

GJMH010001772026



Received on	15.01.2026
Registered on	15.01.2026
Decided on	13.03.2026
Duration	Year Month Days 00 - 01 - 26

IN THE COURT OF SESSIONS JUDGE,
AT MAHESANA.

Criminal Appeal No.19/2026

Exh.: 12

Appellant(Original accused):-

Solanki Manjilkumar Ratilal,

Age:-28 years,

Residing at:- Nr. Tower, Rohitvas, Tal. Kadi.

(Currently in Sub-Jail, Kadi)

Versus

Respondents(No.1 - Original complainant):-

(1) Rathod Rajeshkumar Pravinbhai,

Residing at:- Ambedkarnagar Society,

Kundal, Tal. Kadi, Dist. Mahesana.

(2) The State of Gujarat,

Appearance:

- Mr. A.A. Yadav, Ld. Adv. for the Appellant.
- Mr. J.S. Ojha, Ld. Adv. for the Respondent No.1.
- Mr. B.G. Patel, Ld. A.P.P. for the Respondent No.2-
State.

Criminal Appeal under Section 415 of B.N.S.S. Act, 2023**:: JUDGMENT ::**

1. Being aggrieved by and dissatisfied with the judgment and order of conviction dated 30.12.2025 passed by the learned Judicial Magistrate First Class, Kadi in Criminal Case No.2192/2024, tried for the offence punishable under Section 138 of the Negotiable Instruments Act, the appellant has preferred present appeal under Section 415 of B.N.S.S.
2. The appellant is the original accused, while the respondent No.1 is the original complainant in Criminal Case No.2192/2024. Now on-wards, for the sake of brevity and convenience, they are referred as per their original status before the learned Trial Court, such as accused and complainant.
3. The short facts that lead filing to the criminal complaint against the accused are that the complainant and the accused belong to the same community and due to this a friendly relationship has been established between both of them. About six months before, the accused was in need of money for medical purpose and therefore he demanded a hand loan of Rs.2,00,000/- from the complainant. The complainant has given Rs.2,00,000/- to the accused with the assurance that the said amount would be repaid by the accused within six months. After completion of six months and after repeated demands made by the complainant, the accused issued a cheque No.000006

dated 18/10/2024 for an amount of Rs.2,00,000/- drawn on Kotak Mahindra Bank, Kadi Branch. The complainant deposited the said cheque on 19/10/2024 in his bank account No.7220000100025948 with Punjab National Bank, Kundal Branch. However, the cheque was returned unpaid on 21/10/2024 with an endorsement "Funds Insufficient". Thereafter, the complainant, through his advocate, issued a legal demand notice to the accused on 24/10/2024 by Registered Post A.D., the said notice was served upon the accused on 25/10/2024. Despite service of notice, the accused has failed to make payment of the cheque amount taken from the complainant. Therefore, the complainant was constrained to file complaint under Section 138 of the Negotiable Instrument Act against the accused.

4. On the presentation of the complaint, learned Trial Court has issued the process against the accused, and recorded his plea vide Exh.12, wherein the accused has not pleaded guilty and claimed to be tried and thereafter the complainant has proceeded to adduce his oral as well as documentary evidence, which are as under:-

Oral Evidence:-

Exh.04 Examination-in-chief on affidavit of complainant
- Rathod Rajeshkumar Pravinbhai.

Documentary Evidence:-

Exh.16 Copy of bank-passbook of the complainant with

Punjab National Bank, Kundal Branch

Exh.17 Original cheque No.000006.

Exh.18 Original receipt of the cheque deposited in the bank.

Exh.19 Original return memo.

Exh.20 Office copy of legal demand notice.

Exh.21 Mini slip regarding notice sent to the accused at this address.

Exh.22 Certificate of post regarding notice served upon the accused through R.P.A.D.

