Received on	23/08/2022
Registered on	23/08/2022
Decided on	10/06/2026
Duration	Ys. Ms. Ds. 03 09 19

सत्यमेव जयते

In The Court Of Hon'ble 3rd Additional Chief Judicial Magistrate, Gandhidham-Kachchh.

Criminal Case No. 4234 of 2022.

Exh.No._____

COMPLAINANT...

BHAVYARAJSINH POPATBHA GOHIL

Age :- 27, Occupation :- Business,

Address :- Plot no.16/A, Saharanagar, Vill. Galpadar,

Tal. Gandhidham, Dist. Kachchh.

Versus

ACCUSED...

SHAILESH UMEDBHAI PITHADIYA

Age :- 32, Occupation:- Job,

Address :- House no.8, 506 1/2, Ambaji nagar-4,

Vill. Varsamedi, Tal. Anjar. Dist. Kachchh.

A d v o c a t e :-

Ld. Advocate Mr. N. V. Mangeria, for the complainant.

No Advocate for the Accused.

THE COMPLAINT FILED UNDER SECTION - 138 OF THE NEGOTIABLE INSTRUMENT ACT.

~ J U D G M E N T ~

1. The present complaint is filed by the complainant against the accused for the offence punishable under Sec. 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act' for the sake of brevity).

2. Brief facts of the complainant's case are as follows :

The complainant carries on the business of car dealership and the accused is also a businessman and had good business as well as friendly relations with the complainant. Due to his financial requirement, the accused demanded a loan of Rs.3,50,000/- from the complainant and the complainant paid the said amount. At the time of taking the money, the accused assured and promised the complainant that he would repay the amount within a two and half months. When the complainant demanded repayment of the outstanding amount of Rs.3,50,000/-, the accused issued one cheque dated 21/06/2022 bearing Cheque No. 000105 for Rs.3,50,000/- as part payment, drawn on ICICI Bank. The complainant deposited the said cheque in his account with Gandhidham Mercantile Co. Op. Bank Ltd., Gandhidham on 23/06/2022 for encashment. However, the cheque was returned unpaid on the same date with the endorsement “Funds Insufficient” by the accused’s bank. Thereafter, to recover the outstanding amount, the complainant, through his advocate, issued a legal notice dated 19/07/2022 to the accused by Registered A.D. The said notice was duly served upon the accused on 22/07/2022. However, till date, the accused has neither replied to the notice nor made any effort to repay the complainant’s money. Hence, in view of the above facts and circumstances, the accused has committed offence punishable under Sec.138 of Negotiable Instruments Act. Hence, the complainant was constrained to file the present complaint against the accused to punish the accused under the provisions of Sec. 138 of the said Act.

3. Hence, the case was posted for evidence of complainant. In support of his case, the complainant has produced the following oral and documentary evidence ::

Oral Evidence

Sr. No	Details	Exh.
1	Affidavit of evidence of complainant i.e. **Bhavyarajsinh Popatbha Gohil**	06

Documentary Evidence

Sr. No	Details	Exh.
1	Original cheque No. 000105 of ICICI Bank given by the accused	15
2	Return Memo	16
3	Legal demand Notice	17
4	Original Postal Slip	18
5	Original Postal Report	19
6	Account statement	22
7	Account statement	23

4. In order to prove the case of the complainant, complainant has given his examination in chief dated vide Exh. 06 and also got documents Exhibited vide Exh. 15 to 19, Exh.22 and 23, during his sworn statement. The sworn statement itself is treated as examination in chief. However no cross-examination has be done by the other side, hence right of accused has been closed. Accused was not remain present for Further Statement.

5. The Hon'ble Supreme Court has issued directions in the ruling reported in ***2014(5) SCC 590 in Indian Bank Association and others V/s. Union of India and others***, held that, The Metropolitan Magistrate, on the day when the complaint is filed, shall scrutinize the complaint and if the complaint is accompanied by the affidavit and the documents are found in order to take cognizance and direct issuance of summons. Summons must be properly addressed by post as well as e-mail address got from the complainant and assistance of police may be taken to serve the notice. Unless an application under Section 145(2) of the Negotiable Instruments Act is filed for recalling the witness, the court need not posed for cross-examination, case should be posted for defence evidence.

