CNR No. GJJN100007082025

Received on	07	07	2025
Registered on	07	07	2025
Decided on		07	2026
Duration	**Y**	**M**	**D**

In the Court of Additional Chief Judicial Magistrate,
At. Vanthali (Dist. Junagadh)

Criminal Case No.529/2025

Exh. : ......

Complainant:	**Shri Keshav Co-operative Credit Society Ltd., Junagadh,** a registered credit society under the Co-operative Act, through the Manager of its Vanthali Branch, having its registered office at Junagadh. **Bhavin Kalidas Tank** Age : 39 years, Occupation : Service, R/o. Vanthali, Tal. Vanthali, District Junagadh.
Accused:	**Dhirubhai Bhagvanjibhai Humbal** Age : Adult, Occupation : Farming/Business, R/o. Village area, Balot, Tal. Vanghali, District Junagadh. Mo.No. : 9924067945
Appearance:	Ld. Adv. **Mr.J.D.Shingala** for the Complainant. Ld. Adv. **Mr.R.R.Garchar**for the Accused.

Subject :	**Complaint under Section 138 of Negotiable Instrument Act, 1881.**

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

1. The accused has been arrayed in this complaint for the offence of Section 138 of of N I Act, 1881.

2. The factual matrix of the case of the complainant as narrated by the complainant in the complaint is as such that, the complainant is an officer of complainant bank and serving at Vanthali. That the accused is residing at Balot, Tal. Vanthali. Complainant co-operative bank is registered credit society under the Co-operative Act and complainant is an authorised officer of the Co-operative bank. That the accused is Member of credit society. That the accused, for the purpose of house repairing, had taken a loan of Rs. 50,000/- from the complainant credit society on 07/10/2024. That as per the loan agreement, the accused was required to repay the said loan in EMIs along with interest. That towards repayment of the outstanding loan amount with interest, the accused issued a cheque dated 25/04/2025 bearing No. 000005 for Rs. 52,408/- drawn on Bank of Baroda, Vanthali Branch.

3. The complainant society presented the said cheque for encashment on 25/04/2025 in its account at Junagadh District Co-operative Bank Ltd., Vanthali Branch. However, the cheque was returned unpaid on 29/04/2025 with the endorsement “insufficient funds”. Thereafter, as the cheque was dishonoured, the complainant society issued a legal notice dated 22/05/2025 to the accused, which was duly served on 24/05/2025. Despite receipt of the notice, the accused failed to make payment of the cheque amount within the stipulated time. Thus, the accused has committed an offence under Section 138 of the Negotiable Instruments Act. Therefore, the present complaint has been filed against the accused, praying that

appropriate legal action be taken against him and that he be directed to deposit the cheque amount before the Hon’ble Court in accordance with law.

4. That this Hon'ble Court took cognizance of the offence and after registering the complaint as criminal complaint summons qua the complaint was issued to the accused and in response to the said summons the accused had appeared through his Ld. Advocate, and his plea was recorded as per the direction given by Hon'ble Supreme Court in the matter of Sanjabij Tari Vs. Kishore S. Borcar & Anrs vide Exh. 12 & 13, wherein the accused has pleaded not guilty and opted to be tried for the offence of Section 138 of the N.I. Act. Therefore the matter was posted for the evidence of the complainant.

5. During the course of trial the complainant had produced the following oral as well as documentary evidence.

Oral Evidence of the Complaint

Sr.No.	Exh.	Particulars
1.	1/1	Chief-examination of the complainant

Documentary Evidence of the Complaint

Sr.No.	Exh.	Particulars
1.	15	Registration certificate of complainant society
2.	16	Resolution authorizing the filing of the complaint
3.	17	Cheque No.000005 of Bank of Baroda, Vanthali Branch issued by accused to complainant
4.	18	Return Memo
5.	19	Legal Notice
6.	20	Postal Window Slip
7.	21	Post Acknowledgment Slip
8.	22	PAN Card of the complainant

9.	23	Statement of account of the accused.

6. That as accused had stopped appearing before Hon'ble Court, his right of cross examination was closed by passing an order below Exh 1/1. Thereafter the complainant did not tender any further oral or documentary evidence and filed his closing pursis vide Exh. 28.

