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**IN THE COURT OF 5TH ADDL. SENIOR CIVIL JUDGE &
A.C.J.M. AT NADIAD
CRIMINAL CASE NO. 3065-2025
EXH-23**

COMPLAINANT : **Proprietor of Shivam Finance**
Ileshkumar Hasmukhbhai Solanki
Residing at : 33, Shree Ram Complex,
B/h. Globe Cinema, Rabari vad, Nadiad,
Ta : Nadiad, District : Kheda.
(Rep. by N.N.Shah, Adv.)

V / S
ACCUSED : **Pravinkumar Jagdishbhai Chauhan**
R/o Bhagatvalu Faliyu, Vansol Sundha,
Ta. Mahemdavad, Dist. Kheda.
(Rep. by S.P. Sisodiya, Adv.)

**Re : OFFENCE PUNISHABLE UNDER SEC. 138 OF THE
NEGOTIABLE INSTRUMENTS ACT, 1881.**

J U D G M E N T

FACTS OF THE COMPLAINANT'S CASE :

1. The facts raised by the complainant in the present case is as follows:
 - a. The present complainant is doing the business of finance in name of Shivam Finance and have license

**Judgment in CC No. 3065/2025 delivered on 01.04.2026 by 5th Addl
Senior Civil Judge & ACJM, Nadiad.**

No.GML/Kheda/Nadiad/45/2017. Accused frequently visited the office of complainant and thus they became familiar to each other. On dated 13.11.2024 accused came to complainant's office as he was in urgent need of Rs.68,000/- and asked for personal loan to complainant. Hence, complainant has given Rs. 68,000/- to the accused as personal loan with yearly 15% rate of interest for one month by bill No. 158. At that time accused had given promissory note to complainant. After the promise time, the accused did not returned the amount. So complainant demanded for his legal due amount and as against the demand accused has issued a **Cheque No. 000001 for Rs. 69,200/- on 26.12.2024 drawn on Bank of Baroda, Mahemdavad Branch.** The accused has given assurance that the cheque would be cleared when it would be deposited to the bank. Relying on the words of the accused complainant accepted the cheque. It has further been averred that when the said Cheque was presented by the complainant for clearance in **The Co. Op. Bank of Rajkot, Nadiad Branch, dated 26.12.2024**, the same was returned unpaid by The Co. Op. Bank of Rajkot, Nadiad Branch, on dated 27.12.2024 vide its return memo with the remarks "Funds Insufficient".

- b. Thereafter, the legal demand notice was issued through the complainant's advocate to the accused on dated

10.01.2025 and sent through the R.P.A.D, and the said notice was served on dated **11.01.2025** to the accused, but accused did not comply with the contents of the demand notice nor made any payment to the complainant, thus the present complainant has filed a case against the accused under Section-138 of N.I. Act, for maximum punishment and compensation to be paid to the complainant.

- c. Thereby, the accused has committed the offence punishable under Section 138 of Negotiable Instruments Act. Hence, the complaint.

COGNIZANCE :

2. After filing of this complaint, cognizance was taken for the offence punishable U/s.138 of N.I. Act. Sworn statement of the complainant was produced along with a complaint which was recorded. As the prima facie case made out, a criminal case was registered against the accused and a summons was ordered to be issued.

PLEA OF ACCUSED :

3. In pursuance of the court process issued by this court, the accused appeared and necessary copies were supplied to the accused. Thereafter, accusation was read over and explained to him, wherein, plea was recorded at EXH-09 dated 12.11.2025. The accused pleaded not guilty and claimed trial.

EVIDENCE OF THE COMPLAINANT :

4. To prove the case of the complainant following evidences are produced :

-: ORAL EVIDENCE :-

SR NO.	EXH	PARTICULARS
CW1	04	DEPOSITION OF COMPLAINANT

-: DOCUMENTARY EVIDENCE :-

Sr No.	MARK	Particulars
PE1	10	Copy of Finance License
PE2	11	Loan terms and conditions statement
PE3	12	Promissory Note
PE4	13	Original cheque dated 26.12.2024 of Rs. 69,200/-
PE5	14	Bank Memo dated 27.12.2024
PE6	15	Copy of legal notice 10.01.2025
PE7	16	Postal payment Receipt
PE8	17	Track Report

DEFENCE OF THE ACCUSED :

5. In **Modern Denim Limited vs. State of Gujarat, 2015 (3)**

GLH 668, the Hon'ble Gujarat High Court issued directions for immediate disposal of case under Section 138 of the NI Act. Relevant para is below:

“4. Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251 Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for re-calling a witness for cross-examination.”