6. Heard the Ld. Advocate for the complainant submitting oral arguments. In which Ld. Advocate stated that complainant is doing business of car dealership and accused is doing the business and the accused in this work was in need of financial help and so, demanded an amount of Rs.3,50,000/- from the complainant and complainant due to friendlily relation, given cash to the accused as per demand.

7. Complainant and accused entered into a financial transactions and accused accepted and agreed to pay the amount. But, the accused in this case, failed to pay the amount given by the complainant and due to which the accused has issued a cheque in the name of complainant and signed it for the outstanding amount. But, that cheque was dishonored reason there of “Funds Insufficient” complainant proved his case beyond all reasonable doubt as well as accused never denied his signature on the cheque. Therefore, presumption as per the Section 139 N.I. Act goes in favour of the complainant.

8. Following points are framed for determination of this case:-

I S S U E S

1. Whether complainant proves beyond all reasonable doubt

that accused had issued cheques bearing No.000105 for Rs.3,50,000/-, of ICICI Bank, Gandhidham branch, Gandhidham, towards discharge of legally enforceable debt or liability and the same was dishonored for Funds Insufficient and even after deemed legal notice. The accused has not paid the debt covered under the above said cheque and thereby has committed an offence under Sec. 138 of the N.I. Act.

2. What order ?

9. My findings for the above issues are as under:-

1. In the Affirmative.
2. As per final order.

REASONS

10. In Order to ascertain whether the accused has committed the offence under Sec138 of the N.I. Act, it is deemed fit to examine separately as to whether all the indispensable ingredients constituting the offence have been proved by the complainant. The offence under Sec. 138 of the N.I. Act has the following ingredients:-

a) The cheque has been drawn on an account maintained by a person in a bank for payment of a certain amount of money to another person from out of that account;

b) The cheque has been issued for the discharge, in whole or in part, of any legal and enforceable debt or other liability;

c) That 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;

d) That cheque has been returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honor the cheque or that it exceeds the amount arranged to be paid from that account by an settlement agreement made with the bank;

e) The payee or the holder in due course of the cheque has made a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

f) The drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice.

11. Being cumulative, it goes without saying that it is only when all the aforementioned ingredients are satisfied that the person who had drawn the cheque can be deemed to have committed an offence under Section 138 of the Act.

Section 118 provides negotiable instruments. Section 118 is as follows:-

"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;

12. Next provision, which needs to be noticed is Section 139, which provides for presumption in favour of holder. Section 139 lays down:-

"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.”

In Rangappa v. Sri Mohan : (2010) 11 SCC 441, this Court has reiterated and summarised the principles relating to presumptions under Sections 118 and 139 of the NI Act and rebuttal thereof in the following:-

"26. In the light of these extracts, we are in settlement agreement with the respondent claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it is based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttal 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 favors the complainant.

27. Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonor of cheque, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the defendant-accused cannot be expected to discharge an unduly high standard of proof.

28. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that 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 prosecution can fail. As clarified in the citations, 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."

On the aspects relating to preponderance of probabilities, the accused has to bring on record such facts and such circumstances which may lead the Court to conclude either that the consideration did not exist or that its non- existence was so probable that a prudent man would, under the circumstances of the case, act upon the plea that the consideration did not exist. This Court has, time and again, emphasized that though there may not be sufficient negative evidence which could be brought on record by the accused to discharge his burden, yet mere denial would not fulfill the requirements of rebuttal as envisaged under Section 118 and 139 of the NI Act.

Hon'ble Supreme Court has stated the principles in the case of Kumar Exports (supra) as follows:

"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 non- existence 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. The accused has also an option to prove the non-existence of consideration and debt or liability either by letting in evidence or in some clear and exceptional cases, from the case set out by the complainant, that is, the averment in the complaint, the case set out in the statutory notice and evidence adduced by the complainant during the trial. Once such rebuttal evidence is adduced and accepted by the court, having regard to all the circumstances of the case and the preponderance of probabilities, the evidential burden shifts back to the complainant and, therefore, the presumptions under Sections 118 and 139 of the Act will not again come to the complainant's rescue."

