple imprisonment for offence punishable under Section 138 of the Negotiable Instrument Act. Appellant/ accused is directed to pay fine to the tune of Rs.13,00,000/-, in default, simple imprisonment of one month.

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 for representing the accused and in compliance of order passed below Exh.1 on 03/03/2026, learned LADC Mr.M.B.Somaiya has filed his appearance.

2. Short facts leading to the appeal are that ;

Complainant and accused were having friendly relation. Accused needed money for his business and for that, he requested complainant fpr hand-loan and complainant gave Rs.13,00,000/- on account of friendly relation. Out of those amount, Rs.3,00,000/- deposited into the bank account of accused from complainant's firm account at Uco Bank, main branch, Deepak Talkies, Jamnagar having account No.00810510003183 vide Cheque No.20, dated 06/05/2017 and Rs.10,00,000/- into the bank account of accused's firm Gondiya Associates maintained at Bank of Baroda, Khodiyar Colony Branch, Jamnagar having account No. 18940100007610v vide Cheque No.157, dated 01/03/2017. Complainant herein time and again requested to return that amount. Hence accused issued cheque bearing No.013098, dated 23/01/2020 for Rs.13,00,000/- in favour of complainant and assured him that amount mentioned in cheque would be honoured. When said Cheque was presented by complainant in his bank account for clearing, said Cheque was returned with endorsement of 'Funds insufficient' on 24/01/2020. On 10/02/2020, demand notice through advocate was issued to accused and same was served upon him. The accused has submitted a reply to the notice, however, the contents are deceitful, evasive, and fabricated. Accused has not paid cheque amount. In light of these facts, complainant was constrained to file complaint against accused under section 138 of The Negotiable Instrument Act, 1881 before Trial Court.

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

(A) Oral Evidence :-

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

(B) Documentary Evidence :-

Sr.No.	Particular of Documents	Exhibit
1	Copy of statement of Uco Bank	9
2	Cheque bearing No.013098	10
3	Cheque Return Memo	11
4	Copy of Legal Notice	12
5	Receipt of RPAD to residence of accused	13
6	Receipt of RPAD to business address of accused	14
7	Acknowledgment	15
8	Acknowledgment	16
9	Copy of reply of notice	17
10	Copy of statement of Uco Bank	19
11	Copy of Bank Statement of complainant	38
12	Copy of Bank Statement of complainant of Bank of Baroda	45

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

(A) Oral Evidence :-

Sr.No.	Details	Exh
1	**N I L**	

(B) Documentary Evidence :-

Sr.No.	Particular of Documents	Exhibit
1	Copy of Bank Statement of accused of State Bank of India	32

5. On conclusion of trial, Trial Court, by impugned judgment and conviction order dated 06/04/2024, convicted accused for offence punishable under section 138 of The Negotiable Instrument Act, 1881 and was sentenced accordingly.

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

7. Mr.S.C.Daudiya and Mr.M.B.Somaiya [LADC] appeared on behalf of accused, whereas on behalf State, learned Ad.PP Mr. D.R.Trivedi appeared and Mr.R.D.Gosai appeared on behalf of original complainant.

8. The Learned Advocate for appellant has submitted that complainant has produced documentary evidence, but are not proved by complainant and failed to prove his case, hence, appeal is required to be allowed. The judgment is bad in law and contrary to evidence and material on record.

It is further submitted that the Bank Statement at Exh.9 has not been proved. It is also not proven that amount of Rs.10 Lakh was paid by the complainant to the accused through the alleged cheque. Whereas the amount of Rs.3 Lakh which was given to the accused as per the complainant's statement has been repaid by the accused. However, taking into consideration the cross-examination of the complainant, he admitted that he was working as accused's tax consultant. Complainant has misused the cheque of accused lying with him. Thus, while complainant has no legal dues from accused and failed to discharge this burden of proof. It is a settled principle of law that when a complainant alleges a commercial transaction, the initial onus lies strictly on him to establish the existence of a legally enforceable debt or liability. Since the primary burden of proof has not been discharged, the deposition and cross-examination of the complainant warrant strict judicial scrutiny to expose the material contradictions in his claim. Despite this, the trial court made a serious error of law in evaluating the evidence in favor of the complainant, and the trial court, without considering the cross-examination of the complainant, relied on the oral evidence of the complainant. The documentary evidence based upon which punishment order is passed were not legally proved and hence also, impugned judgment is required to be set aside by allowing present appeal.

