Exhibit	:	**24**
Filed on	:	08/08/2024
Decided on	:	16/06/2026
Duration	:	**Y**-01, **M**-10, **D**-08

IN THE COURT OF SESSIONS JUDGE, JAMNAGAR.

Criminal Appeal No.351 of 2024

Appellant :-

Proprietor of Geeta Sales Agency …...

1. Lunesh Bakulbhai Pandya,
   Age about 34, Occupation : Business,
   Resident of G.I.D.C. Plot No.-3522,
   Phase-Three, Jamnagar.

V E R S U S

Opponents:-

1. The State of Gujarat,
   Through : D.G.P.,Jamnagar.
2. Vijay Prabhulal Nanda,
   Age : 31, Occupation :--,
   Resident of Timbafali,
   Havai Chowk, Bhanushaliwad,
   Jamnagar.

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

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Appearance :-

Mr.T.B.Joshi,learned advocate for Appellant/Accused.

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

Mr.H.A.Sheikh, learned advocate for Opponent No.2.

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

1. The appellant-accused has challenged Judgment and conviction order dated 09/07/2024 passed by the Court of 7th Additional Chief Judicial Magistrate, Jamnagar in Criminal Case No.7109 of 2023, by which appellant/accused convicted for the offence punishable under Section 138 of the Negotiable Instrument Act. The appellant/accused is convicted for 04 months 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.90,000/-, in default, simple imprisonment of 15 days.

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

Complainant and accused both are known to each other since long. Accused needed money for his business and for that, he requested complainant to hand-loan and complainant gave Rs.90,000/- on account of friendly relation. Complainant herein time and again requested to return that amount. Hence accused issued cheque bearing No.000150, dated 30/06/2023 for Rs.90,000/- in favour of complainant and assured him that amount mentioned in cheques 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 04/07/2023. On 05/07/2023, demand notice through advocate was issued to accused and same was returned undelivered with endorsement "Left". Accused has neither replied nor paid cheque amount. In light of these facts, complainant was constrained to file complaint against accused under section 138 of The Negotiable Instrument Act, 1881 before

Trial Court.

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

(A) Oral Evidence :-

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

(B) Documentary Evidence :-

Sr.No.	Particular of Documents	Exhibit
1	Cheque bearing No.000150	12
2	Cheque Return Memo	13
3	Copy of demand notice	14
4	Receipt of RPAD	15
5	Undelivered Postal Cover	16

4. Accused has neither adduced oral nor produced documentary evidence in his defence.

5. On conclusion of trial, Trial Court, by impugned judgment and conviction order dated 09/07/2024, 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. Learned Advocate Mr.T.B.Joshi, appeared on behalf of accused, whereas on behalf State, learned Ad.PP Mr. D.R.Trivedi

appeared and learned advocate Mr.H.A.Sheikh appeared on behalf of original complainant.

8. The Learned Advocate Mr.Joshi for appellant has submitted written argument vide Exh.22. Crux of the argument is that complainant has produced documentary evidence, but are not proved by complainant and failed to prove his case, hence, appeal is required to be allowed. The judgment is bad in law and contrary to evidence and material on record.

It is further submitted that the complainant stated during cross-examination that he advanced a total hand-loan of Rs. 90,000/- to the accused, sourcing Rs. 40,000/- from his personal savings and borrowing the remaining Rs. 50,000/- from his brother. However, the complainant failed to examine his brother as a witness and these material facts were not mentioned in the complaint and his affidavit-in-chief. Consequently, the alleged transaction of the hand-loan remains unproved. 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.Sheikh on behalf of complainant has submitted written argument at Exh.23. Crux of the argument is that complainant has produced oral as well as documentary evidence to establish the offence under Negotiable Insufficient Act as well as affidavit of Examination-in-chief at Exh.5 to prove transaction of loan as well as dishonour of cheque and signature of accused on cheque. That Trial Court has passed order in consonance with the facts and evidence on record and settled proposition of law, which does not requires any kind of

interference and prayed to dismiss present appeal.

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

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

1	Whether complainant proves that cheque dated 30/06/2023 bearing No.000150 for sum of Rs.90,000/- was issued by accused in his favour towards discharge of legally enforceable liability?
2	Whether impugned judgment and order dated 09/07/2024 passed by learned Trial Court in Criminal Case No.7109 of 2023, 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,but accused failed to reply that notice and intentionally avoided to pay legal debt.

During cross-examination, the complainant stated that he had known the accused for the last three to four years. He advanced a hand loan to the accused due to their friendly relations, rather than any business dealings. He was employed at Saya Colour Fragrance with a monthly salary of Rs. 15,000. He advanced the loan about a year ago in cash, which consisted of Rs.40,000 withdrawn from his bank account and Rs.50,000 borrowed from his brother. This was his only loan transaction with the accused.

Complainant further stated that legal notice sent to the residential address and another notice was sent to Geeta Wooden at Phase-Three, Dared. Cover of notice was returned undelivered with endorsement of "Left".

