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**IN THE COURT OF HONOURABLE ADDITIONAL  
CHIEF JUDICIAL MAGISTRATE KHEDA**

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**CRIMINAL CASE NO. 28 of 2025**

**Exh-**

**Ambalal Bhairavsingh Chauhan,**  
Resident of Mahamadi Nagari,  
Kheda

**... Complainant**

**v/s**

**Fesalbhai Farooqbhai Ghanchi Vora,**  
Resident of Balapir Bhagod,  
Kheda .

**... Accused**

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**Ld. Advocate for the Complainant Mrs. BT Brahmhatt  
Ld. Advocate for the Accused Mr. M.U. Vhora**

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

**SHORT FACTS IN NUTSHELL**

- 1) The short facts of the present case in nutshell is that the complainant have filed present case u/s. 138 of the Negotiable Instruments Act, 1881 (**Hereinafter will be referred to as N.I. Act**) against the accused alleging that accused have issued a cheque in favour of complainant which was dishonored by the drawee bank. It is the case of the complainant that the accused and the complainant are friends and the accused use to take

handloan from the complainant and used to repay the same It is the case of the complainant that the accused demanded handloan of Rs 21,000/-and the complainant has given the handloan of Rs21,000/- to the accused with condition to repay the same within 1 month It is the case of the complainant that when complainant demanded the due amount the accused issued cheque of Union Bank of India **cheque bearing No. 028095 of Rs. 21,000/-** on **15/10/2024 of** accused account. The complainant deposited the said cheque in his own account of **ICICI Bank, Kheda Branch** for clearance and the said cheque was dishonored with an endorsement as "**Fund Insufficient**" on **10/12/2024**. The complainant gave notice to the accused on **16/12/2024** by RPAD which was duly served to the accused on **17/12/2024** and even after service of notice the accused did not made any payment to the complainant hence, complainant have filed present case against the accused.

### **COGNIZANCE**

- 2) The Court took cognizance of the offence on the basis of complaint filed by the complainant u/s. 142 of the N.I. Act and after satisfying about the prima facie case against the accused issued summons against the accused **u/s. 227 of the B.N.S.S.** in order to ensure the charge u/s. 138 of the N.I. Act. The accused appeared before this Court and pleaded not guilty and claimed to be tried.

### **EVIDENCE OF COMPLAINANT**

- 3) In support of the case, the complainant has produced oral as well as documentary evidence.

**ORAL EVIDENCE**

<b>Sr. No.</b>	<b>Particular</b>	<b>Exh</b>
1	Affidavit of Complainant	5

**DOCUMENTARY EVIDENCE**

<b>Sr. No.</b>	<b>Particular</b>	<b>Exh</b>
1	Cheque	16
2	Return Memo	17
3	Notice	18
4	RPAD Receipt	19
5	RPAD	20
6	Track Report	21

- 4) The complainant have examined one witness and have relied upon the list of documents. The accused have not cross examined the complainant and hence the right of the accused of cross examination was closed. The accused have not remained present at the time of further statement and hence his right to further statement was closed. The accused have not entered into the witness box and have not produced any witness and have not produced any documentary evidence to support his case.

**ARGUMENTS OF COMPLAINANT**

- 5) The complainant have argued that he has successfully proved his case and the accused have not honored the cheque issued by him and have prayed that accused shall be punished to the full sentence as prescribed by law and have also prayed to adequately compensate the complainant.

**ARGUMENTS OF ACCUSED**

- 6) The Ld. Advocate for the accused have not argued and hence his right of argument was closed.

**ISSUES**

1. Whether complainant proves that on 15/10/2024 accused have issued a cheque No. 028095 of Rs. 21,000/- for the repayment of amount to the complainant which was dishonored on presentation to the Bank on 10/12/2024 and hence statutory notice dated 16/12/2024 u/s. 138 was issued to the accused which was served though the cheque amount was not paid by the accused without any sufficient reasons and hence accused has committed offence u/s. 138 read with Section 142 of the N.I. Act ?
2. What order?
- 7) My reply to the above issues are as under :-

**1) Affirmative**

**2) As per Final Order**

**Reasons for the Determination of the Issues.****Issues No.1**

- 8) Before going into the merit of the case it will be necessary to persue Section 138, Section 139, Section 118 and Section 140 of the Negotiable Instruments Act which is reproduced herein below.

**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-[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, [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.]

### **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 140 : Defence which may not be allowed in any prosecution under section 138.**

It shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.]

