

GJMH010041462025



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Decided on	01-04-2026
Duration	Year Month Days

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

Criminal Appeal No. 655 of 2025

Exh.:

Appellant (Original accused):-

Patel Pravinbhai Ramabhai  
Age : 55, Occupation : Agriculture,  
Resi. At. Nagalpur, Patelvas, Ta. Dist. Mahesana

**Versus**

Respondents(Original complainant):-

- (1) Desai Alpeshkumar Baldevbhai  
Age : Adult, Occupation : Agriculture,  
Resi. Rabarivas, Nagalpur, Ta. Dist. Mahesana.
- (2) The State of Gujarat

**Appearance:**

- On behalf of appellant – Ld. Adv. Mr. R.M.Zala  
➤ On behalf of Resp. No.1 – Ld. Adv. Mr. M.G.Chaudhary  
➤ On behalf of Resp. No.2 – Ld. A.P.P. Ms.R.K.Joshi

**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 7<sup>th</sup> Additional Judicial Magistrate First Class, Mahesana (herein after referred to as "the Ld. Trial

Court") on 29.04.2025 in Criminal Case No. 472/2024 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 1 year simple imprisonment and also directed to pay compensation of Rs.10,00,000/- to complainant within 30 days of this order and in default thereof the accused appellant undergone further simple imprisonment for 3 months.

2. The appellant is the original accused, while the respondent No.1 is the original complainant, in Criminal Case No.472/2024. 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, who is engaged in the business of animal husbandry and operates a dairy stable in Nagalpur, Mehsana, asserted his status as a person of financial means with a substantial income derived from milk production and ancillary trades. The accused, a fellow resident and long-standing acquaintance of the complainant, purportedly approached the latter on November 21, 2020, seeking a friendly loan of Rs.10,00,000/- for personal exigencies. Relying on their mutual friendship, the complainant advanced the said amount in cash, against which the accused executed notarized agreement acknowledging receipt and promising repayment within eight months. Upon the complainant's subsequent demands for repayment, the accused allegedly filed a frivolous police complaint to evade his liability. Eventually, in discharge of the said debt, the accused issued a cheque No.416088 drawn on Axis Bank, Mehsana. However, when presented for realization on

November 3, 2023, the instrument was dishonored by the drawee bank with the endorsement "Funds Insufficient" on November 6, 2023. Despite the service of a formal statutory demand notice dated November 18, 2023, the accused failed to liquidate the debt within the prescribed period and thereby leading to institution of the present complaint u/s 138 of the Negotiable Instruments Act, 1881.

4. On presentation of this complaint, Ld. Trial Court has issued process against the accused, and recorded his plea vide Exh.10, wherein the accused has not pleaded guilty, the complainant has proceeded to adduce its oral and documentary evidence, which are as under:-

**Oral Evidences :-**

Sr.No.	Description	Exh.
1	Examination in chief of complainant Desai Alpeshkumar Baldevbhai, on oath	05

**Documentary Evidences :-**

Sr.No.	Description	Exh.
1	Copy of the Agreement executed on ₹300/- Stamp Paper before the Notary	11
2	Original Cheque No. 416088	12
3	Bank Deposit Slip for the cheque deposited in HDFC Bank, Mehsana	13
4	Bank Return Memo indicating the cheque was dishonored	14
5	Office copy of the Statutory Legal Notice	15
6	Registered Post A.D. Receipt issued by the Post Office	16
7	Acknowledgment Slip (confirming delivery)	17
8	Copy of the Reply to the Notice provided by the	

	Accused	
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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 7<sup>th</sup> Additional Judicial Magistrate First Class, Mahesana, on 29.04.2025 in Criminal Case No.472/2024 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, appellant has prayed to allow this appeal and set aside the impugned judgment passed by Ld. Trial Court on 29.04.2025 in Criminal Case No. 472/2024.
8. For deciding this appeal, following points have arisen for my determination:-

**POINT OF 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 accused was present. The learned advocate of the appellant has submitted his written argument. In this argument, he has argued that, accused is falsely implicated in this case. The appellant contends that the impugned judgment is ex-facie erroneous, having been passed in a summary and arbitrary manner without affording a reasonable opportunity for the defense to be heard. It is argued that the learned trial court proceeded ex-parte in substance, as the appellant was deprived of the right to cross-examine the complainant and lead defense evidence, thereby violating the principles of natural justice. On merits, the appellant asserts that the subject cheque was never issued in discharge of a legally enforceable debt. Rather, it was a security cheque obtained during a prior transaction. The appellant maintains that the principal amount had already been liquidated, yet the complainant, with mala fide intent, misused the security instrument by unilaterally filling in the particulars and presented it for realization. Furthermore, the

appellant challenges the authenticity of the instrument, noting a material discrepancy between the signature in Gujarati and the body of the cheque filled in English. The appellant further contends that the statutory notice was issued without proper authorization and that the complainant failed to resolve the contradictions between the initial police statement and the subsequent complaint. Consequently, the appellant seeks to set aside the conviction on the grounds that the presumption under Section 139 of the N.I. Act stands successfully rebutted by the preponderance of probabilities.

