GJJM020002662026

सत्यमेव जयते

Filed on	:	07/01/2026
Registered on	:	07/01/2026
Decided on	:	22/07/2026
Duration	:	**Y**: 00 **M**: 06 **D**: 14
EXH.	:	

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IN THE COURT OF 2nd ADDITIONAL CHIEF JUDICIAL MAGISTRATE, JAMNAGAR

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Criminal Case No. 124 of 2026

Shriram Finance Ltd.,
(formerly known as Shriram City Union Finance Ltd.)
having its office at, Avadh Complex, Third Floor,
Near G.G. Hospital, Opp. Dhanvantri Ground,
Above TBZ Showroom, Jamnagar
Though its Authorized Signatory / Assistant Legal Manager,
Mr. Chavda Jayesh Hebhabhai, Age - 26 years

...Complainant

V E R S U S

Dilipgar Premgar Gauswami,
R/o: Block No.271, Housing Board,
At - Dhuvav, Taluka - Jamnagar
District - Jamnagar

...Accused

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Subject:- Complaint u/S 138 of the Negotiable Instrument Act, 1881

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***Appearance** :-*

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Ld. Advocate for the Complainant	*: **Mr. K. N. Chavda***
Ld. Advocate for the accused	*: **---***

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

1. The accused is facing a trial for the offence under Section 138 of the Negotiable Instruments Act, 1881 *(hereinafter referred to as "The Act, 1881" for the sake of brevity)*.

2. The short facts of the case is as under;

2.1 The complainant company is registered and incorporated under the provisions of the Companies Act, 1956 and business of providing various loans and Mr. Chavda Jayesh Hebhabhai is a Authorized Officer of its Company and he is represented as complainant in the present case. The accused has borrowed loan from the complainant company. The accused is failed to repay the loan amount as per repayment schedule. For to discharge his liability the accused has given a cheque for the amount of Rs. 48,924/- of Union Bank of India, Jamnagar Branch, Jamnagar to the complainant, the details of the cheque is as under;

(1) Cheque No. 001502 for the amount of Rs. 48,924/- dated 19/11/2025 of Union Bank of India, Jamnagar Branch, Jamnagar.

The accused has given an assurance that the complainant can encash the above said cheque on or after the mentioned date on the cheque and by this way he will pay the amount in question. The complainant has deposited the above mentioned cheque in his bank account and the same has been returned unpaid with the endorsement of *"Account Blocked"* on dated 21/11/2025. The complainant has sent a demand notice to the accused through RPAD on dated 02/12/2025 which was returned with the endorsement of "Address Changed". Till then neither the accused has given reply to the notice nor has paid the amount in question to the complainant.

3. On being institution the complaint against the accused, cognizance was taken by the Court & summons issued upon the accused. The accused has appeared and not plead guilty in response to the plea at Exh.-8 on 21/04/2026.

4. It is pertinent to note that this matter has been filed on dated 07/01/2026 and after taking a plea a reasonable opportunities have been given to the accused for to conduct the cross examination of the accused, the accused has failed to do so.

Further, the accused has produced a pursis vide Exh.-9 on dated 22/04/2026 wherein he was accepted the legal dues against the complainant and stated that he will be paid the cheque amount to the complainant within three months and Rs. 10,000/- towards the cheque amount will be paid to the complainant in first installment.

Even after the reasonable opportunities have been given to the accused either to pay the cheque amount or to conduct the cross examination, but neither the accused nor his Ld. Advocate are present before the Court for the cross-examination of the complainant. The Ld. Advocate for the complainant has filed an application to close the right of the accused for Cross Examination of the complainant vide Exh.-10 on 24/06/2026 and the right of cross-examination has been closed vide Order Below Exh.-10 on dated 24/06/2026. The Closing Pursis has been produced by the complainant on 24/06/2026 vide Exh.-20 and the same has been recorded. The matter has placed for Further Statement of the accused and Further Statement is ready but, the accused has been failed to remain present hence, the learned advocate for the complainant has filed an application to close the right of further statement therefore, right of Further Statement of Accused has been closed vide Order below Exh.-21 on dated 08/07/2026 u/S 351 of The Bhartiya Nagrik Suraksha Sanhita, 2023 *(in short "The B.N.S.S., 2023")*. After hearing the argument for the complainant the matter has placed for final argument of the accused. After given reasonable opportunities to the accused for advanced his final argument, none have appeared on behalf of the accused for to advance argument therefore, right of final argument of the accused has been closed vide order below Exh.-22.

