

GJMH010002982026



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**IN THE COURT OF SESSIONS JUDGE,**  
**AT MAHESANA.**

**Criminal Appeal No.36/2026**

**Exh.: 09**

**Appellant(Original accused):-**

**Dineshbhai Narsinghbhai Patel,**  
Aged about adult, Occupation :- Labour,  
Residing at :- 4/1, Krishnanagar, Narayannagar,  
Opp. Vansh Society, Nava Vadaj, Ahmedabad.  
(Currently in Sub-Jail, Mahesana)

**Versus**

**Respondents( No.2 - Original complainant):-**

**(1) The State of Gujarat,**

**(2) Shri Ram Finance Ltd. through its Manager**

**Kalpesh R. Rajgor,**

Age:- 32 Years, Occu:- Service(Collection Manager),  
Office At- 2nd Floor, Suzuki Showroom,  
Opp. Pramukh Enclave, Mahesana Highway, Mahesana.

**Appearance:**

➤ Mr. P.C. Chavada, Ld. Advocate for the Appellant.

- Mr. B.G. Patel, Ld. A.P.P. for the Respondent No.1-State.
- Mr. H.B. Prajapati, Ld. Advocate for the Respondent No.2.

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

**:: JUDGMENT ::**

1. Being aggrieved by and dissatisfied with the judgment and order of conviction dated 12.01.2026 passed by the learned Chief Judicial Magistrate, Mahesana, in Criminal Case No.4624/2025, for the offence punishable under Section 138 of the Negotiable Instruments Act, the appellant has preferred the present appeal under Section 415 of B.N.S.S.
2. The appellant is the original accused, while the respondent No.2 is the original complainant in the said Criminal Case No.4624/2025. 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 hailing from the Criminal Case No.4624/2025 are that the complainant in the present case is a company registered under Company Act, 1956. The said company is engaged in the business of providing loans on heavy vehicles. The accused had obtained business loan of Rs.4,00,000/- from the complainant - company on 26/02/2020 through Account No.002260003,

repayable in forty monthly installments. The accused had already paid a few installments of the loan amount and thereafter, for making the final settlement of the loan, issued a cheque No.000068 dated 26.09.2024 for an amount of Rs.3,00,000/- of The Ahmedabad District Co-op Bank Ltd., Mota Gauriya Branch. The said cheque was deposited by the complainant - company in its bank account with Axis Bank, Mahesana Branch on 27/09/2024, however, the said cheque was returned unpaid on 30/09/2024 with an endorsement of "Account Closed". Thereafter, the complainant - company, through its advocate, issued a legal demand notice to the accused by R.P.A.D. on 23/10/2024. The said notice was served upon the accused on 25/10/2024. Thus, despite of service of notice, accused has neither given any reply to the notice nor paid the cheque amount to the complainant - company. Therefore, the complainant - company 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.11, wherein the accused has not pleaded guilty, the complainant has proceeded to adduce his oral as well as documentary evidence, which are as under:-

**Oral Evidence:-**

Exh.08 Examination-in-chief on affidavit of complainant  
– Shri Ram Finance Ltd. through its officer

Kalpesh R. Rajgor.

**Documentary Evidence:-**

Exh.12 Original cheque.

Exh.13 Original return memo.

Exh.14 Original legal demand notice.

Exh.15 Original receipt of R.P.A.D.

Exh.16 Track consignment slip of online postal account.

Exh.17 Statement of loan account.

Exh.18 Power of attorney.

5. After furnishing above oral and documentary evidences of the complainant, the learned Trial Court has recorded Further Statement of the accused, wherein he has submitted that he does not want to produce any evidence on oath and does not want to examine any witness in support of his defense. He has specifically submitted that a false case has been filed against him by misusing the said cheque. After hearing of the arguments from both the parties, the Learned Trial Court had passed the Judgment in this matter.
6. According to the appeal memo, the appellant i.e. original accused has challenged the judgment and order of conviction dated 12.01.2026 passed by the learned Chief Judicial Magistrate, Mahesana, in Criminal Case No.4624/2025, 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 erred in holding the provisions of the Negotiable Instruments Act in this case.
- (vii) The Ld. Trial Court has not considered the fact that the complainant has misused the cheque given by the accused as security, therefore, 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:-

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

appreciation of evidence on record and 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. P.C. Chavada on behalf of the appellant / original accused wherein he has submitted that in Criminal Case No.4624 of 2025, present appellant is convicted for the offence punishable under Section 138 of the N.I. Act and sentenced him to undergo simple imprisonment for one year and also as per the Section 395(3) of B.N.S.S. to pay the compensation of Rs.3,00,000/- to the complainant and since the appellant / original accused is not present today and also not deposited the amount of compensation and therefore, it is hereby ordered to undergo further simple imprisonment for two months. Being aggrieved by and dissatisfied with the said order passed by Ld. Trial Court, this appeal has been preferred by the appellant i.e., original accused.

During the course of arguments Ld. Advocate Mr. Chavada has repeated the contention which is narrated in the grounds of appeal. He has further submitted that the Ld. Trial Court has not properly evaluated the evidence produced by the appellant. It has also been averred that Ld. Trial Court only relied upon the oral as well as documentary evidence produced by the complainant, which has not been properly evaluated. He has further submitted that the complainant has misused the cheque given as security, however, the learned Trial Court has not considered the same. Considering the above facts relevant to the present appeal, Mr. Chavada has requested to allow the appeal and requested to set aside the Judgment passed by the Ld. Trial Court.

