

GJMH010001312026



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IN THE COURT OF 4<sup>th</sup> ADDITIONAL SESSIONS JUDGE,  
AT MAHESANA.

Criminal Appeal No. 17 of 2026

Exh.:

Appellant (Original accused):-

Akshay Bhikhabhai Joshi  
Age : 29, Occupation : Driving,  
Resi. At. Shriji Sharanam Residency, Uchrapi Road,  
At.Mahesana, Ta.Dist.Mahesana

**Versus**

Respondents(Original complainant):-

- (1) The State of Gujarat
- (2) Patel Tarunkumar Rajeshbhai  
Resi. Sardar Patel Society, At.Devinapura, Ta.Dist.Mahesana.

**Appearance:**

- On behalf of appellant – Ld. Adv. Mr. J.H.Makwana
- On behalf of Resp. No.1 – Ld. A.P.P. Ms.R.K.Joshi
- On behalf of Resp. No.2 – Ld. Adv. Mr. K.B.Goswami

**Subject** : Criminal Appeal u/s 415 of the B.N.S.S., 2023

**:: JUDGMENT ::**

1. By way of the present appeal, appellant-accused has challenged the order of the conviction passed by 5<sup>th</sup> Additional Judicial Magistrate First Class, Mahesana (herein after referred to as "the Ld. Trial

Court") on 28.01.2025 in Criminal Case No. 5298/2024 u/s 138 of Negotiable Instruments Act ( herein after referred as "N.I. Act") wherein the Ld. Trial Court has convicted appellant-accused and sentenced him to undergo 6 months simple imprisonment and also directed to pay compensation of Rs.1,50,000/- to complainant within 60 days and in default thereof accused /appellant undergo further imprisonment for one month.

2. The appellant is the original accused, while the respondent No.2 is the original complainant, in Criminal Case No.5298/2024. Now onwards, for the sake of brevity and convenience, they are referred as per their original status before the Ld. Trial Court, such as accused and complainant.
3. The facts leading to the present appeal in nutshell are as under : -

The complainant's case is that the complainant and the accused are related as brothers-in-law (Sadhubhai) and used to meet each other frequently, thereby developing a cordial and familial relationship. About one year prior to the filing of the complaint, the accused approached the complainant stating that he was in need of money for a social/personal purpose. Accordingly, the complainant, out of goodwill and a genuine desire to help his brother-in-law, extended a hand loan of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) from his personal savings to the accused. At the time of accepting the said amount, the accused assured and gave a firm commitment to repay the same within 6 (six) months. When the complainant demanded repayment of the said amount, the accused, in discharge of his legally enforceable debt, issued a cheque bearing No. 312802 dated 01/03/2024 drawn on Indian Bank, Mehsana Branch, for an amount of Rs.1,50,000/-, duly

signed in his own handwriting, with a firm assurance that upon presentation on the said date, the complainant would receive his money. However, upon the complainant presenting the said cheque at his bank, i.e., Mehsana Urban Co-operative Bank, Mehsana Branch, for clearing, the cheque was returned unpaid on 05/03/2024 with the endorsement "*Funds Insufficient*". When the complainant intimated the accused about the return of the cheque, the accused refused to make payment and gave evasive replies. Consequently, the complainant, through his advocate, Shri V.M. Goswami sent a statutory demand notice dated 20/03/2024 via Registered Post with Acknowledgment Due (RPAD) to the accused's residential address. However, the said notice was returned on 28/03/2024 with the endorsement "Refused to accept by the person himself". Despite the notice having been duly served, the accused neither replied to the notice nor paid the cheque amount, compelling the complainant to institute the present complaint under Section 138 of the N.I. Act within the prescribed time limit.

4. On presentation of this complaint, the Ld. Trial Court issued process against the accused and the accused entered appearance before the court. Copies of the complaint and connected documents were supplied to the accused free of cost under Section 207 of the Code of Criminal Procedure. Plea was recorded vide Exh. No. 09, wherein accused pleaded not guilty to offence alleged against him. Thus, trial was conducted as a Summons Trial case. Complainant proceeded to adduce oral and documentary evidence, which are as under:-:-

**Oral Evidences :-**

Sr.No.	Description	Exh.
1	Examination-in-chief of complainant Tarunkumar	05

**Documentary Evidences :-**

Sr.No.	Description	Exh.
1	Original Cheque	10
2	Original Cheque Return Memo	11
3	Office copy of Statutory Demand Notice dated 20/03/2024 sent via RPAD	12
4	Original Postal Acknowledgment Receipt / Registered Post Slip	13
5	Original Returned Cover with endorsement (Notice returned undelivered)	14