7. On completion of the evidence of the complainant as incriminating circumstances appeared against the accused, the further statement was prepared. However the said accused was continuously on run and did not appeared to avail his right of further statement, and therefore his right to tender/record further statement was closed by passing an order below the further statement in tune with the observation made by **Hon'ble Bombay High Court** in the matter of **Navneet Singh Gogia Vs. State of Maharashtra (2025(o) AIJEL -MH 2502426)**. After completion of evidence, the matter was posted for Final Arguments.

8. <u>Final Arguments</u>

<u>Arguments by Ld. Advocate for the Complainant ::</u>

- The Ld. Advocate for the complainant argued as per the record of the complaint and requested to convict the accused, as no material inconsistencies is brought out in the evidence of the complainant by the accused and therefore relying on the presumption under section 139, read with section 118 of the N.I. Act, 1881, Ld. Advocate for the complainant prayed to allow the Complaint.

<u>Arguments by Ld. Advocate for the Accused ::</u>

As the accused was on run and never appeared his right of argument was closed by passing an order in rojkam on 08.06.2026.

9. After hearing the Ld. Advocates for the parties following points falls for the determination of this court.

<u>Points of Determination::</u>

1. Whether the complainant proves that present accused by maintaining an account with Bank of Baroda, issued cheque No. 000005, dated 25/04/2025 for payment of Rs.52,408/- to the complainant from the said account in discharge of legally enforceable debt/liability and complainant having deposited the said cheque with his banker Junagadh District Co-operative Bank Ltd., Vanthali Branch, the said cheque was returned dishounoured by the accused bank with the endorsement Funds Insufficient and accused in spite of receipt of written notice from the complainant qua dishonour of cheque has failed to pay the legal due amount to the complainant within stipulated time, and thereby has committed the offence under Section 138 of N.I.Act, 1881 ?
2. What order?

10. **Findings**

1. In affirmative
2. As per final order

11. **Reasons**

Before I incept to deal with the reasons, the admitted position on record is required to be taken note of. The same reads as under.

Admitted Position :

- The accused has not replied to the statutory notice (Exh. 19) issued by the complainant.
- The accused has denied cheque as well as signature on the cheque at Exh.13. However has not laid any evidence to prove the said fact and distort the presumption u/s 139 and 118 of N I Act, 1881.
- The accused has not cross examined the complianant nor has examined himself or any witnesses to prove that complainant has misused the cheque.

With this admitted position the present points are required to be answered.

12. Now, if I assign the reasons then before assigning any reason Sec. 139 and Sec. 118 of N.I. Act are required to be quoted. The same reads as under:

SECTION 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.

SECTION 118 : Presumptions as to negotiable instruments.

Until the contrary is proved, the following presumptions shall be made:
(a) of consideration-that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

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

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

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

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

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

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

13. Thus as per the section 139 of N I Act, 1881, the Hon’ble Court has to presume that the cheque Exh.17 was issued in discharge of debt and the burden is on

the accused to disprove the same. Further as per Section 118 of N I Act, 1881 the cheques Exh.17 was drawn for consideration is also to be presumed by the Hon'ble Court unless the same is disproved by the accused. The said two presumptions are of presumption of law and not of facts and therefore the accused is suppose to disprove/dislodge the same with cogent and clinching material. To buttress the same it is vital to quote the law laid down by **Hon'ble Gujarat High Court** in the matter of **Patel Jayantibhai Mafatlal Vs. State of Gujarat reported in 2018(o) AIJEL – HC 239654**, wherein **Hon'ble Gujarat High Court** has in **para. 46** observed as under :

> **Para (46.)** **<u>The respondent No.2 was required to discharge the burden under section 118 and 139 of the N.I. Act that the cheque he issued of Rs. 36 lakh was not issued towards discharge of legal debt but was issued in view of security or was obtained unlawfully or was issued otherwise, since the appellant succeeded in proving the initial burden reasonably existence of legal debt as was required under the law.</u>**
>
> **<u>46.1 With no reply to the notice of demand initially and in absence of any complaint to the police or otherwise in connection with his version that the impugned cheque having been stolen from his brother, the respondent No.2 cannot be said to have discharged his burden as required of him by the law.</u>**
>
> **46.2 His attempt to bring on record theory of stolen cheque in his further statement after many years is nothing but a calculative chance or an afterthought,1 however, neither that attempt nor his detailed cross examination comes nowhere nearer even to discharge his burden, even with a comparatively lighter scale of proof i.e. preponderance of probabilities.**
>
> **46.3 His line of cross-examination also reveals clearly that the business of S.B. Fabrics (process house) was purchased from father of Mr. Gautam**

Adani and his sons were looking after this business. He attempted to say that he was not involved personally in running the business and there were certain litigations in respect of the said process house, however, that version, on the contrary, as held by the trial Court, favours the complainant's story. His aspirations for his family and his purchase of a huge business is the cause of his facing various litigations under section 138 of the N.I. Act. Respondent No.2, in fact, as can be held unhesitantly, failed to dislodge the positive proof.