**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.

- 9) The prosecution under section 138 of NI Act the court shall presume certain facts against the accused upon proof of issuance of cheque by the accused to the complainant in view of Section 118 and Section 138 of NI Act. However, such presumption are not conclusive in nature but they are rebuttal and it is for the accused to rebut such presumption. The standard of proof for rebutting the presumption is that of preponderance of probabilities. To rebut the presumption it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise the probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by the reference to the circumstances upon which they rely. The said presumption can also be rebutted by the accused from the admission made by the complainant in his cross - examination which creates doubts on the complainant story. It is also well settled that it is not necessary for the accused to come in the witness box in support of his defence in all the cases. It is also well settled that Section 139 imposed an evidentiary burden and persuasive burden. So it can legitimately be said that whether presumption stood rebutted or not will depend upon the facts and circumstances of the case. It is also well settled that if the accused is not able to rebut the said presumption raised against him and if the accused able to rebut the presumption then the onus is again shifted to the complainant to prove his case beyond all reasonable doubt.

- 10) The complainant have filed affidavit vide **Exh-5** in which he has reiterated the same things as stated by him in his complaint. The accused have not cross examined the complainant and hence adverse inference can be drawn against the accused.
- 11) There is a statutory presumption u/s. 118 and 139 of the N.I. Act in favour of the holder of the cheque that the cheque was issued for the discharge of debt. In the present case on hand the complainant have stated in his affidavit that he has given hand loan of Rs. 21,000/- to the accused and the accused have not repaid the same. The contents of the affidavit have not been challenged by the accused and the accused have not cross examined the complainant. The accused have issued cheque of Rs. 21,000/- in favour of complainant for the above legal enforceable debt. The accused have not challenged any document produced by the complainant. In the present case on hand the complainant have brought on record cheque vide **Exh-16** and has already proved the liability of the accused and accused could not adduce any evidence to rebut the same, as such the only presumption that can be drawn in the absence of any evidence to the contrary is that said cheque was issued for the discharge of legally enforceable debt. The accused have not adduce any contrary evidence to show that he does not have any existing legal liability in favour of the complainant. In the present case on hand the accused have taken hand loan of Rs. 21,000/- from the complainant and have not repaid the due amount and hence the cheque was issued by the accused in favour of the complainant for the legally enforceable debt.

- 12) The purpose of statutory notice u/s. 138 of N.I. Act is to give the opportunity to the accused to clear his stand on the alleged allegation of return of cheque. In the present case the accused have been duly served with statutory notice vide **Exh-18** and the complainant have brought on record the copy of RPAD receipt, RPAD and track report vide **Exh-19 to Exh-21** which shows that the accused have been duly served with the statutory notice but accused have not choose to clear his stand by giving reply to the said notice. Not replying to the statutory notice itself raises adverse inference against the accused. Further, mere putting questions in the cross examination of the complainant without adducing evidence will never constitute the probable defence. It is well settled principle that the accused not bound to step into the witness box to depose as witness to rebut the said presumption. Accused can rebut the said presumption by cross examination of the complainant and his witness or by bringing some material and some circumstance regarding facts of the case on record. In the present case on hand the accused have not cross examined the complainant hence adverse inference can be drawn against the accused. In the present case neither the accused has entered into witness box nor he has led any oral or documentary evidence to rebut the presumption. Hence, whether accused has rebutted the presumption or not the Court has to rely upon evidence of the complainant.
- 13) The complainant have stated in his affidavit that cheque in question was issued for the legally enforceable debt on **15/10/2024** and the same was presented for encashment but the said cheque was dishonoured because of "**Fund**

**Insufficient"** on **10/12/2024** which is on record vide **Exh-16 and Exh-17**. The accused has not disputed the fact of dishonoured of the cheque. As per Section 146 of the N.I. Act provides for its statutory presumption as regard to the genuineness of cheque, returned memo issued by the Bank. Hence, the cheque was dishonoured due to **Insufficient Funds** in the account of accused. The complainant have stated in his affidavit that after the dishonoured of cheque demand notice was issued on **16/12/2024** in respect of dishonoured of cheque by RPAD which was duly served on **17/12/2024**. The statutory notice, RPAD receipt, RPAD, online track report are on record vide **Exh-18 to Exh-21**. There is nothing on record to doubt or disbelieve the genuineness of the above evidence. On perusal of the track report the same has been delivered to the accused. As per Section 27 of General Clause Act when the notice was issued at the correct address and it is duly served then presumption of deem service arise when the notice is address to the correct address.