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

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

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

1	Whether complainant proves that cheque dated 23/01/2020 bearing No.013098 for sum of Rs.13,00,000/- was issued by accused in his favour towards discharge of legally enforceable liability?
2	Whether impugned judgment and order dated 06/04/2024 passed by learned Trial Court in Criminal Case No.2023 of 2020, convicting appellant (accused) for offence punishable u/s.138 of The Negotiable Instrument Act, 1881 is incorrect and requires to set-aside ?
3	What final order ?

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

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

-: R E A S O N S :-

Issue no. 1 and 2:-

13. This is an appeal arising out of judgment of conviction recorded by Trial Court under section 138 of the NI Act. So at this stage it would be proper and convenient to take up for determination, question as to what are presumptions available to complainant under section 138 of the NI Act. In the case on hand, considering record, it is to be seen whether appellant has been

able to rebut presumption under section 139 so this court can presume that cheque was not issued for discharge of debt or any liability.

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

During cross-examination, the complainant stated that he came into contact with the accused through the accused's father and has known the accused since the years 2010–2011. He is a Chartered Accountant by profession and manages the tax-related matters for the accused's firm. It is correct that prior to filing the income tax returns, was used to verify the income and expenditure calculations of the firm, alongside all relevant documentation. He instituted the present case in the name of the firm. It is correct that there are other partners in M/s Gondhiya Associates, and the witness knows all of them by name, namely Piyushbhai Gondhiya, Ankitaben Gondhiya, and Truptiben Gondhiya. It is correct that no legal notice has been served upon any of the other partners of Gondhiya Associates. It is correct that while the statement of account marked at Exh.9 purports to reflect entries from 01.04.2017 to 31.03.2018, the said statement only contains entries up to 06.05.2017 and he is ready and willing to produce the remaining statement of account from

06.05.2017 to 31.03.2018.

Complainant further stated that it is correct that the sum of three lakh rupees, transferred from the firm via cheque, was duly deposited into the firm's bank account. It is correct that the said sum of three lakh rupees was advanced to Gondhiya Associates and not to the accused in his personal capacity. It is equally correct that the remaining balance of ten lakh rupees was also paid to Gondhiya Associates and not to the accused personally and he further affirms that the total sum of thirteen lakh rupees was paid to the Gondhiya Associates in the installments.

Complainant further stated that it is correct that on the cheque marked at Exh.10, all details with the exception of the signature are filled in English. It is correct that the ink used for the signature differs from the ink used for the other details. It is correct that, the complainant has instituted another case also against the accused under the Negotiable Instruments Act. It is correct that the said matter also pertains to a loan amount. It is correct that he has not stated the specific date, time, or location, as well as the names of any witnesses present, when the accused allegedly demanded the amount in question.

15. It is required to note that on perusal of record, it transpires that complainant has produced original cheque bearing No.013098 of Rs.13,00,000/- at Exh.10, Return memo of the Uco at Exh.11, demand notice at Exh.12, receipts of RPAd Notice at Exh.13 and Exh.14 and Acknowledgments at Exh.15 and Exh.16.

16. As per provision contained under section 146 of The Negotiable Instrument Act, 1881, The Court shall on production

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

Complainant has produced copy of bank return memo at Exh.11 issued by the Uco Bank,which shows that cheque No.013098 was returned by reason of 'Funds insufficient'. Accused has not produced any evidence to disprove this fact. Thus, it is clear that said cheque was returned by the bank as unpaid by reason of 'Funds insufficient'.