5. After furnishing above oral and documentary evidences of the complainant, the learned Trial Court had given sufficient opportunities to the accused for recording Further Statement of the accused under Section-313 of the Criminal Procedure Code. However, despite of reasonable opportunities given to the accused, neither accused himself nor his learned Advocate remained present for cross-examination of the complainant and for recording Further Statement under Section-313 of the Code.
6. According to the appeal memo the appellant i.e. original accused has challenged the judgment and order of conviction dated 30.12.2025 passed by the learned Judicial Magistrate First Class, Kadi in Criminal Case No.2192/2024, wherein the accused is convicted for the

offence punishable under section 138 of the N.I. Act. In the appeal memo the present appellant has contended that :-

- (i) Learned Trial Court has passed the impugned order against the settled principles of law.
- (ii) The Learned Trial Court has erred in evaluating the the documentary evidence produced by the complainant.
- (iii) The complainant has failed to prove his case by oral as well as documentary evidence.
- (iv) The order passed by the Ld. Trial Court is illegal, improper and against the settled principle of law, equity and justice.
- (v) The Ld. Trial Court has not appreciated the evidence of complainant according to the law.
- (vi) The Ld. Trial Court has closed the right to cross-examine the complainant and also closed the right to record F.S. before the Ld. Trial Court. Therefore, the accused has been deprived of the rights to produce cogent and reliable evidence in support of his defense. Further, the appellant has prayed to allow the appeal and also requested to set aside the impugned Judgment passed by the Ld. Trial Court.

7. For deciding this appeal, following issues have arisen for the determination:-

ISSUES

- (1) Whether the impugned judgment of the Ld. Trial Court is against the provisions of law and without

appreciation of evidence on record, the Ld. Trial Court has erred in passing the said Judgment?

- (2) Whether it is necessary to interfere in the impugned Judgment passed by the Ld. Trial Court?
- (3) What order?

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

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

REASONS

Point No. 1 & 2 collectively :-

9. I have heard Ld. Advocate Mr. A.A. Yadav on behalf of the appellant / original accused wherein he has submitted that in Criminal Case No.2192/2024, present appellant convicted for the offence punishable under Section 138 and sentenced him to undergo simple imprisonment for one year and as per Sec.395(3) of B.N.S.S. to pay the compensation of Rs.2,00,000/- within 30 days from the date of passing of this order and in default of payment of compensation, further to undergo simple imprisonment for six months. Being aggrieved by and dissatisfied with the said order passed by the learned Judicial Magistrate First Class, Kadi, this appeal has been preferred by the appellant / original accused.

During the course of arguments Ld. Advocate Mr. A.A. Yadav has repeated the contention which is narrated in the grounds of appeal. He further submitted that the Ld.

Trial Court only relied upon the oral as well as documentary evidence produced by the complainant and no opportunity is being given to the accused by the Ld. Trial Court to produce any documentary evidence in support of his defence. He has further submitted that the Ld. Trial Court has closed the right to cross-examine the complainant and also closed the right to record F.S. before the Ld. Trial Court. Therefore, the accused has been deprived of the rights to produce cogent and reliable evidence in support of his defense. Considering the above facts relevant to the present appeal, Mr. Yadav has requested to allow the appeal and requested to set aside the Judgment passed by the Ld. Trial Court.

10. Per contra, Ld. Advocate Shri J.S. Ojha appearing on behalf of the respondent No.1 i.e. original complainant has submitted that the accused had obtained a hand loan of Rs.2,00,000/- from the complainant with an assurance that the said amount would be repaid by the accused within six months. When the complainant demanded the said amount, the accused issued a cheque No.000006 dated 18/10/2024 for Rs.2,00,000/- drawn on Kotak Mahindra Bank, Kadi Branch. The complainant deposited the said cheque on 19/10/2024 in his bank account with the Punjab National Bank, Kundal Branch. However, the said cheque was returned unpaid on 21/10/2024 with the endorsement "Funds Insufficient". Thereafter, the complainant, through his advocate, issued a legal demand notice to the accused

on 24/10/2024 by Registered Post A.D., the said notice was served upon the accused on 25/10/2024. Despite receipt of the notice, the accused has failed to make payment of the cheque amount to the complainant. Hence, the present complaint was filed. In the said Criminal Case accused has not returned the cheque amount, Ld. Trial Court has rightly convicted the accused. There is no such legal reason to set aside the Judgment. Hence, he requested to dismiss the appeal.