11. The Learned Advocate appearing on behalf of the respondent No. 1 i.e. original complainant has also advanced his oral argument. In this argument he has argued that, the cheque is issued regarding the legal enforceable debt of the accused. He has also argued that defense taken by the accused that he could get opportunity to defend his case is not tenable. The complainant has proved his contentions by submitting the same facts on oath by way of affidavit in lieu of examination in chief and deposition of witness. Further, Learned Advocate has submitted that Learned Advocate of accused could not brought on record facts in favor of the accused. Further, the Learned Advocate of the complainant has submitted that the accused has not proved that the cheque in dispute was snatched away from his custody and thereby misused by the complainant. Further, Learned Advocate has stated that he has produced all the necessary documentary evidences in support of his contention, and, therefore, there is no any hesitation to believe that the complainant has proved that there is legal enforceable debt and accused has drawn the cheque to discharge the legal dues. Nothing contrary to the case of complainant is brought on record. Thus, the

accused failed to rebut the presumptions in favour of complainant. Therefore, Learned Trial Court has rightly drawn the presumption in favour of complainant and come to conclusion that the accused has committed offence punishable u/s 138 of the N. I. Act. The reasons recorded by the Learned Trial Court are legal. Further, he has submitted that there is no such legal reason shown in the appeal memo to interfere in the judgment passed by 7<sup>th</sup> Additional Judicial Magistrate First Class, Mahesana. Lastly, Learned Advocate for complainant has requested to dismiss the appeal with costs.

12. It is a well settled principle of criminal jurisprudence that a criminal trial proceeds on the presumption of innocence of the accused i.e. an accused is presumed to be innocent unless proved guilty. Thus, normally the initial burden to prove is on complainant/prosecution to prove the guilt of the accused. However, in offences u/s 138 of N. I. Act, there is a reverse onus clause contained in section 118 and 139 of the 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 essential facts for deciding the present appeal. The complainant has produced his affidavit in lieu of examination in chief vide Exh.05 and the Ld. Advocate of the accused has cross-examined the complainant. Further, complainant has proved the factum of the complaint by producing documentary evidences like the original cheque, return memo. The Ld. Trial Court has rightly

appreciated that the accused has issued the disputed cheque produced vide Exh.12 before Ld. Trial Court. Registered notice was sent by RPAD to accused by complainant. Copy of notice is produced vide Exh.15. That notice was served upon the accused and acknowledgment slip was filed by Exh.17. The appellant failed to rebut the statutory presumption under Section 138 and 139 of the Negotiable Instruments Act as the signature on the disputed cheque was proved to be his, which shifted the legal burden of proof to the defense. Although this presumption is rebuttable by a preponderance of probabilities, the appellant did not provide any cogent evidence or testimony to substantiate his claim that the cheque was stolen or misused. By failing to cross-examine the complainant and neglecting to lead any defense evidence, the appellant allowed the complainant's testimony to remain unchallenged, meaning the mere plausible explanation offered in his statement was insufficient to displace the mandatory presumption of law. Consequently, the trial court correctly held that the presumption in favor of the complainant became final and decisive, establishing that the instrument was issued in discharge of a legally enforceable debt. Further accused has not produced any evidence which shows that the transaction was not made between the parties. Considering the evidence produced before the Ld. Trial court it can be said that, complainant has very well proved transaction between them thus, it can be said that, cheque is issued by the accused to discharge legally enforceable due and accused failed to rebut statutory presumption u/s.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. 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 is given only for security purpose is not sufficient, accused has to produced any evidence regarding the same.
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 borrowed money has already been repaid to the complainant and cheque is being mis-used which has been given only for security purpose. But by putting this fact accused has not been successful regarding proving of the said fact. I do not agree with the argument of learned advocate of accused. If the money is borrowed by executing notarized deed then the repayment must be proved by any authentic documentary evidence but it is not in the present case. Mere say that repayment has been made cannot be conclusive evidence.

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 discharge 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 understand 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.14

before Ld. Trial Court. Accused has not denied the said cheque not belongs to his account. He has admitted that cheque was given for security purpose. 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 The complainant has also produced Original cheque vide Exh.12, cheque return memo vide Exh.14, copy of notice vide Exh.15 and acknowledgment slip vide Exh.17 on record. Accused has replied the legal notice and a copy of that notice is produced on record vide Exh.18. He has not paid any amount which is mentioned in the notice. Not only that even the accused has filed police complaint against the present complainant which shows his malafide intentions. 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 Section 138 are also proved according to law. So, the facts as culled out from the evidences on

record are that there is no such any reliable or cogent & probable defence or probability came in favor of the 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 the disputed cheque was not issued for purpose of reimbursement of outstanding 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 7<sup>th</sup> Additional Judicial Magistrate First Class, Mahesana, in Criminal Case No.472/2024 on 29.04.2025 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.

Signed & Pronounced in Open Court on 01<sup>st</sup> April, 2026.

Place:Mahesana.

Date: 01-04-2026

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