



CNR No. GJJN100007102021

Received on	12	08	2021
Registered on	12	08	2021
Decided on			2026
Duration	Y	M	D

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

Criminal Case No.574/2021

Exh. :

Complainant:	(1) Chavda Yogeshbhai Arjanbhai Age : 32, Occupation : Business of buying &selling, R/o. Vadla, Tal. Vanthali, District Junagadh.
Accused:	(1) Lilaben Narendrabhai Khuman Age : Adult, Occupation : Business of buying &selling, R/o. Madhura Bypass, Mangaldham Society, Near Raj Ratna Bhawan, Street No.1, Junagadh.
Appearance:	Ld. Adv. Mr. Y.M.Thakor for the Complainant. Ld. Adv. Mr.K.M.Vanvi for the Accused.

Subject :	Complaint under Section 138 of Negotiable Instrument Act, 1881.
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-:: J U D G M E N T ::-

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 residing at the at Vadla and is engaged in business of buying and selling of goods. That the accused is residing at Junagadh and also engaged in same business and during the business they came in contact with each other. That person of finance company repeatedly demanded money from the son of the accused and therefore, the accused had contacted complainant and had demanded Rs.2,00,000/- as hand loan for 10 days, and the said request of the accused was accorded by the complainant and the complainant gave Rs.2,00,000/- from his personal savings and accused gave commitment to return the same within few days and had delivered cheque No.389712, dated 22/06/2021 for the amount of Rs.2,00,000/- to the complainant from her account with S.B.I., University Branch, Junagadh with assurance that by depositing the cheque the complainant will get his money back.

3. That the said cheque issued by the accused was deposited by the complainant with his banker Bank of Baroda, Shapur Branch on 22/06/2021. However the same was returned dishonored for the reasons Fund Insufficient on 22/06/2021. That as the said cheque was returned unpaid the complainant had contacted accused but the accused did not give reply hence the complainant issued notice to the accused on 22/07/2021 and the same is returned on 24/07/2021 as the accused refused to accept the same. As accused did not pay the cheque amount nor did accept the notice, the complainant was constrained to file the present complaint and, therefore, had filed the present complainant against the accused for the offence of Section 138 of N.I. Act, 1881.

4. That my Ld. Predecessor Judge 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 her Ld. Advocate, and her plea was recorded vide Exh. 12, 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.	5	Chief-examination of the complainant

Documentary Evidence of the Complaint

Sr.No.	Exh.	Particulars
1.	24	Cheque
2.	25	Return Memo
3.	26	Notice
4.	27	White deposit slip of post
5.	28	Cover returned with endorsement of refused
6.	29	Copy of aadhar card of the complainant

6. Thereafter the complainant did not tender any further oral or documentary evidence and filed his closing pursis vide Exh. 22.

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 appear to avail her right of further statement and therefore her right to tender/record further statement was closed by passing an order below the further statement prepared as per Cr.P.C. 1973 Section 313.

8. After completion of the evidence the matter was posted for the final

arguments

Final Arguments

9. Arguments by Ld. Advocate for the complainant

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.

10. Arguments by Ld. Advocate for the accused.

As the accused was on run and never appeared after N.B.W. issued against him, her right of argument was closed.

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

- i. Whether the complainant proves that the present accused by maintaining an account with State Bank of India issued cheque no. 389712 dated 22.06.2021 for payment of Rs.2,00,000/- to the complainant from the said account in discharge of legally enforceable debt/liability and the complainant having deposited the said cheque with his banker Bank of Baroda, Shapur Branch, the said cheque was returned dishonored by the accused bank with endorsement Funds Insufficient and the accused having refused the written notice from the complainant qua dishonor of cheque and having failed to pay the legal due amount to the complainant within stipulated time has committed an offence u/s 138 of N I Act, 1881?
- ii. What order?

12. Findings

- i. In affirmative

ii. As per final order

13. **Reasons**

Before I incept to give reasons, the admitted position emerging on record is to be taken note of the same is as under:

Admitted Position

1. The accused has refused to receive statutory notice at **Exh. 28** nor has given any reply to it.
2. The accused has not tendered any evidence to show that cheque is misused by the complainant nor raised any defence that the said cheque is not issued by her in discharge of her liability.
3. The accused has not denied her signature on cheque Exh. 24 either by cross examining the complainant or by leading her contrary evidence.