5. In order to prove the case, the complainant himself examined as C.W. 1 at Exh.-5 and produced various documentary evidences vide Exh.-11 to 19, the descriptions of the same are as under;

1. Original Cheque vide Exh.-11
2. Original Cheque Return Memo vide Exh.-12
3. An office Copy of Legal/Demand Notice vide Exh.-13
4. Original Regd. A.D. Slip vide Exh.-14
5. Original Postal Cover vide Exh.-15
6. Copy of Track Consignment Report vide Exh.-16
7. Copy of Power of Attorney vide Exh.-17
8. Copy of RBI Certificate for Amalgamation & Demerger vide Exh.-18
9. Copy of Statement of Account with Banker Books Evidence Certificate vide Exh.-19

6. I have heard Ld. Advocate Mr. K. N. Chavda for the complainant. In his argument he has drawn the attention towards the facts and circumstances of the case that the complainant has proved the case against the accused by oral as well as documentary evidence. He is vehemently submitted that the cheque in question was duly signed by the accused and came to be dishonoured when presented before the bank with an endorsement *"Account Blocked"*. He has further contended that accused was issued cheque for discharge of legal liability towards complainant. He is further contended that cheque in question was deposited in the bank in time, the cheque was return unpaid, demand notice upon the accused was also issued within the stipulated time and the accused has failed to arrange to repay the money within the notice period. It is also submitted that during the trial even after given reasonable opportunity to the accused for to place his defence before the court, but accused has failed to defend himself and he is chosen to remain absent during the trial. Hence, the accused should be held guilty and be punished accordingly.

7. In view of the accusation, following points are arisen for my determination & my findings there are as follows:

Sr. No.	***Points***	***Findings***
1.	Whether complainant proves that in pursuance of his legally enforceable debt accused has issued cheque No. 001502 bearing date 19/11/2025 of Rs. 48,924/- drawn on Union Bank of India, Jamnagar Branch, Jamnagar, in	Affirmative

	favour of complainant which was dis-honoured due to *"Account Blocked"* and despite of demand notice sent to the accused, he has failed to repay the amount of the cheque and thus, accused has committed offence under Section- 138 of Negotiable Instrument Act?	
2.	What order?	As per final Order

8. Before deal with the evidence, it would be proper to reiterate legal provisions of section 138 and section 139 of the Act, 1881,

> *"138 Dishonour of cheque for insufficiency, etc., of funds in the account. — Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:*
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> *Provided that nothing contained in this section shall apply unless— (a) the cheque has been presented to the bank within a period of three months*

from the date on which it is drawn or within the period of its validity, whichever is earlier; (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.— For the purposes of this section, "debt or other liability" means a legally enforceable debt 5 or other liability.]

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

8.1 The object of Section 138 of the Negotiable Instruments Act, 1881 is to infuse credibility to negotiable instruments including cheque and to encourage and promote the use of negotiable instruments including cheque in financial transactions. The penal provision of Section 138 of the Negotiable Instruments Act is intended to be a deterrent to callous issuance of negotiable instruments such as cheques without serious intention to honour the promise implicit in the issuance of the same.

8.2 In this case, the complainant has stated that the accused has to pay Rs.48,924/- and for that reason the accused has given a cheque No.001502 dated 19/11/2025 of Union

Bank of India, Jamnagar Branch, Jamnagar, of Rs.48,924/- to the complainant and gave an assurance that it shall be honoured on being presented before the bank. The complainant has presented the said cheque before the bank where he is maintained his bank account on 21/11/2025, but the said cheque was returned unpaid with the endorsement of *"Account Blocked"*. A copy of original cheque and a copy of return memo are produced by the complainant vide Exh.-11 & Exh.-12 respectively. Further, after dishonour of the said cheque complainant has issued demand notice to the accused and sent through R.P.A.D. on 02/12/2025 and the same was duly served to the accused. In this matter, the complainant requires to prove essential ingredients of section 138 of the Act, 1881. Once ingredients are proved, initial presumption u/S 139 of the Act, 1881 is said to be established. Onus then shifts to the accused later to rebut it. In the case of *"Rangappa V/s. Sri Mohan" reported in 2010 (0) AIJEL-SC 48349* wherein the Hon'ble Apex Court has held that there is initial presumption which favours the complainant that the cheque was issued to discharge of debt or other liability. It is further held that once the cheque in question is issued and signature thereon is admitted to be of the accused, it has to be presumed that the cheque is issued to discharge of debt or other liability. The presumption is rebutable by the accused by leading probable defence with evidence or on the evidence produced by the complainant.