Hon'ble Supreme Court in the case of Baslingappa vs. Mudibasappa having -noticed the ratio laid down by the Hon'ble Supreme Court in above cases on Sections 118(a) and 139, have now summarise the principles enumerated in following manner:-

(i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

(v) It is not necessary for the accused to come in the witness box to support his defence.

13. In the present case on hand complainant has examined himself and stated in his evidence all the facts averred in the complainant. Along with this complainant filed original cheque and return memo vide Exh. 15 and 16**.** Further, R.P.A.D slips produced at Exh. 18 and along with their furnish legal notice vide Exh. 17. However, no such objection has been raised by the accused side. Complainant proving all these documents as per the Evidence Act. Moreover, documentary evidence also support the oral evidence of the complainant. However, no rebuttal evidence has been brought by the accused. Therefore, in this scenario it is clear that complainant **Bhavyarajsinh Popatbha Gohil** is the payee of the cheque and the accused is the drawer of the cheque and it was drawn on account of the accused, and same bears the signature of the accused. Further it is also clear that neither accused has denied his signature on cheque nor he has denied execution of the cheque. Further It is also not disputed that the cheque in question was presented for encashment by the complainant and same was dishonored on several dates by the accused's bank due to "Funds Insufficient” in the account of the accused. Hence, on above undisputed facts of the present case if we apply the ratio laid down by **Hon'ble Supreme Court in case of "Hiten Dalal V/s B. Banerjee"** (Supra)", it is held that, " the moment cheque is issued the presumption runs against the accused. The words used for the presumption are unless contrary is proved. Therefore, the accused either by way of cross-examination or by leading satisfactory evidence equivalent to the degree of proof or at-least to the level of moral certainty to establish that the cheque was not issued for legally enforceable liability. In the present case on hand Signature on the cheque has not been disputed by the accused, due to which presumption shall be raised that cheque was issued in discharge of any debt or liability. The complainant being holder of cheque and the signature on the cheque having not been denied by the accused, presumption shall be raised under Section 139 that cheque were issued in discharge of legally enforceable debt or liability. Admittedly, cheque in the present case have returned due to the reason payment stopped by the drawer as reflected from the cheque return memo. Ordinary in cheque bouncing cases, what the courts have to consider is whether the ingredients of the offence enumerated in section 138 of the Act have been met and if so, whether the accused was able to rebut the statutory presumption contemplated by section 139 of the Act. It is pertinent to note that section 138 of the Act can indeed be attracted when a cheque is dishonored on account of stop payment instructions sent by the accused to his bank in respect of a post-dated cheque, irrespective of insufficiency of funds in the account. This position was clarified by the **Hon'ble Supreme Court in Goa Plast (Pvt.) Ltd. v/s Chico Urusula D'souza, (2003) 3 SCC 232**, wherein it was held that "Chapter XVII containing sections 138 to 142 was introduced in the Act by Act 66 of 1988 with the object of inculcating faith in the efficacy of banking operations and giving credibility to negotiable instruments in business transactions. These provisions were intended to discourage people from not honoring their commitments by way of payment through cheque. The Court should lean in favour of an interpretation which serves the object of the statute. A post-dated cheque will lose its credibility and acceptability if its payment can be stopped routinely. The purpose of a post dated cheque is to provide some accommodation to the drawer of the cheque. Therefore, it is all the more necessary that the drawer of the cheque should not be allowed to abuse the accommodation given to him by a creditor by way of acceptance of a post-dated cheque. In view of Section

139, It has to be presumed that a cheque is issued in discharge of any debt or other liability. The presumption can be rebutted by adducing evidence and the burden of proof is on the person who wants to rebut the presumption. The presumption coupled with the object of chapter-XVII of the act leads to the conclusion that by counter-manding payment of a post dated cheque, a party should not be allowed to get way from the penal provision of section 138. A contrary view would render Sec. 138 a dead letter and will provide a handle to persons trying to avoid payment under legal obligations undertaken by them through their own acts which in other words can be said to be taking advantage of one's own wrong... "

Hon'ble Supreme Court in the case M.M.T.C Ltd. and anr. v. Medchl Chemicals and Pharma (P) Ltd. (2002) 1 SCC 234 (Para. 19) :

"The authority shows that even when the cheque is dishonored by reason of stop payment instruction, by virtue of Section 139 the court has to presume that the cheque was received by the holder for the discharge in whole or in part, of any debt or liability. Of course this is a rebuttal presumption. The accused can thus show that the stop payment instructions were not issued because of insufficiency or paucity of funds. If the accused shows that in his account there was sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presentation of cheque for encashment, then offence under Section 138 would not be made out. The important thing is that the burden of so proving would be on the accused..."