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

14. 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.

15. Thus as per the section 139 of N I Act, 1881, the Hon'ble Court has to presume that the cheque Exh. 24 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 cheque Exh. 24 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.) 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.

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.

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 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.

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.

14. 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 to discharge the burden that cheque (Exh. 24) has not being issued in discharge of legal dues and complainant has misused the cheques.

15. 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 her defence neither she herself has entered in to box. The accused has not denied the signature on cheque either in cross of complainant or otherwise. The same warrants this Court to quote law laid down by the **Hon'ble Supreme Court** in the matter of **Bir Singh Versus Mukesh Kumar** reported in **2019 (0) AIJEL-SC 63577**, wherein **Hon'ble Supreme Court** in **para 38 to 42** has obseved as under:

38. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove

that the cheque was not in discharge of a debt or liability by adducing evidence.

39. It is not the case of the respondent-accused that he either signed the cheque or parted with it under any threat or coercion. Nor is it the case of the respondent-accused that the unfilled signed cheque had been stolen. The existence of a fiduciary relationship between the payee of a cheque and its drawer, would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.

40. Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.

41. The fact that the appellant-complainant might have been an Income Tax practitioner conversant with knowledge of law does not make any difference to the law relating to the dishonour of a cheque. The fact that the loan may not have been advanced by a cheque or demand draft or a receipt might not have been obtained would make no difference. In this context, it would, perhaps, not be out of context to note that the fact that the respondent-accused should have given or signed blank cheque to the appellant complainant, as claimed by the respondent-accused, shows that initially there was mutual trust and faith between them.

42. In the absence of any finding that the cheque in question was not signed by the respondent-accused or not voluntarily made over to the payee and in the absence of any evidence with regard to the circumstances in which a blank signed cheque had been given to the appellant-complainant, it may reasonably be presumed that the cheque was filled in by the appellant-complainant being the payee in the presence of the respondent-accused being the drawer, at his request and/or with his acquiescence. The subsequent filling in of an unfilled signed cheque is not an alteration. There was no change in the amount of the cheque, its

date or the name of the payee. The High Court ought not to have acquitted the respondent-accused of the charge under Section 138 of the Negotiable Instruments Act

16. Thus as per the observation made by the Honb'le Supreme Court in the above matter, if a person signs a cheque and makes it over to the payee then he remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. In the present matter accused has not cross examined the complainant nor has denied her signature on cheque and neither has ever disputed tendering of cheque by giving reply to statutory notice issued by the complainant. Thus as per the law laid down by Hon'ble Apex Court in the matter of **Bir Singh Versus Mukesh Kumar** reported in **2019 (0) AIJEL-SC 63577** the case against the accused stands proved in view of statutory presumption of Section 118 and 139 of N I Act, 1881. That accused has refused to accept the statutory notice issued by the complainant. The same in absence of any evidence on the part of the accused warrants the Hon'ble Court to draw adverse inference against the accused. Even if the notice is not being received by the accused, then also she could have delivered the cheque amount on the service of the summons of the Court, but the accused opted to contest the matter. Thus in absence of any defense on the part of accused and signature on cheque being not denied by the accused the presumption of Section 118 and 139 of N I Act, 1881 cannot be said to be distorted.

17. 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 her 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 Apex Court** in the matter of **Bir Singh Versus Mukesh Kumar** reported in **2019 (0) AIJEL-SC 63577** together with 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 when there is not embargo of limitation or legal liability 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 Lilaben Narendrabhai Khuman, resident of Madhura Bypass Mangaldham Society, Near Raj Ratna Bhavan, Sheri no. 1, Junagadh is convicted for the offence punishable of Section 138 of Negotiable Instrument Act, 1881 under section 255(2) of Criminal Procedure Code, 1973.**
- **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.C1973, the accused has to pay compensation of total Rs.2,00,000/- (Rupees Two Lacs only) the amount of cheque and in default accused has to undergo further simple imprisonment for 6 months.**
- **Under Section 363(1) of Cr.P.C 1973, copy of this judgment be supplied to the accused free of cost immediately.**

Signed & Pronounced in the open court today on this **24 Day of March, 2026**

Date :24/03/2026

Place:Vanthali.

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