6. Considering the Record of the case, no application u/s 145(2) of the Negotiable Instruments Act, 1881 is filed. The complainant was not subjected to the cross-examination due to non-proceedings of the case by the accused. As the accused did not made any effort to cross-examine the complainant during the course of trial after recording of

plea, right to cross-examine was closed below application at EXH-18 dated 13.01.2026. Thereafter, Ld. Adv. for the accused had given an application for re-open the right of cross-examine, but accused and advocate were not present. So, the right to cross-examine was closed below application at EXH.-22 dated 28.01.2026.

FURTHER STATEMENT & EVIDENCE OF THE ACCUSED :

7. After closing of right to cross-examination and closing of evidence of the complainant, further statement as per Section 313 Cr.P.C. (Section 351 BNSS) was prepared and kept in record. But the accused did not appear, therefore, his right to adduce further statement is closed below application at EXH-20 dated 16.03.2026.

ARGUMENTS :

8. Thereafter matter is kept for final arguments. Heard Ld. Adv for the complainant who argued that the overall case is proved with admissible unrebutted evidence and the accused shall be punished as per Section 138 NI Act. As the accused again did not remain present.

POINTS OF DETERMINATION :

9. On going through the rival contentions, based on the substantial evidence available on record, the following points have been arising for determination:
 - 1) Whether the complainant proves the guilt of the accused for the offence punishable under Section 138 of Negotiable Instruments Act?
 - 2) What Order?

10. On appreciation of materials available on record, my findings on the above points are as under:

Point No.1 : In the Affirmative

Point No.2 : As per final order, for the following:

: REASONS :

POINT NO.1 :

11. Considering documents with above information, when the complainant has presented the cheque in question to his banker within three months from the date of said cheque, it was returned dishonored and that when the complainant got issued statutory notice U/s.138 of N.I. Act by registered post to the accused within 30 days from the date of intimation of dishonour of said cheque, it was served on the accused. Hence, the present complaint filed after expiry of 15 days from the date of receipt of such legal notice and 30 days thereafter is well within time.
12. Now to prove offence of the Section 138 of the Negotiable Instruments Act, 1881 following provision is required to be taken into consideration :

Section 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 ¹⁹ [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: Provided that nothing contained in this section shall apply unless—

- (a) **the cheque has been presented to the bank** within a period of six 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, ²⁰ **[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 or other liability.]

13. This court has meticulously gone through the complaint averments, evidence on record and court records. Documentary evidence is produced in original and contents of those documents are reiterated on oath. Therefore, those evidences can be considered as primary evidence as per Section 61 to 65 of the Indian Evidence Act, 1872. Relying upon the documents at PE-1 to PE-8 and dates mentioned

therein, it is clear that the accused has outstanding amount of Rs. 69,200/- for the amount received from the complainant. *Even the fact of the complainant being Finance company and obtaining a loan by the accused have not been disputed. When the complainant has proved the transaction alleged in the complaint, then the question of issuing the Cheque for discharge of Rs. 69,200/- cannot be disputed.*

14. Considering the provision and the evidence placed on record clearly probable that, complainant has successfully *proved that, accused issued Cheque dated 26.12.2024, for sum of Rs. 69,200/- drawn on Bank of Baroda, Mahemdavad Branch, for discharge of liability of Rs. 69,200/-* It is *also proved from Bank Memo that the Said cheque after being deposited in the account of complainant at The Co-Op. Bank, Rajkot, Nadiad branch, came to be dishonored with an endorsement "Funds Insufficient" dated on 27.12.2024.* It is *also proved by producing notice that due to said dishonor complainant issued legal notice to the accused dated 10.01.2025.* It is *proved from postal related documents that said notice was duly served to the accused on 11.01.2025.* Even service of notice is confirmed from the fact that the accused did not dispute it at time of plea or afterwards during the course of the entire trial and not rebutted it with valid evidence.
15. As regard to legally enforceable debt or liability, it is settled principle of law relating to the Negotiable Instruments that

the presumption mandated by Sec.139 of the Act includes a presumption that there exists a legally enforceable debt or liability. 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. In every case 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 presumption can fail. 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.