15. It is required to note that on perusal of record, it transpires that complainant has produced original cheque bearing No. 000150 of Rs.90,000/- at Exh.12, Return memo of the Kotak Mahindra Bank at Exh.13, demand notice at Exh.14, receipt of RPAD at Exh.15 and undelivered postal cover at Exh.16 with endorsement of "Left".

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.13 issued by the Kotak Mahindra Bank, which shows that cheque No.000150 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.14, receipt of RPAD at Exh.15 and undelivered postal cover at Exh.16 with endorsement of "Left", it appears that notice in writing demanding payment of cheque amount was given by complainant to accused on 05/07/2023. Said notice was given within 30 days

from date of receipt of information from bank regarding return of cheque as unpaid. Undelivered postal cover at Exh.16 shows that notice was sent by complainant to accused through registered post on his business address but same was returned undelivered with endorsement of “Left”.

On perusal of legal notice at Exh.14 that same has been sent on the business address and returned undelivered postal cover at Exh.16, shows that “Addressee Left”. From which it is quite clear statutory- demanding notice was sent to the accused at his business address. It is required to note that the only requirement for the service of demand notice is that, the notice should have been sent to the correct address of the drawer. Since the mode of service is not prescribed by the law, it can be sent either by registered post or under certificate of posting or otherwise. The expressions ‘Left, not known’, ‘not available in the house’, ‘house locked’, shop closed etc., are all synonyms. Therefore, if the address of the drawer is proved to be correct, even if the notice is returned with the above remarks, then the notice is deemed to have been served on the drawer.

At this juncture, it is pertinent to note that Section 27 of the General Clauses Act, 1897 defines the meaning of service by post as follows ;

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

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

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

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

> *"14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement refused or not available in the house or house locked or shop closed or addressee not in station, due service has to be presumed. [Vide Jagdish Singh vs. Natthu Singh ; State of M.P. Vs. Hiralal & Ors. And V.Raja Kumari Vs. P.Subbarama Naidu & Anr.] It is, therefore, manifest that in view of the presumption available under Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved.*
>
> *15. Insofar as the question of disclosure of necessary particulars with regard to the issue of notice in terms of proviso (b) of Section 138 of the Act, in order to enable the*

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

18. Then the learned counsel for the petitioner relied on paragraph 17 of C.C. Alavi Haji's case (supra) and submitted that if notice is not received by the accused, he can pay the amount once the summons is received from the court. It will be better to extract paragraph 17 of C.C. Alavi Haji's case (supra), which reads thus :-

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

cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of S. 138 of the Act."

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

18. Moreover, on perusal of deposition of complainant as well as documentary evidence, it is established that cheque was given by accused towards legal debt to complainant and cheque in question was dishonoured due to 'Funds insufficient' and accused herein failed to rebut issuance of cheque. It may be noted that initial presumption is in favour of complainant and as per Section 139, onus is on accused to submit probable defence which may creates doubt about the legal debt.

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

" 14. In light of these extracts, we are in agreement with the respondent-claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat (supra) may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise

a defence wherein the existence of a legally enforceable debt or liability can be contested. However, there can be no doubt that there is an initial presumption which favours the complainant. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard or proof. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of `preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.

19. In view of above oral as well as documentary evidence available on record, complainant has proved that accused has demanded amount for the purpose of business needs and for that he issued cheque bearing No.000150 of Rs.90,000/- drawn on The Navanagar Co-operative Bank Ltd. in favour of complainant. It is also proved that on presentation of said cheque to bank by complainant for clearing, it was dishonoured and returned by bank as unpaid by reason of “Funds insufficient”. It is also proved that demand notice for cheque amount was given by complainant to accused through registered post, but accused failed to make payment of cheque amount within 15 days of the receipt of demand notice.

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

" *Once a cheque has been signed and issued in favour of holder of cheque, there is statutory presumption under S. 139 of NI Act that the cheque is issued in discharge of a legally enforceable debt or liability. However, said presumption is a rebuttable one. Issuer of cheque can rebut that presumption by adducing credible evidence that the cheque was issued for some other purpose like security for loan.*"

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. The appellant has raised a defense that the complainant lacked the financial capacity to provide a hand-loan of Rs.

90,000/- and failed to produce evidence proving such capacity.

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

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

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

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

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

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

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

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

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

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

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

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

22. 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 7th Additional Chief Judicial Magistrate, Jamnagar in Criminal Case No.7109 of 2023, dated 09/07/204 is hereby **confirmed.**
3. Bail bonds executed by appellant/original accused hereby stands cancelled.

4. The Record and proceedings of the Criminal Case No.7109 of 2023 be sent back to the Trial Court alongwith one true copy of this judgment immediately.

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

Digitally signed by
NEHAL RAJESHBHAI JOSHI
on 16/06/2026 17:37:44 IST.

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

Date: -16/06/2026
Place: - Jamnagar.
A J RAVAL/PS