17. On perusal of copy of demand notice at Exh.12, receipts of RPAD Notice at Exh.13 and Exh.14, Acknowledgments at Exh.15 and Exh.16, it appears that notice in writing demanding payment of cheque amount was given by complainant to accused on 10/02/2020. Said notice was given within 30 days from date of receipt of information from bank regarding return of cheque as unpaid. Receipts of RPAD Notice at Exh.13 & Exh.14 and Acknowledgment at Exh.15 & Exh.16 shows that notice was sent by complainant to accused through registered post on his residential address as well as at his business address and same was served upon the accused.

From above oral as well as documentary evidence, it is establish that cheque in question was given by accused to his legal liability to complainant and same was dishonoured due to 'Funds Insufficient' and accused herein failed to rebut issuance of cheque.

18. 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."*

19. In view of above oral as well as documentary evidence available on record, complainant has proved that accused had issued a cheque bearing No.013098 for sum of Rs.13,00,000/-. 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 'Insufficient Balance'. 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.*"

20. 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 **AIRONLINE-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. InLaxmi 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 countermanding 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."

21. Learned advocate for appellant/accused raised a defence that complainant has given amount to the Gondiya Associates and not to the accused herein personally. Under these circumstances, complainant has no legal debt against the accused and hence,present impugned judgment is required to be quashed and set-aside.

On a perusal of the record, specifically the reply to the notice given by the accused at Exh.17, it appears that the accused failed to state that the amount provided by the complainant was given to Gondiya Associates. In fact, the accused has admitted that the complainant advanced the sum of Rs. 13 Lakhs for the construction of a showroom, thereby acknowledging receipt of the said amount. Consequently, the accused has admitted the existence of a legally enforceable debt.

It is required to note under Section 138 of the Negotiable Instruments (NI) Act, the criminal complaint is legally valid and completely maintainable. Even though money was deposited into the bank account of the accused's proprietorship firm, the accused is personally liable because the dishonoured cheque was issued in his personal capacity from an account maintained by him. Depositing money into the firm's account is legally considered the same as giving it to the accused directly. Section 138 explicitly targets the "drawer" of the cheque (the person who signs it). Because the accused signed and issued the cheque from his personal account, he cannot hide behind the name of his business firm.

22. The appellant/accused further raised a defence that complainant was worked as his tax consultant, and consequently, had custody of various financial documents, including account books and cheque books. It is submitted that after severing his professional ties as a Chartered Accountant and partner, the complainant misappropriated a cheque from the said custody to file a false and malicious complaint against the appellant.

It is relevant to note that the cheque in question was dishonoured on 24/01/2020. The complainant issued a legal demand notice to the accused, which was replied to by the accused on 20/02/2020. If the complainant had misappropriated the cheques of the accused as alleged, the accused ought to have lodged a complaint with the concerned police agency. However, a perusal of the record reveals that the accused has not lodged any complaint regarding the misappropriation of the cheque till the date. Therefore, it appears that the accused has raised a baseline defense without any foundation and made a false statement regarding the misappropriation of the cheque. Consequently, the said defense raised by the accused herein is legally untenable

23. 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 provethe 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."

24. Defense raised by accused are not acceptable for the reasons mentioned in view of aforesaid discussions. 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 ;

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

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

2. The impugned Judgment and conviction order passed by the Court of 3rd Additional Chief Judicial Magistrate, Jamnagar in Criminal Case No.2023 of 2020, dated

06/04/2024 is hereby **confirmed.**

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

4. The Record and proceedings of the Criminal Case No.2023 of 2020 be sent back to the Trial Court alongwith one true copy of this judgment immediately.

Pronounced and signed today in open Court on this 24th day of June- 2026.

Digitally signed by
NEHAL RAJESHBHAI JOSHI
on 24/06/2026 17:22:56 IST.

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

Date: -24/06/2026
Place: - Jamnagar.
A J RAVAL/PS