10. Per contra, Ld. Advocate Mr. H.B. Prajapati appearing on behalf of the respondent No.2 i.e., original complainant has submitted that the accused had obtained business loan of Rs.4,00,000/- from the complainant - company on 26/02/2020, for which he had already paid a few installments and thereafter, for making the final settlement of the loan, issued a cheque No.000068 dated 26.09.2024 for an amount of Rs.3,00,000/- of The Ahmedabad District Co-op Bank Ltd., Mota Gauriya Branch, the said cheque was deposited by the complainant - company in its bank account with Axis Bank, Mahesana Branch on 27/09/2024, however, the said cheque was returned unpaid on 30/09/2024 with an endorsement of "Account Closed".

Thereafter, the complainant - company, through its advocate, issued a legal demand notice to the accused by R.P.A.D. on 23/10/2024. The said notice was served upon the accused on 25/10/2024. Thus, despite of service of notice, accused has neither given any reply to the notice nor paid the cheque amount to the complainant - company. Therefore, 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.1 i.e., State has submitted that the 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. Hence, he requested to dismiss the appeal.
12. Now, considering the appeal memo arguments advanced by the Ld. Advocate for the parties, the Judgment passed by the Ld. Trial Court and record and proceeding of the Ld. Trial Court, it appears that the present appellant was the accused before the Ld. Trial Court and the present respondent was the complainant before the Ld. Trial Court, the accused has been convicted in the offence punishable under Section 138 of 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 re-appreciating the evidence of complainant vide Exh.08. i.e., affidavit of examination-in-chief of Kalpesh R. Rajgor, it becomes very clear that the accused approached the complainant - company and had obtained business loan of Rs.4,00,000/- for which he had paid a few installments and for the remaining amount he issued a cheque of Rs.3,00,000/- on 26.09.2024 of The Ahmedabad District Co-op. Bank Ltd, the complainant - company deposited the said cheque in Axis Bank, Mahesana Branch on 27.09.2024, which was dishonoured and returned on 30.09.2024 with the endorsement of "Account Closed". Thereafter, before filing the complaint, complainant - company issued a legal notice to accused but accused did not pay cheque amount to the complainant. Moreover, it appears from the record of the learned Trial Court that despite fair and reasonable opportunities given to the accused, neither accused himself nor his learned Advocate has raised any defence by cross-examining complainant. In that circumstances, learned Trial Court has rightly drawn presumption under Section 139 of N.I.Act against accused that accused had issued said cheque to the complainant - company for payment of legally enforceable debt of amount in respect of the loan taken from the complainant - company.
14. On re-appreciating the evidence vide Exh.12 i.e., original cheque, it is undisputed that cheque is signed by accused and cheque belongs to the account of accused, there is no

such alteration found in the original cheque. The cheque has been written in the name of complainant - company and amount of Rs.3,00,000/- has also been written in the cheque, so it becomes very clear that the cheque is signed by the accused and is of the account of accused. The complainant - company has proved that the said cheque has been given by the accused to discharge his legal liability.

15. On reappreciating the evidence vide Exh.13 i.e., cheque return memo it becomes very clear that the cheque has been returned unpaid with the endorsement of "Account Closed". Thereafter within the period of limitation the complainant - company has given the legal notice on 23.10.2024 to the accused, which is produced at Exh.14. On reappreciating the evidence vide Exh.16 i.e., track consignment slip, 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, thereafter, the complainant - company has filed complaint against the accused. 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 to accused but accused neither replied to said notice nor made payment of cheque amount to the complainant - company. It appears from the record of

learned Trial Court that even after giving fair and reasonable opportunity to the accused, Ld. Advocate for accused did not raise any defence by cross-examining complainant and, thereby, accused failed to produce any probable evidence for rebutting presumption raised against him for issuance of cheque to complainant - company. Moreover, the accused has not produced any cogent and reliable documentary evidence in this behalf.

16. On reappreciating the evidence produced at Exh.17 i.e., loan account statement of the accused, it becomes very clear that on 26.02.2020, the complainant - company has sanctioned a business loan of Rs.4,00,000/- to the accused through Account No.002260003, repayable in forty monthly installments. Further, it is mentioned in the loan account statement that loan amount Rs.4,00,000/- along with interest Rs.2,13,061/- has been clearly shown. So, it becomes very clear that the accused had obtained business loan of Rs.4,00,000/- from the complainant - company and for repayment of the said loan amount, accused has given the cheque to the complainant - company to discharge his legal debt.
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. Moreover, it

is very clear from record of learned Trial Court even after giving fair and reasonable opportunity to accused, Learned Advocate for accused did not raise any defence by cross-examining complainant. Thereby, accused failed to produce any probable evidence for rebutting presumption raised against him. Thus, the impugned Judgment of the Ld. Trial Court is not erroneous on facts as well as on 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. Therefore, there is no legal reason to set aside the judgment passed by the Learned Magistrate.

18. I have gone through the legal reasons recorded by the Ld. Trial Court, the reasons assigned by the Trial Court are according to the provisions of law, after perusing and appreciating the facts and oral as well as documentary evidence on record, there is no illegality or perversity in the order passed by the Ld. Trial Court. The Ld. Trial Court has rightly come to the conclusion that the accused is found to be guilty for the offence under Section 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 passed in the Criminal Case No.4624 of 2025, dated 12.01.2026 passed by learned Chief Judicial Magistrate, Mahesana 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 11<sup>th</sup>  
day of March, 2026.**

Place: Mahesana.  
Date: 11.03.2026

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