- 14) In the landmark case of **P.Rasiya Versus Abdul Nazer And Anr.** reported in **2022 (4) CrLR(SC) 1294** the Hon'ble Supreme Court have held in para 7 that,

**"7. As per Section 139 of the N.I. Act, 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 discharge, in whole or in part, of any debt or other liability. Therefore, once the initial burden is discharged by the Complainant that the cheque was issued by the accused and the signature and the issuance of the cheque is not disputed by the accused, in that case, the onus will shift**

upon the accused to prove the contrary that the cheque was not for any debt or other liability. The presumption under Section 139 of the N.I. Act is a statutory presumption and thereafter, once it is presumed that the cheque is issued in whole or in part of any debt or other liability which is in favour of the Complainant/holder of the cheque, in that case, it is for the accused to prove the contrary."

- 15) In the landmark case of **M/s Dalmia Cement (Bharat) Ltd. v/s M/s Galaxy Traders and Agencies Ltd and Others** reported in **2001(6) SCC 463** the Hon'ble Supreme Court have held in **para 3 and 4** that,

"3. The Act was enacted and Sec. 138 thereof incorporated with a specified object of making a special provision by incorporating a strict liability so far as the cheque, a negotiable instrument, is concerned. The law relating to negotiable instrument is the law of commercial world legislated to facilitate the activities in trade and commerce making provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily passable from one person to another. In the absence of such instruments, including a cheque, the trade and commerce activities in the present day are likely to be adversely affected as it is impracticable for the trading community to carry on with it the bulk of the currency in force. The negotiable instruments are in fact the instruments of credit being convertible on account of legality of being negotiated and are easily passable from one hand to another. To achieve the objectives of the Act,

**the Legislature has, in its wisdom, thought it proper to make such provisions in the Act for conferring such privileges to the mercantile instruments contemplated under it and provide special penalties and procedure in case the obligations under the instruments are not discharged. The laws relating to the Act are, therefore, required to be interpreted in the light of the objects intended to be achieved by it despite there being deviations from the general law and the procedure provided for the redressal of the grievances to the litigants. Efforts to defeat the objectives of law by resorting to innovative measures and methods are required to be discouraged lest it may affect the commercial and mercantile activities in a smooth and healthy manner ultimately affecting the economy of the country."**

**"4. Sec. 138 of the Act makes a civil transaction to be an offence by fiction of law. 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, is returned by the bank unpaid either because of the amount or money standing to the credit of that person being insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account, such person subject to the other conditions shall be deemed to have committed an offence under the Section and be punished."**

- 16) In the landmark case of K.N.Beena Versus Muniyappan reported in 2001 (8) SCC 458 it has been held in para 6 that**

**"6. Under Section 118, unless the contrary was proved, it is to be presumed that the Negotiable Instrument (including a cheque) had been made or drawn for consideration. Under Section 139 the Court has to presume, unless the contrary was proved, that the holder of the cheque received the cheque for discharge, in whole or in part of a debt or liability. Thus in complaints under Section 138, the Court has to presume that the cheque had been issued for a debt or liability. This presumption is rebuttable. However, the burden of proving that a cheque had not been issued for a debt or liability is on the accused."**

- 17) In the landmark case of Shree Daneshwari Traders Versus Sanjay Jain reported in 2019 (16) SCC 83 it has been held in para 20 that**

**"20. The accused in a trial under Section 138 of the Act has two options. He can either show that consideration and debt did not exist or that under the particular circumstances of the case the non-existence of consideration and debt is so probable that a prudent man ought to suppose that no consideration and debt existed. To rebut the statutory presumptions an accused is not expected to prove his defence beyond reasonable doubt as is expected of the complainant in a criminal trial. The accused may adduce direct evidence to prove that the note in question was not supported by consideration and that there was no debt or liability to be discharged by him. However, the court need not insist in every case that the accused should disprove the nonexistence of consideration**

and debt by leading direct evidence because the existence of negative evidence is neither possible nor contemplated. At the same time, it is clear that bare denial of the passing of the consideration and existence of debt, apparently would not serve the purpose of the accused. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. To disprove the presumptions, the accused should bring on record such facts and circumstances, upon consideration of which, the court may either believe that the consideration and debt did not exist or their non-existence was so probable that a prudent man would under the circumstances of the case, act upon the plea that they did not exist. Apart from adducing direct evidence to prove that the note in question was not supported by consideration or that he had not incurred any debt or liability, the accused may also rely upon circumstantial evidence and if the circumstances so relied upon are compelling, the burden may likewise shift again on to the complainant. The accused may also rely upon presumptions of fact, for instance, those mentioned in Section 114 of the Evidence Act to rebut the presumptions arising under Sections 118 and 139 of the Act."