14. Considering the above dictum, here in this case on hand, it is clear that facts of the complainant has remained unchallenged and statutory presumption in favour of complainant is also remained unrebutted, as the accused has neither chose to cross examined the complainant nor enter in the witness box and has adduced any evidences. Therefore, it is proved that the said cheque was issued by the accused in favour of complainant in discharge of his legally enforceable debt/liability, as alleged in the complaint. Apart from the legal/liability of accused, based on the evidence led on record by the complainant, it is also to be seen whether all other ingredients, which are to be satisfied for making out a case u/s 138 of the act against the accused, have been complied with. In the light of this, I have gone through the documentary evidence (Exh. Nos.15 to 19 and Exh.22 and 23) adduced on record by the complainant. It is revealed too from that, the cheque dated 21/06/2022 had been presented to the bank within a period of its validity and same has been returned/dishonored by accused's bank unpaid on 23/06/2022 reason therein “Funds Insufficient”. It is also revealed that, the complainant was made a demand for the payment of the said amount of money by giving a notice on 19/07/2022 in writing, to the accused, within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. It is also revealed that, the said notice as contemplated u/s. 138 (b) of the Act, was made on the accused was delivered to the accused, still however, the accused failed to pay the said amount of money to the complainant, within 15 days of the receipt of the said notice. It is also revealed that, the complainant has filed the complaint on 17/08/2022 i.e, within one months of the date on which the cause of action arises under clause (c) of the proviso to section 138 of the N.I Act. Thus, the complainant has complied all technicalities which are required to be completed u/s 138 of N.I. Act.

15. Considering, all these facts and in view of above reasoning, it has become clear that the accused had issued the cheque to the complainant for discharge of legal liability of repayment of outstanding amount and subsequently, the cheque was dishonored upon presentation due to "Funds Insufficient" in the account of the accused and inspite of legal demand notice, accused failed to pay the cheque amount within stipulated period. In the circumstances, I find that, all the ingredients of section 138 of the Act have been completed with. Hence, I proceed to answer point No. 1 in the **Affirmative** and find the accused to be guilty of having committed an offence punishable u/s 138 of the Act.

16. Matter to be kept for hearing of accused on point of punishment. However, accused is not remain present before the court. Hence, no leniency shown to the accused.

O R D E R

1. The accused **SHAILESH UMEDBHAI PITHADIYA,** residing at House no.8, 506 1/2, Ambaji nagar-4, Vill. Varsamedi, Tal. Anjar. Dist. Kachchh, is hereby convicted vide Section 255(2) of Criminal Procedure Code 1973, for the offence punishable u/s 138 of Negotiable Instrument Act.

2. He is sentenced to undergo one (1) year simple imprisonment and impose fine of **Rs.7,00,000/-** (Seven lacs only). In case of default to pay fine accused shall undergo further simple imprisonment for 6 months.

3. It is hereby ordered that, the said fine amount shall be paid to the complainant as compensation, as per Section 357(1)(b) of Criminal Procedure Code 1973.

4. Bail bonds of the accused, if any, stands canceled.

5. As the accused is absent today, the office is directed to issue warrant of arrest against the accused to serve the sentence.

6. When accused is appears or is brought before a court, the office is directed to supply the copy of this judgment to the accused forthwith on free of cost.

Signed and pronounced in the open Court, today on this 10th day of June, 2026 at Gandhidham.

Date : 10/06/2026
Place : Gandhidham.

(Atul Mohanbhai Vasava)
3rd Addl. Chief Judicial Magistrate
Gandhidham-Kachchh
Judge Code : 01117

A. R. Makwana
Eng. Stenographer