Exhibit	:	**28**
Filed on	:	10/10/2025
Decided on	:	18/07/2026
Duration	:	**Y**-00, **M**-07, **D**-08

IN THE COURT OF SESSIONS JUDGE, JAMNAGAR.

Criminal Appeal No.555 of 2025

Appellant :-

1. Harishbhai Manilal Savjani,
Age about 55 years, Occupation : Business,
Dhanvantari Ayurveda,Maithily Bandhej,
Resident of Spring Heights,
B/601, 4-Patel Colony, Road No,2,
Jamnagar.

V E R S U S

Opponents:-

Proprietor of New Life Plus Health Care …..

1. Nehaben Bharatbhai Amlani,
Age about 38 years, Occupation : Business,
Resident of Royal Heights,
Khodiyar Colony Road,
Jamnagar.
2. The State of Gujarat,
Through : D.G.P.,
Lal Bungalow Court Building,
Jamnagar.

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

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Appearance :-
Mr.V.G.Gohil, learned advocate for Appellant/Accused,

Mr.H.H.Chotai, learned advocate for complainant.

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

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

1. The appellant-accused has challenged Judgment and conviction order dated 12/09/2025 passed by the Court of learned 4th Additional Chief Judicial Magistrate, Jamnagar in Criminal Case No.3106 of 2022, 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 also directed to pay fine to the tune of Rs.3,90,000/- would be paid to the complainant as a compensation, in default, simple imprisonment of six months.

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

The present complaint is being preferred by the Complainant through the authorized Power of Attorney holder of "M/s. New Life Plus Healthcare," a proprietary concern of Vinodbhai Dharamshibhai Vithalani. The husband of the Complainant is a practicing medical professional-Doctor running his hospital at Jamkhambhaliya. Furthermore, Vinodbhai Dharamshibhai Vithalani, the proprietor of the Jamnagar-based firm "M/s. New Life Plus Healthcare" and the father-in-law of the POA holder, owns a medical store situated in Khambhaliya. The POA holder has been actively involved in managing the operations of the said medical store alongside her father-in-law for a considerable period. Consequently, she is well-versed, fully conversant, and has personal knowledge of all the business transactions and dealings of the entity.

The Accused had family relationship with Complainant. The Accused was engaged in the pharmaceutical business for several years and, in the course of his trade, frequently used to visit Khambhaliya. Professionally associated with Complainant for numerous years, the Accused had maintained close relations with Dr. Paras Vithalani, the husband of the Complainant's Power of Attorney holder. Consequently, Complainant is well acquainted with the Accused. The Complainant purchased a retail pharmaceutical outlet operating under the name and style of 'Life Plus Healthcare', situated on the ground floor of the building known as 'Royal Heights' in the Khodiyar Colony area of Jamnagar. This acquisition included the goodwill of the business. Subsequently, the Complainant commenced operations of the said medical store under the new name and style of 'New Life Plus Healthcare' with effect from 29th January 2020.

The Accused requested sole management of all financial transactions of the said firm, including its income and expenditure. He further represented that he would personally manage and supervise all daily affairs, sales, purchases, and disposal of expired medicines related to the medical store. Based on these representations, it was mutually agreed between the parties that the Accused would receive a fixed monthly remuneration for managing the said financial transactions. The aforementioned medical business commenced operations on 29/01/2020, from which date the Accused assumed responsibility for the financial management of the firm. However, within six months of its commencement, the Accused failed to provide clear accounts of the financial transactions. Dissatisfied with the income and expenditure statements submitted by the Accused, Complainant demanded a detailed clarification of all business transactions executed between 29/01/2020 and 04/08/2020. Consequently, on 04/08/2020, the Complainant's family members took over the financial management and control of the firm, along with the existing stock, from the Accused on, as is where is basis.

The complainant repeatedly notified the accused of a financial discrepancy and misappropriation within the firm's accounts during the period from 29th January 2020 to 4th August 2020. Subsequent audits revealed that the accused had misappropriated cash proceeds amounting to Rs.17,40,000 accrued from the sale of medicines. Instead of depositing the said revenue into the firm's designated bank account, the accused diverted and utilised the funds for his personal enrichment, subsequently admitting to this criminal breach of trust. Furthermore, the accused confessed to unlawfully "redirecting" stock worth Rs.3,50,000, which was obtained through credit notes issued against expired medicines belonging to the firm "New Life Plus Health Care". He integrated these goods into the inventory of his independent retail outlet, "Dhanvantari Ayurved", for personal commercial gain. By exploiting the fiduciary relationship and the absolute trust reposed in him, the accused had managed the entirety of the financial transactions of the complainant's proprietorship firm. Under the guise of seeking personal financial assistance, the accused further induced the complainant to advance him various sums over the years totalling

Rs.3,50,000. The complainant has a legally enforceable right to recover the aggregate amount of Rs.24,40,000 from the accused under the relevant provisions of law.