- 18) In the landmark case of *Aps Forex Services Pvt.Ltd. v/s Shakti International Fashion Linkers* reported in 2020 (12) SCC 724 the Hon'ble Supreme Court have held in para 7 that,

"7. Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque and

that the cheque in question was issued for the second time, after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there is a presumption under Section 139 of the N.I. Act that there exists a legally enforceable debt or liability. Of course such presumption is rebuttable in nature. However, to rebut the presumption the accused was required to lead the evidence that full amount due and payable to the complainant has been paid. In the present case, no such evidence has been led by the accused. The story put forward by the accused that the cheques were given by way of security is not believable in absence of further evidence to rebut the presumption and more particularly the cheque in question was issued for the second time, after the earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of the complainant that there exists legally enforceable debt or liability as per Section 139 of the N.I. Act. It appears that both, the Learned Trial Court as well as the High Court, have committed error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of N.I. Act. As observed above, Section 139 of the Act is an example of reverse onus clause and therefore once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter it is for the accused to rebut such presumption by leading evidence."

The above said judgments of the Hon'ble Apex Courts are squarely applicable to the present case.

- 19) In the present case on hand the complainant has succeeded in proving that the accused have taken hand loan of Rs. 21,000/- from the complainant and have not paid the due amount. The accused have not paid the due amount of **Rs. 21,000/-** to the complainant and hence the accused have issued the disputed cheque. As such the complainant have succeeded in proving that the cheque was issued for legally enforceable debt. The complainant have succeeded in proving that the cheque was issued by the accused on the account maintained by him for the discharge of legally enforceable debt. The complainant have succeeded to prove that the cheque dated **15/10/2024** was presented within three months for encashment and the same was dishonoured on the ground of **Insufficient funds** on **10/12/2024** for which he has issued statutory notice dated **16/12/2024** to the accused and same was duly served to the accused on **17/12/2024** and the accused have failed to repay the due amount of debt within 15 days on receipt of information of dishonoured of cheque. The accused have not cross examined the complainant and hence evidence given by the complainant remains unrebutted. Hence, looking to the complaint, cheque, return memo, demand notice, RPAD Receipt, RPAD Slip, online track report, examination in chief, the argument of the complainant, the complainant has succeeded in proving that accused have committed an offence u/s. 138 of the N.I. Act.

**Issue No. 2**

In the interest of justice for issue No. 2 following order is passed

**ORDER**

- 1.** The accused is held guilty in view of Section 278(2) of B.N.S.S. for the offence punishable u/s. 138 of the Negotiable Instruments Act.
  
- 2.** Matter stands adjourned for hearing accused and complainant for the purpose of imposing appropriate sentence.

Pronounced in open Court today.

**Date: 07/03/2026**  
**Place: Kheda**

**Nikhil Chandrasen Jadhav**  
**Additional Chief Judicial Magistrate**  
**Kheda**  
**GJ01215**

**ARGUMENT ON SENTENCE**

1. The Ld. Advocate for the complainant has submitted that it is an economic offence and since the accused has been held guilty under Section 138 N.I. Act he should be sentenced to such an extent that it gives the message to the society to be deterred to commit the said offence. The Ld. Advocate for the complainant have argued that the complainant should be also awarded compensation.
2. Looking to the provisions of Section 138 of N.I. Act it provides for imprisonment for two years or fine which may extend to twice the amount of cheque or with both. It is well settled that punishment should be proportionate with the crime committed and it should not be unduly harsh and not unduly light. The said provision has been inserted to regulate as well as safeguard the faith of the creditor.
3. The Ld. Advocate for the accused have not argued the present case.
4. I have heard the Ld. Advocate for the complainant. The offence committed is in the nature of economic offence and done with an intention to escape the responsibilities from the legal debt due. Moreover the real intention behind the N.I. Act is to provide a speedy remedy to the payee or the holder of the cheque and also to install a sense of confidence and assurance to the business community. The present case is a fit case to impose appropriate sentence mentioned in Section 138 of the N.I. Act. The complainant is also entitled to have the

compensation to the extent of cheque amount. Hence, following final order is passed.

**O R D E R**

1. The accused **Fesalbhai Farooqbhai Ghanchi Vora** is hereby sentence to undergo one year simple imprisonment in view of Section 278(2) of B.N.S.S. in connection with an offence punishable u/s 138 of the Negotiable Instruments Act.
2. The accused shall pay sum of Rs. 21,000/- as compensation to the complainant in view of Section 395(3) of B.N.S.S.
3. The accused shall have to undergo further 3 months simple imprisonment in case of default of making payment of compensation to the complainant.
4. Copy of the judgment free of cost shall be provided to the accused immediately in view of Section 404 of B.N.S.S.

Pronounced in open Court today.

**Date:07/03/2026**  
**Place: Kheda**

**Nikhil Chandrasen Jadhav**  
**Additional Chief Judicial Magistrate**  
**Kheda**  
**GJ01215**