9. This Court has perused the evidence of the complainant Mr. Chavda Jayeshbhai Hebhabhai, which is produced vide Exh.-5. The complainant has also produced the documents to show that the cheque was given by the accused and the same was dishonoured. And even after demand the cheque amount through demand notice, accused has neither repay the cheque amount nor to reply the demand notice of the complainant. Further during the trial he has not plead guilty and has chosen to contest the matter. A reasonable opportunity has been given by this court to the accused for to defend and rebut the legal presumption which is drawn in favour of the complainant, but the accused is remained absent and even not to cross examine the complainant. Thus, on evaluating the entire evidence, this Court finds that signature on the cheque mentioned at Exh.-15 is of accused which has not been denied by the accused during the trial. On the contrary, it is admitted by the complainant and bring out the fact by the complainant that due to *"Account Blocked"* the cheque was returned unpaid. Therefore, once it is proved that cheque in question was drawn by the accused on an account maintained by him with a banker for payment of money to the complainant for the discharge of his debt or liability is returned unpaid, the presumption u/S 118 & 139 of the Act, 1881 automatically stands in favour of the complainant and against the accused. In such circumstances the accused has to rebut this presumptions of law by rebutting the evidence of the complainant in cross-examination or may adduce further evidence in this respect. Admittedly, no evidence is being put forth by the accused on the contrary even though the accused was within well knowledge, the accused does not proceed and appeared in the present matter. Further, the accused has produced a pursis vide Exh.-9 on dated 22/04/2026 wherein he was accepted the legal dues against the complainant and stated that he will be paid the cheque amount to the complainant within three months and Rs. 10,000/- towards the cheque amount will be paid to the complainant in first installment. But, he is failed to do so. Therefore, in such peculiar circumstances, adverse inference can be drawn against the accused. Hence, this Court finds that accused had given the cheque to the complainant for to discharge his legal debt which was dishonoured due to *"Account Blocked"*.

10. As per the principles laid down by the Hon'ble High Court of Gujarat in the case of *"Sharad Jethalal Salva vs State of Gujarat"* reported in 2016 (0) AIJEL-HC-236849 in para-16 & 17 Hon’ble High Court observed as under;

Para 16 : *"...If a person accused of an offence and convicted as such avoids arrest and avoids imprisonment as sentenced by the criminal court. Such an incident only makes the justice delivery system insignificant and renders justice ineffective. Legal justice requires that an offender convicted of a crime must suffer the imprisonment as otherwise there would be social anarchy. People would contravene the law with impunity without any attending punishment for violating the law. The very foundations of democracy and rule of law would be shaken and that is the reason why the Courts strive to treat all persons before the criminal law as equal. Whether one is rich or poor, whether one is in powerful or powerless, the criminal law is equally applied to all equally."*

Para 17 : *"Be you ever so high, but the law is above you', is the signature theme of rule of law that loudly and silently (as well) echoes in the Indian Constitutional context. The purpose of the constitution itself is to equalize the men (and women) before the law. Equal protection of laws and equality before the law does not make any distinction between the Ruler and the ruled when it comes to enforcing the criminal sanctions. If a convict with money power as well as political power can avoid the punishment imposed by the highest Court of the State, the Court which imposed such punishment cannot be a mute spectator or dumb listener to be soothed by high caliber forensic oratory of the counsel at the altar of justice. The Court must and ought to take a serious view of such bizarre incidence: be it one in million. Of course, the law makers and law enforcers must willingly assist the Court in angling the convict avoiding and dodging the law makers, the law enforcers and the law interpreters (Judges and Courts)."*

11. Looking at the provision of The B.N.S.S.,2023 the following points have been made out:-

"Section 392 Judgment

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his advocate on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect

in serving, on the parties or their advocates, or any of them, the notice of such day and place."