5. After furnishing above oral and documentary evidences of the parties, the Ld. Trial Court has recorded Further Statement of the accused u/s 313 of the Code of Criminal Procedure. For incriminating evidence against him, wherein, the accused has submitted that he wanted to call his witnesses and further said that complainant has filed wrong case against him.
6. After hearing the arguments from both the parties, the Ld. Trial Court has passed the judgment in this matter. Being aggrieved and dissatisfied by the order of the Ld. Trial Court, the accused-appellant has filed the present appeal.
7. According to the appeal memo, appellant-accused has challenged the judgment passed by 5<sup>th</sup> Additional Judicial Magistrate First Class, Mahesana, on 28.01.2025 in Criminal Case No.5298/2024 convicting the accused for the offence punishable u/s 138 of N.I. Act. Present appellant has contended that the impugned order has been passed against settled principles of law and provisions by Ld. Trial Court. Ld. Trial Court has considered documentary evidences which is produced by complainant and said documentary evidences are false and fabricated. Ld. Advocate has contended that the order

passed by Ld. Trial Court is illegal, improper and against settled principle of law, equity and justice. Therefore, the appellant has prayed to allow this appeal and set aside the impugned judgment passed by Ld. Trial Court on 28.01.2025 in Criminal Case No. 5298/2024.

8. For deciding this appeal, following issues have arisen for my determination:-

- (1) Whether the impugned judgment of the Ld. Trial Court is against the provisions of law and without appreciation of evidence on record and Ld. Trial Court has erred in passing the said judgment?
- (2) Whether it is necessary to interfere in impugned judgment passed by the Ld. Trial Court?
- (3) What order?

9. My answer to the above issues are as under :-

- (1) In the negative.
- (2) In the negative.
- (3) As per final order.

### **REASONS**

10. Ld. Advocate for the appellant-accused was present. The learned advocate of the appellant advanced his oral arguments. In his argument, he has contended that the accused has been falsely implicated in this case. He has argued that the accused had no legally enforceable liability towards the complainant, and that no genuine financial transaction took place between the parties. He has further argued that the cheque in question was not issued in discharge of any legal debt or liability. He submitted that the Ld. Trial Court had not properly appreciated the evidence on record and

had not given due consideration to the defence of the accused. He has further argued that the Ld. Trial Court erroneously presumed that all the essential ingredients of Section 138 of the N.I. Act stood proved by the complainant, and that such presumption was not rebutted. He prayed that the impugned order passed by the Ld. Trial Court be set aside and the accused be acquitted..

11. The Learned Advocate appearing on behalf of the respondent No.2 (the original complainant) also advanced his oral arguments. He argued that the cheque in question was issued by the accused towards discharge of a legally enforceable debt. He submitted that the accused and complainant were brothers-in-law and that the complainant had given a hand loan of Rs.1,50,000/- to the accused from his personal savings. In discharge of this amount, the accused issued the disputed cheque bearing No. 312802 dated 01/03/2024. The said cheque was presented for clearing and was returned dishonoured on 05/03/2024 due to "Funds Insufficient". A statutory demand notice was duly sent via RPAD, which was returned undelivered with endorsement "Refused by person himself", thereby constituting valid service. The accused neither replied to the notice nor paid the cheque amount. He submitted that the complainant has proved the transaction by submitting facts on oath by way of affidavit-in-lieu of examination-in-chief and by producing the relevant documentary evidence including the original cheque, return memo, notice, and postal receipt. He further argued that the accused had failed to rebut the statutory presumption under Sections 118 and 139 of the N.I. Act by producing any cogent evidence. He therefore requested that the appeal be dismissed with costs.