46.4 <u>Section 139 of the N.I. Act stipulates that the Court shall presume unless the contrary is proved, that the holder of the cheque received the cheque of the nature referred to in Section 138 for discharge of debt or liability.</u>

<u>46.5 Section 3 when read with Section 4 of the Evidence Act, it can be said that Whenever it is directed by the Court that the Court shall presume a fact, it shall regard such fact as proved, unless and1 until it is disproved. Section 3 defines the expression 'disproved' that a fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its nonexistence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. Word 'proved' under the very section stipulates the converse that 'A fact is said to be proved when after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.</u>

Thus as per the law laid down by **Hon'ble Gujarat High Court** in the matter of **Patel Jayantibhai Mafatlal Vs. State of Gujarat** reported in **2018(o) AIJEL – HC 239654** the accused is suppose the discharge the burden, that cheque (Exh.17) has not being issued in discharge of legal dues and complainant has misused the cheques.

14. To discharge the burden the accused has not laid any evidence to show that the cheque is misused by the complainant. Further the accused has not cross-examined the complainant nor adduced any evidence in his defence neither he himself has entered in to box. The accused has not lodged any criminal complaint or police complaint or any proceeding to show that the cheque is misused by the complainant. Accused has accepted the statutory notice issued by the complainant, but has not replied the same. Thus adverse inference is required to be drawan against the version of the accused. The accused could have delivered the cheque amount on the service of the summons of the Court, but the accused opted to contest the matter. However in his defence at Exh. 13 the accused has not tendered any evidence.

15. Further the complainant is registered credit Society and the accused has taken loan for the purpose of repairing of his house and executed the documents of the complainant society for the said purpose. The same can be butressed from the loan statement Exh. 23 as well as cheque Exh. 17. Hence the cheque amount is legal debt of the accused toward the complainant and he has failed to pay the said amount and also failed to prove his innocence by adducing evidence. Thus when the accused has not replied to the statutory notice nor has tendered any evidence to show that, the cheque is not issued by him or misused by the complainant, the presumption under Section 139 and 118 of the N.I.Act, 1881 will favour the complainant in view of the law laid down by **Hon’ble Gujarat High Court** in the matter of **Patel Jayantibhai Mafatlal Vs. State of Gujarat** reported in **2018(o) AIJEL – HC 239654**, and therefore this is the fit case for convicting the accused for the offence punishable under Section 138 of the N.I.Act,1881 and sentencing him to proper punishment, and **hence I answer issue No.1 in Affirmative and pass following final order qua Issue No.2.**

:: Order ::

- The accused **Dhirubhai Bhagvanjibhai Humbal**, resident of Village Area, Balot, Tal. Vanthali, District Junagadh is convicted for the offence punishable uncer Section 138 of the Negotiable Instrument Act, 1881 under section 278(2) of B.N.S.S., 2023/ under Section 255(2) of Criminal Procedure Code.
- The accused is sentenced to undergo simple imprisonment for one year towards conviction for the commission of offence of Section 138 of Negotiable Instrument Act, 1881.
- As per section 357(3) of Cr.P.C./Section 395(3) of B.N.S.S., 2023, the accused has to pay compensation of total Rs. 52,408/- (Rupees Fifty Two Thousand Four Hundred Eight only) to the complainant which is an amount of cheque and in default accused has to undergo further simple imprisonment for 6 months.
- Under Section 363(1) of Cr.P.C./Section 404(1) of B.N.S.S., 2023, copy of this judgment be supplied to the accused free of cost immediately.

Signed & Pronounced in the open court today on this **06 Day of July , 2026**

Date :06/07/2026
Place:Vanthali.

(Lalitkumar Indravadan Ingale)
Additional Chief Judicial Magistrate
Vanthali
(Code -GJ01372)