11. Heard Ld. A.P.P., Mr. B.G. Patel appearing on behalf of the respondent No.2 i.e., State and he has submitted that Ld. Magistrate has rightly passed the order after appreciating the evidence and interpreting the provisions of law, there is no such legal reason for interference in the judgment.
12. Now, considering the appeal memo, oral arguments canvassed by the Ld. Advocate for the parties as well as perusing the record and proceedings of the Ld. Trial Court, it appears that the present appellant is the accused before the Ld. Trial Court and present respondent is the complainant before the Ld. Trial Court and accused has been convicted for the offence punishable under Section 138 of the N.I. Act. Being aggrieved by and dissatisfied with the judgment passed by Ld. Trial Court, the accused has preferred the present appeal.
13. On appreciating the facts as well as evidence of the complainant, it is undisputed that the accused has obtained

a hand loan of Rs.2,00,000/- from the complainant for medical purpose. When the complainant demanded the said amount, the accused has given a cheque No.000006 dated 18/10/2024 of Rs.2,00,000/- to the complainant. Therefore, there is no doubt that the complainant has given an amount of Rs.2,00,000/- to the accused as a hand loan, and the said cheque was issued towards repayment of the said loan amount. Further, the accused has not shown any probable defence regarding the financial capacity of the complainant. The complainant has proved the amount and the date on which the said amount was given to the accused. Therefore, it is clearly proved by the complainant that the complainant had given a hand loan of Rs.2,00,000/- to the accused.

14. On re-appreciating the evidence vide Exh.17 i.e., original cheque, it is undisputed that cheque is signed by the accused and cheque belongs to the bank account of accused, there is no such alteration found in the original cheque. The cheque has been written in the name of complainant and amount of Rs.2,00,000/- also written in the cheque and the date 18/10/2024 has also been mentioned in the cheque. The complainant has deposited the said cheque in his bank account and receipt of which is produced on record vide Exh.18, hence, the complainant has proved that the said cheque has been given by the accused to discharge his legal liability.

15. On appreciating the evidence vide Exh.04 i.e., examination-in-chief on affidavit of the complainant, it becomes very clear that the complainant and the accused are known to each other. About six months before, the complainant had given a hand loan of Rs.2,00,000/- to the accused for his medical operation. Further, when the complainant demanded the amount of the hand loan, the accused issued a cheque No.000006 dated 18/10/2024 of Rs.2,00,000/-, when the complainant deposited the said cheque in his bank account, the same has been returned unpaid with the endorsement of "Funds Insufficient". Therefore, the complainant has given legal demand notice to the accused by Regd. Post A.D. on 24.10.2024, same has been served upon the accused on 25.10.2024, however, the accused has not paid the amount of disputed cheque and hence, the present complaint is filed. After recording of the plea, complainant has given the evidence vide Exh.04 and produced the original document vide Exh.16 to 22, the accused remained absent for cross-examination of the complainant. Further appreciating the evidence sufficient opportunities have been given to the accused, however, accused and his advocate remained absent. Further, accused has not tried to cross-examine the complainant, although sufficient opportunities have been given by the Ld. Trial Court, therefore, it cannot be said that the opportunity has not been given as per the principal of natural justice.

The Hon'ble High Court of Gujarat in the case of ***Manoj Vasudev Sompura Vs. State Of Gujarat given in R/Special Criminal Appeal No.6721/2023*** has held that; *"from the above set of facts, it appears that the decision to not remain present on the next date after getting his Further Statement u/s. 313 of Cr.P.C. recorded on the earlier date and to not conduct cross-examination of the complainant in spite of being afforded with sufficient opportunities, was a deliberate or voluntary decision taken by the petitioner. In the interregnum, there is nothing to suggest that the petitioner or his advocate had filed any application requesting the trial Court to grant him an opportunity to record his Further Statement u/s. 313 of Cr.P.C. or to conduct cross-examination of the complainant. The petitioner went into oblivion after the date when his Further Statement u/s. 313 of Cr.P.C. came to undefined be recorded but before it could be exhibited. Therefore, the trial Court was left with no other option but to conduct the trial in the absence of the petitioner, who had deliberately or voluntarily chosen to evade the trial proceedings. Under these circumstances, there was no reason for the trial Court to issue any warrant against the petitioner, as contended by learned advocate for the petitioner. Moreover, the petitioner had not produced any evidence in his defence or had made any submissions either oral or in writing."*