12. It is a well settled principle of criminal jurisprudence that a criminal trial proceeds on presumption of innocence of the accused i.e. an accused is presumed to be innocent unless proved guilty. Thus, normally initial burden to prove is on complainant/prosecution to prove guilt of accused. However, in offences u/s 138 of N. I. Act, there is a reverse onus clause contained in sec. 118 and 139 of Act.
13. Section 118(a) of the Act provides that until the contrary is proved, it shall be presumed that “that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, endorsed, negotiated or transferred, was accepted, endorsed, negotiated or transferred for consideration”.
14. Further, Section 139 of the Act lays down that “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.”
15. On bare reading of these provisions, it becomes clear that the Court shall presume the execution of a negotiable instrument for consideration unless and until the contrary is proved. Similarly, the Court shall also draw a presumption in favour of the complainant/holder of the cheque that the said cheque has been issued in discharge of legally enforceable debt of other liability.
16. There is a statutory presumption u/s 139 of the Act which arises in favour of the complainant. This presumption is rebuttable and the accused is required to raise a probable defence. Burden of proof is hence upon the accused in such cases. Further as discussed above, it should also be noted that the standard of proof in order to rebut the statutory presumption may be inferred from the materials on record and circumstantial evidences. It is not always mandatory for the

accused to examine its own witnesses in order to rebut the said statutory presumption.

17. Thus, Section 139 of the Act puts the burden on the accused to show his defence. However, the accused has to show his defence on the balance of probabilities and not beyond reasonable doubt. Accused can put his defence by drawing inferences from the materials already on record (including complainant's evidence), circumstances of the case and also leading his own evidences. If the accused successfully creates doubts in the complainant's claim about the existence of legally enforceable debt then the burden of proof shifts back to the complainant who is required to prove the guilt of the accused beyond reasonable doubt.
18. I may recapitulate the essential facts for deciding the present appeal. The complainant has produced his affidavit-in-lieu of examination-in-chief vide Exh. No. 05. The complainant has proved the factum of the complaint by producing documentary evidence, namely the original cheque, bank return memo, office copy of demand notice, postal acknowledgment receipt, and the returned envelope. The Ld. Trial Court has rightly appreciated that the accused issued the disputed cheque at Exh. No. 10 in favour of the complainant. The statutory demand notice was sent via RPAD to the accused. Copy of the said notice is on record at Exh. No. 12. The notice was sent to the residential address of the accused. The said notice was returned with the endorsement "Refused to accept by the person himself" on 28/03/2024 at Exh. No. 14, which constitutes valid and deemed service under law. Looking to the record of the Ld. Trial Court, the accused failed to bring on record any fact explaining how the cheque in question came into the

possession of the complainant, nor did he produce any rebuttal evidence to show that no financial transaction took place between the parties. The accused also failed to prove that the complainant had misused the cheque. Considering the evidence produced before the Ld. Trial Court, it can be concluded that the complainant has well and sufficiently proved the transaction between the parties. Thus, it can be said that the cheque was issued by the accused to discharge a legally enforceable due and that the accused failed to rebut the statutory presumption under Section 139 of the N.I. Act.

19. Learned Trial Court has rightly appreciated the evidence and held that accused has not denied about the disputed cheque is belongs to the account of accused. It also reveals from record that there is nowhere suggested that the cheque was lost or mis-placed. The cheque has been produced from the custody of complainant. Considering the record, it is not proved that any monetary transaction has not taken place between accused and complainant. Therefore, defence taken by the accused is not acceptable.
20. Moreover, the accused has taken defence that complainant has misused his cheque and falsely implicated the accused in the offence U/s. 138 of the N.I. Act. But Accused is failed to prove this fact. The non-reply of notice by accused suggest that all the defences mentioned above and taken up by defence during trial are after thoughts of accused on his advocate.

Even during cross-examination of the complainant, the fact regarding misuse of cheque can not be brought on record. The Ld. Trial Court has rightly appreciated that mere say fact mentioned in the Further Statement that the cheque was misused and snatched away are not sufficient, accused has to produced any evidence.

21. Recently, Hon'ble Supreme Court of India in ***Special Leave Petition (CRL) No.12802 of 2022, Rajesh Jain v/s Ajay Singh*** has held in Para 55 which is reproduce as under.

*Para No. 55. "As rightly contended by appellant, there is a fundamental flaw in the way both the courts below have proceeded to appreciate the evidence on record. Once, the presumption u/s 139 was given effect to, the court ought to have proceeded on the premise that the cheque was, indeed, issued in discharge of a debt / liability. The entire focus would then necessarily have to shift on the case set up by the accused, since the activation of the presumption has effect of shifting evidential burden on the accused. The nature of inquiry would then be to see whether the accused has discharged his onus of rebutting his presumption. If he fails to do so, the court can straight away proceed to convict him, subject to satisfaction of the other ingredients of section 138. IF the court finds that the evidential burden placed on the accused has been discharged, the complainant would be excepted to prove the said fact independently, without taking aid of presumption. The court would then take on overall view based on the evidence on record and decide accordingly."*

In this case also accused tried to convince the court that no financial transaction has took place between the parties and cheque is being mis-used. But by putting this fact accused has not successful regarding proving of the said fact. I do not agree with the argument of learned advocate of accused. Further when notice was issued u/s 138 of N. I. Act, the said notice was served upon the accused. If appellant was of the opinion that the there is no transaction took place between accused and complainant, he could reply the said notice after appearing to this complaint. But the said act has not done by appellant. So said argument cannot be accepted.