The Complainant was entitled to receive an aggregate amount of Rs.24,40,000/- from the Accused. Upon the Complainant demanding the repayment of the said amount, the Accused, towards the discharge of his legally enforceable debt/liability, issued Cheque No. 591035 dated 03/12/2021 for an amount of Rs.3,90,000/- drawn on Canara Bank. The Complainant presented the said cheque to her banker for encashment, however, the same was returned dishonoured with the endorsement "Funds Insufficient" vide a return memo dated 05/01/2022. Consequent to the dishonour of the cheque, the Complainant, through her advocate, issued a statutory legal notice dated 29/01/2022 to both the residential and business addresses of the Accused. The notice dispatched to the residential address was duly served and the notice sent to the business address was served on 01/02/2022. Despite the due service of the statutory legal notice, the Accused failed to make the payment of the cheque amount within the prescribed statutory period. In light of these facts and circumstances, the Complainant was constrained to institute the present complaint against the Accused under Section 138 of the Negotiable Instruments Act, 1881, before the learned Trial Court.

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

(A) Oral Evidence :-

Sr.No.	Details	Exhibit
1	Affidavit of chief-examination of complainant	04
2	Deposition of PW-2 Rohitbhai Kamleshbhai Joshi	24

(B) Documentary Evidence :-

Sr.No.	Particular of Documents	Exhibit
1	Cheque No.591030	11
2	Cheque Return Memo	12
3	Copy of legal notice	13
4	Receipt of RPAd of business address	14
5	Receipt of RPAD of residential address	15
6	Acknowledgment of business address	16
7	Acknowledgment of residential address	17
8	Copy of Power-of-Attorney	18
9	Attested Copy of KYC document at the time of opening of Bank account	25
10	True Copy of extract of address for receiving of cheque book	26
11	True Copy of Bank statement	27
12	Copy of specimen of Signature Card	28
13	Certificate of Banker's Books of evidence	29

4. Accused has not adduced oral or documentary evidence in his defence before trial Court.

5. On conclusion of trial, learned Trial Court, by impugned judgment and conviction order dated 12/09/2025, convicted the 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 the impugned judgment of conviction order and to acquit appellant for offense punishable under section 138 of The Negotiable Instrument Act, 1881.

7. On behalf of accused, Mr.V.G.Gohil appeared, on behalf of complainant, learned advocate Mr. H.H.Chotai appeared, whereas on behalf State, learned Ad.PP Mr. D.R.Trivedi appeared.

8. The Learned Advocate Mr.Gohil for appellant has submitted that complainant has produced some documentary evidence, but are not proved by complainant and failed to prove her case, hence, appeal is required to be allowed. The judgment is bad in law and contrary to the evidence and material on record as present appellant has not got the opportunity either of cross-examination of complainant or to place evidence on record in his defence. The Learned Trial Court has erred by not evaluating evidence in its true perspective. The documentary evidence based upon which the punishment order is passed were not legally proved and hence also, the impugned judgment is required to be set aside by allowing present appeal.

9. On the other-hand, learned advocate Mr.Chotai on behalf of complainant has submitted written argument at Exh.27. 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.4 to prove the transaction of dishonoured of cheque and

signature of accused on cheque. That accused person did not remain present before Court on the date fixed for cross-examination and learned advocate for accused remained present in the Court but denied to cross-examination of complainant. The present case is 'crystal clear' because the accused has admitted the underlying debt to the complainant, and has done so in writing. The 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 the grounds cited in the judgment and the reasons which have been assigned by the Learned Trial Judge are in consonance with the facts and evidence on record and after evaluating all the documents, no interference is called for and hence urged to reject the 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 the complainant proves that cheque dated 03/12/2021 bearing No.591035 for sum of Rs.3,90,000/- was issued by accused in her favour towards discharge of legally enforceable liability?
2	Whether impudent judgment and order dated 12/9/2025 passed by learned Trial Court in Criminal Case No. 3106 of 2022, convicting the appellant (accused) for offence punishable under section 138 of The Negotiable Instrument Act, 1881 is incorrect and requires to set-aside ?