Here, in the present case, when the sufficient opportunities are being given to the accused, the accused deliberately chosen to remain absent from the trial proceeding. On perusing the reasons recorded by the Ld. Trial Court, which is just, proper and legal, there is no such dispute regarding the signature of the accused in the cheque and the said cheque belongs to the bank account of the

accused, it is also clear that notice has been served upon the accused, however, he has not paid the amount, accused has not rebut the presumption by cross-examination or by adducing the evidence and hence learned Trial Court has passed the well reasoned order. There is no such legal reason for interfering the Judgment passed by Ld. Trial Court.

16. On appreciating the evidence vide Exh.19 i.e., cheque return memo it becomes very clear that the cheque has been returned unpaid with the endorsement of "Funds Insufficient". Thereafter within the period of limitation complainant has given legal notice to the accused on 24.10.2024, produced vide Exh.20 and the said notice was sent through R.P.A.D., the slip of R.P.A.D. is produced at Exh.21. Further, on appreciating the evidence produced at Exh.22 i.e., Certificate of Post of the notice, it becomes very clear that the said notice was served upon the accused on 25.10.2024, however, the accused has not paid the amount which is narrated in the legal notice of the said cheque, thereafter, the complainant has filed the complaint. Further on re-appreciating the oral evidence of the complainant, he has proved the content of Section 138 of N.I. Act. Moreover, from perusal of the record of learned Trial Court, it appears that before filing the complaint, demand notice was duly served upon the accused but accused has failed to make payment of the cheque amount to the complainant. It appears from the

record of learned Trial Court that even after giving fair and reasonable opportunities to the accused, the accused and his advocate remained absent to cross-examine complainant and, thereby, accused failed to produce any probable evidence for rebutting presumption raised against him for issuance of cheque to complainant. Moreover, the accused has not produced any cogent and reliable documentary evidence in this behalf.

17. Thus, from the overall consideration of the evidence on record, it is very clear that the accused has committed an offence under Section 138 of the Negotiable Instruments Act. It also appears that all the ingredients provided in Section 138 of the Act have been fulfilled and therefore, the offence is made out against the accused. Thus, the impugned Judgment of the Ld. Trial Court is not erroneous on facts as well as as per law. The conviction as well as punishment order passed by the Ld. Trial Court is legal and proper which does not call for any interference of this Court.
18. I have gone through the legal reasons recorded by the Ld. Trial Court and reasons assigned by the Trial Court are according to the provisions of law. After perusing the record and proceedings of the case and after appreciating the oral as well as documentary evidence produced on record, there is no illegality or perversity found in the order passed by the Ld. Trial Court. The Ld. Trial Court has rightly come to the conclusion that the accused is

found guilty for the offence punishable u/s.138 of the N.I. Act. Therefore, I answer point Nos. 1 & 2 in the negative and for the point No. 3, I pass following order in the interest of justice:-

:: ORDER ::

1. This appeal is hereby dismissed.
2. The impugned Judgment and order of conviction dated 30.12.2025 passed by the learned Judicial Magistrate First Class, Kadi in Criminal Case No.2192/2024 is hereby confirmed.
3. The Ld. Trial Court is directed to follow necessary procedure for implementation of sentence against the accused.
4. R & P be sent back to the Ld. Trial Court.
5. No order as to costs.

Pronounced in the Open Court today on this **13th** day of **March, 2026.**

Place: Mahesana.
Date: 13.03.2026.

(Amrish Laljibhai Vyas)
Sessions Judge,
Mahesana.
Code No.GJ00508.