*" **Section 458 Execution of sentence of imprisonment***

(1) Where the accused is sentenced to imprisonment for life or to imprisonment for term in cases other than those provided for by section 453, the Court passing the sentence shall forthwith forward a warrant to the jail or other place in which he is, or is to be, confined, and, unless the accused is already confined in such jail or other place, shall forward him to such jail or other place, with the warrant;

Provided that where the accused is sentenced to imprisonment till the rising of the Court, it shall not be necessary to prepare or forward a warrant to a jail, and the accused may be confined in such place as the Court may direct.

(2) Where the accused is not present in Court when he is sentenced to such imprisonment as is mentioned in sub-section (1), the Court shall issue a warrant for his arrest for the purpose of forwarding him to the jail or other place in which he is to be confined; and in such case, the sentence shall commence on the date of his arrest."

12. As per the ratio laid down in the case of "*Manoj Vasudev Sompura V/s State Of Gujarat" 2023(0) AIJEL- HC 247313* Hon'ble High Court of Gujarat in it's Judgment observed in para 12 & 14 as under;

"12. From the above set of facts, it appears that the decision to not remain present on the next date after getting his further statement u/s 313 of Cr.P.C. recorded on the earlier date and to not conduct cross-examination of the complainant in spite of being afforded with sufficient opportunities, was a deliberate or voluntary decision taken by the petitioner. In the interregnum, there is nothing to suggest that the petitioner or his advocate had filed any application requesting the trial Court to grant him an opportunity to record his Further Statement u/s 313 of Cr.P.C. or to conduct cross-examination of the complainant. The petitioner went into oblivion after the date when his Further Statement u/s 313 of the Cr.P.C. came to be recorded but before it could be

exhibited. Therefore, the trial Court was left with no other option but to conduct the trial in the absence of the petitioner, who had deliberately or voluntarily chosen to evade the trial proceedings. Under these circumstances, there was no reason for the trial Court to issue any warrant against the petitioner, as contended by learned advocate for the petitioner. Moreover, the petitioner had not produced any evidence in his defence or had made any submissions either oral or in writing."

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

In the case on hand the Further Statement of the Accused is ready but the Accused or his Ld. Advocate have been failed to appear before the Court in spite of afforded many opportunities. Thus, the complainant has established his case with cogent evidence hence, I answer Point No. 1 in Affirmative. The offence being categorized as economic offence, is not liable for any benefit of probation. Of course, the accused should be called upon to straight on the point of sentence but the accused did not bother to cross examine the complainant.

Therefore, this Court has no alternative but to pronounce the Judgment in absence of the accused as per provisions of Section 392(7) read with Section 458(2) of the B.N.S.S., 2023, hence, for answering Issue No.2, after considering the fact of the case and amount of the cheque following final order is passed in the interest of justice:-

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

1. The accused Mr. Dilipgar Premgar Gauswami, R/o: Block No.271, Housing Board, At - Dhuvav, Taluka & District - Jamnagar, is convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 under Section 278(2) of The Bhartiya Nagrik Suraksha Sanhita, 2023.

2. The accused is sentenced to undergo Simple Imprisonment for Six Months for the offence punishable u/S Section 138 of the Negotiable Instruments Act.

3. The accused is further directed to pay compensation of Rs.48,924/- (Rupees: Forty Eight Thousand Nine Hundred and Twenty Four Only) to the complainant under Section 395(3) of The Bhartiya Nagrik Suraksha Sanhita, 2023 within one month commence from today. In case of default in payment of the said amount the Accused will have to undergo Simple Imprisonment for two (2) months.

4. In the present case the accused is deliberately delaying the case by remain absent in the Court. Hence, Judgment is pronounced in the absence of accused u/S 458(2) of The Bhartiya Nagrik Suraksha Sanhita, 2023 and it is hereby ordered to issue sentence warrant against the accused.

5. As & when the accused appears before the Court, a copy of this judgment be provided free of cost.

The Judgment is Signed and Pronounced in an Open Court today on this 22nd day of July, 2026.

Date : 22/07/2026
Place : Jamnagar

[Bhaskar Rameshwar Dave]
2nd Addl. Chief Judicial Magistrate,
Jamnagar, Code No.GJ01073