3	What final order ?

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

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

-: R E A S O N S :-

Issue no. 1 :-

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

14. In the present matter, complainant herself appeared in the witness box as CW-01 and tendered her affidavit of evidence in lieu of chief-examination at Exh-04, wherein she has reiterated the same facts in the complaint.

It is required to note that learned advocate for accused declared by filing pursis at Exh.20 by stating that she does not want to cross-examine complainant.

15. On perusal of record, it transpires that Complainant has produced original cheque bearing No.591035 of Rs.3,90,000/- at

Exh.11, Return memo of the Axis Bank at Exh.12, Office copy of demand notice at Exh.13, Postal receipt at Exh.14 and Exh.15, Acknowledgment at Exh.16 and Exh.17 and copy of Power-of-Attorney in favour of complainant at Exh.18.

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

Complainant has produced copy of bank return memo at Exh.12 issued by Axis Bank which shows that cheque No.591035 was returned by reason of "Funds Insufficient". Accused person has not brought any evidence to disprove this fact. Thus, it is clear that said cheque was returned by the bank as unpaid by reason of "Funds Insufficient".

17. On the perusal of copy of demand notice at Exh.13, postal receipt at Exh.14 and Exh.15, Acknowledgment at Exh.16 & Exh.17, it appears that notice in writing demanding payment of cheque amount was given by the complainant to accused on 29/01/2022. Said notice was given within 30 days from the date of receipt of information from bank regarding return of cheque as unpaid. Postal receipt at Exh.14 and Exh.15 shows that notice was sent by the complainant to the accused through registered post at his office as well as residential addresses and Acknowledgment at Exh.16 and Exh.17 certified that cover/

notice was delivered to accused.

Accused has not adduced any evidence to disprove the fact of the written notice sent by the complainant at the correct postal address of the accused and its delivery at that address. Thus, it is clear that demand notice for cheque amount was sent by complainant to accused through registered post and was delivered to accused and no reply is given to that notice.

18. It is required to note that complainant has examine witness Rohitbhai Kamleshbhai Joshi -Bank Manager at Exh.24. It is required to note that the witness examined by the Complainant, purported to be the Bank Manager, is merely a Production Manager within the organizational hierarchy of the banking institution. The said witness possesses no personal knowledge regarding the specific transactions, facts, or circumstances giving rise to the present dispute. The present witness has produced copy of account opening form of accused at Exh.25, copy of cheque book issue register at Exh.26, copy of bank statement of accused at Exh.27, copy of signature card at Exh.28 and certificate of Banker's Book Evidence at Exh.29.

In cross-examination, witness has stated that he has no personal knowledge regarding the cheque transaction.

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

20. In view of the above oral as well as documentary evidence available on the record, complainant has stated in discharge of that debt, issued cheque No.591035 dated 03/12/2021 of Rs.3,90,000/- drawn on Canara Bank in favour of complainant. It is proved that on presentation of said cheque to bank by complainant for clearing, it was dishonoured and returned by bank as unpaid by reason of "Funds Insufficient". It is also

proved that demand notice for cheque amount was given by complainant to accused through registered post, but accused failed to make the 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**, that " *Once a cheque has been signed and issued in favour of holder of cheque, there is statutory presumption under S. 139 of NI Act that the cheque is issued in discharge of a legally enforceable debt or liability. However, said presumption is a rebuttable one. Issuer of cheque can rebut that presumption by adducing credible evidence that the cheque was issued for some other purpose like security for loan.*"

21. 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. 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 ;

:-: <u>F I N A L = O R D E R</u> :-:

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

2. The impugned Judgment and conviction order passed by the Court of 4th Additional Chief Judicial Magistrate, Jamnagar in Criminal Case No.3106 of 2022, dated 12/09/2025 is hereby **confirmed.**

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

4. The Record and proceedings of the Criminal Case No.3106 of 2022 be sent back to the Trial Court alongwith true copy of this judgment.

Pronounced and signed today in open Court on this 18th day of July-2026.

Digitally signed by
NEHAL RAJESHBHAI JOSHI
on 18/07/2026 16:18:03 IST.

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

Date: -18/07/2026
Place: - Jamnagar.
A J RAVAL/PS