22. In view of the above discussion, it is established on record that disputed cheque was issued by accused in favour of complainant towards the discharges of his legal liability. Therefore, all the requirements as per Section 138 of N. I. Act are fulfilled in this case and complainant successfully proved case against accused. Looking to facts and circumstances of the case on hand, and

considering the provisions of Section 138 of N. I. Act, this Court is of view that section 138 made strict to make people understands the seriousness of executing cheque and for liquidity of money.

23. It is settled principle that accused has not to prove his defence by adducing the evidence, but the accused can rebut the presumption by way of cross-examination also. The accused failed to rebut the presumption by way of cross-examination. From the evidence of complainant, it becomes very clear that there was all explanation of legally recoverable debt and accused has issued cheque towards the discharge of debt. The complainant has also proved that the said cheque was returned unpaid by producing return memo vide Exh.11 before Ld. Trial Court. Accused has not denied the said cheque not belongs to his account. So, it becomes very clear that accused has issued the cheque in the name of the complainant. On considering the whole cross-examination there is no such probable defence taken by accused. There is no such circumstances on record for rebuttal of presumption. Complainant has proved his three ingredients that there is legal enforceable debt, secondly the cheque was drawn for discharge in whole or in part of any debt or other liability which presupposes legally enforceable debt and lastly that cheque so issued had been returned due to "*funds insufficient*". Therefore, presumption u/s 139 of N.I. Act is drawn in favor of complainant. Sec.139 of N.I. Act merely raises presumption that cheque was drawn in discharge of debt or other liability.
- 24 Complainant has also produced Original cheque at Exh.10, cheque return memo at Exh.11, copy of notice at Exh.12 and postal slip vide Exh.13 on record. Accused has not replied the legal notice. He has not paid any amount which is mentioned in the notice. The

accused has appeared through his Ld. Advocate before the Ld. Trial Court, then the accused could return said cheque amount to complainant but he has not reimbursed the outstanding dues. The accused has not produced any evidence to show that he has paid the amount which is mentioned in notice. Therefore, other ingredients of Sec.138 are also proved according to law. So, facts as culled out from evidences on record are that there is no such any reliable or cogent & probable defence or probability came in favor of accused. On perusal of observation by Ld. Trial Court which transpires that accused failed to bring on record that there is no any legal debt or disputed cheque was not issued for purpose of repayment of dues. Based on pleadings, this court has concluded that admitted facts of cross-examination are in consonance with complaint. Nothing contrary to facts of complaint has come on record.

25. Considering the whole evidence, the complainant has proved his complaint beyond reasonable doubt. There is no such probable defence of accused. I have gone through the reasons recorded by Ld. Trial Court. The reasons assigned by Ld. Trial Court are legal one after perusing the facts as well as the oral and documentary evidence on record and according to the provisions of law. There is no illegality or perversity in the judgment passed by Ld. Trial Court. Ld. Trial Court has rightly come to the conclusion that accused is found to be guilty in the offence u/s 138 of the N.I. Act. Looking to the reasons stated in the appeal memo by the appellant there is no such any legal reason for interference and setting aside the judgment of the Ld. Trial Court. Therefore, I answer issue No.1 and 2 in negative and for issue No.3, I pass following order in the interest of justice :-

**:: ORDER ::**

1. This appeal is hereby dismissed.
2. Judgment passed by Learned 5<sup>th</sup> Additional Judicial Magistrate First Class, Mahesana, in Criminal Case No.5298/2024 on 28.01.2025 is hereby confirmed.
3. The learned Trial Court is directed to follow necessary procedure for implementation of sentence against the accused.
4. R & P be sent back to Ld. Trial Court if any along with the copy of this judgment.
5. The amount deposited shall be returned to accused.
6. No order as to costs.

Pronounced in Open Court on 21<sup>st</sup> April, 2026.

Place:Mahesana.

Date: 21-04-2026

**(Sarang Shrikant Kale)**  
4<sup>th</sup> Additional Sessions Judge,  
Mahesana.  
Code No. GJ00753