16. If the facts and circumstances of this case are considered in light of above said principle of law, it is clear that ***the cheque is drawn on the bank account of the accused*** and that it ***bears the signature of the accused***. Therefore, ***statutory presumption arises U/s.139 of N.I. Act in the favour of the complainant that the cheque is issued in discharge of debt or liability***. The burden of rebutting the said presumption by probable defence is on the accused.
17. On careful perusal of evidence on record, it is clear that ***the accused has not raised any probable defense***. It is because

the accused has not remained present even after recording of plea as evident from record. In order to prove the defence of the accused, he himself chosen not to remain present and neither examined himself as witness nor produced any evidence in his defence.

18. The sum and substances of well established principles are that, once it is proved that, cheque pertaining to the account of the accused is dishonored and the requirements envisaged under Section 138 of (a) to (c) of Negotiable Instruments Act is complied, then it has to be presumed that, cheque in question was issued in discharge of legally recoverable debt. The presumption envisaged under Section 138 of Negotiable Instruments Act is mandatory presumption and it has to be raised in every cheque bounce cases.
19. Now, it is settled principles that, to rebut the presumption, the accused has to set up a probable defense. In view of the above discussion, this court considered the opinion that **the accused has utterly failed to prove or probabalize his defense and thereby to rebut statutory presumption in favor of the complainant.**
20. It clearly appears from the evidence on record that defense of the accused was not raised. Unless and until the accused rebuts the statutory presumption with convincing and cogent evidence, burden cannot be shifted on the complainant. The complainant has placed sufficient materials on record to establish his contention.

21. The evidence on record is sufficient to accept the case of the complainant that accused had issued cheque in question towards discharge of legally enforceable debt or liability and the complainant has proved all the requirements of Sec.138 of N.I. Act, so as to constitute the offence against the accused. Therefore, **Point No. 1 is answered in THE AFFIRMATIVE.**

POINT NO. 2:

22. As discussed above, the complainant has proved his case as to commission of the offence punishable U/s.138 of N.I. Act by the accused. The punishment prescribed for the said offence is imprisonment for a period which may extend to two years or with fine.
23. Considering the facts and circumstances of this case, nature, year of the transaction, nature of the instrument involved, provisions of Sec.117 of N.I. Act, cost of litigation and the rate of interest proposed by Hon'ble Supreme Court in **2012 (1) SCC 260 (R.Vijayan Vs Baby)**, etc this court is of the considered view that it is just and desirable to impose fine of Rs. 69,200/- shall be given to the complainant as compensation being amount of cheque. In default of payment of fine it would be desirable to award simple imprisonment which may extend to six months.
24. For the reasons discussed in connection with Point Nos.1 to 3 this court proceed to pass the following....:

: O R D E R :

- (1) **The accused- Pravinkumar Jagdishbhai Chauhan** is hereby *held GUILTY* and *CONVICTED* for the offence punishable under Section 138 of Negotiable Instruments Act.
- (2) The accused is sentenced to undergo simple imprisonment for a term of three months and is ordered to pay the amount of Rs. 69,200/- to the complainant as compensation under Section 357(3) Cr.P.C.(Section 395 BNSS) 45 days from the date of the judgment and in default of compensation, the accused shall undergo further imprisonment of three months.
- (3) The copy of the judgment be supplied to the accused free of costs immediately as per section 363(1) of Cr.P.C (Section 404(1) BNSS).
- (4) Bail bond of the accused, if any, stands canceled. Since the accused was not present when the accused was called-out and the judicial proceedings of the present case were continuously delayed by the accused's absence, it seems justified to pronounce the said judgment in the absence of the accused as per Section 353(6) of the Cr.P.C.(Section 392 of BNSS), and therefore, the said judgment is pronounced in the absence of the accused and it is hereby ordered that a punishment warrant under Section 418(2) of Cr.P.C. (Section 418 of BNSS) be issued against the accused

and sent to the concerned Police Station/ S.P. Shri Nadiad for execution.

**Singed and Pronounced in the open court on today
01st April, 2026.**

DATE : 01.04.2026

PLACE:NADIAD

[Mehulkumar Mahendrakumar Gandhi]

5th Addl. Senior Civil Judge

& A.C.J.M.,Nadiad.

Judge Code : GJ01270

(Pinkal-Eng.steno)