

GJMH010041852025



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IN THE COURT OF SESSIONS JUDGE, AT
MAHESANA.
Criminal Appeal No.662/2025

Exh.: 20

Appellant(Original accused):-

Bhangi Manojbhai Kantibhai,
Age:-47 Years, Occupation :- Labour,
Residing at :- 149, Tejasvi Society, B/h.108,
Manav Ashram, Tal. & Dist. Mahesana.

Versus

Respondents(No.2 - Original complainant):-

(1) The State of Gujarat,

(2) Raval Ajaykumar Rameshbhai,
Aged about adult, Occupation :- Labour,
Residence of :- Ravalvas, Bhoyravas, Tal. & Dist. Mahesana.

Appearance:

- Mr. T.N. Barot, Ld. Adv. for the Appellant.
- Mr. B.G. Patel, Ld. A.P.P. for the Respondent No.1-State.
- Mr. S.M. Kotai, Ld. Adv. for the Respondent No.2.

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

:: JUDGMENT ::

1. This appeal is filed by the appellant under Section 415 of B.N.S.S. Act. Being aggrieved by the judgment of conviction passed by the Learned 4th Additional Judicial Magistrate First Class, Mahesana, in Criminal Case No.8841/2023, dated 29.11.2025 tried for the offence punishable under Section 138 of the Negotiable Instruments Act. By way of present appeal the order of conviction is challenged.
2. The appellant is the original accused, while the respondent No.2 is the original complainant in the said Criminal Case No.8841/2023. 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.8841/2023 are that the accused is the old friend of the complainant and therefore a friendly relationship has established between both the accused and the complainant. In June-2023, the accused approached the complainant and demanded a hand loan of Rs.50,000/- for his personal needs, assuring that the same would be repaid within three months. The complainant has given Rs.50,000/- in cash to the accused. At that time, the accused issued a cheque No.000001 dated 18/09/2023 for Rs.50,000/-, drawn on the Mehsana Urban Co-operative Bank Ltd., Mehsana Branch, duly signed by the accused in the presence of the complainant. The complainant deposited the said cheque in his account in the Mehsana Urban Co-operative Bank Ltd. Mahesana Branch. However, the said cheque was

returned unpaid on 27/09/2023 with the endorsement of “Insufficient Funds.” Thereafter, the complainant, through his advocate, issued a legal demand notice on 11/10/2023 to the accused by Registered Post A.D., the said notice was duly served upon the accused on 12/10/2023. Despite receipt of the notice, the accused has neither replied to the notice nor paid the cheque amount to the complainant. Therefore, the complainant 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.09, 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.05 Affidavit of Examination-in-chief of complainant Raval Ajaykumar Rameshbhai.

Documentary Evidence:-

Exh.10 Original cheque.

Exh.11 Original return memo.

Exh.12 Original post receipt.

Exh.13 Postal tracking consignment of notice being served.

Exh.14 Original Notice.

5. After furnishing above oral and documentary evidences of the complainant, the learned Trial Court has recorded further statement of the accused under Section 313 of the Criminal

Procedure Code, wherein the accused has denied all the facts submitted by the complainant and stated that the complainant filed a false complaint against him. 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 of conviction passed by the Learned 4th Additional Judicial Magistrate First Class, Mahesana, in Criminal Case No.8841/2023, dated 29.11.2025, 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. 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 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. T.N. Barot on behalf of the appellant / original accused wherein he has submitted that in Criminal Case No.8841/2023, present appellant convicted for the offence punishable under Section 138 and sentenced him to undergo simple imprisonment for one year and to pay the cheque amount as compensation within 60 days from the date of passing of this order and in default of payment of compensation, further to undergo simple imprisonment for

three months. Being aggrieved by and dissatisfied with the said order passed by the Learned 4th Additional Judicial Magistrate First Class, Mahesana, this appeal has been preferred by the appellant / original accused.

During the course of the argument, Mr. T.N. Barot reiterated the contentions as stated in the grounds of appeal. Mr. Barot has mainly taken defence in respect of the legally enforceable debt and has stated that the accused has paid the full amount of hand loan to the complainant and there is no remaining amount is to be paid to the complainant. He has further submitted that the Ld. Trial Court has not appreciated the evidence produced on record and therefore, he requested to set aside the judgment passed by learned 4th Additional Judicial Magistrate First Class, Mahesana.

10. Per contra, Ld. Advocate Shri S.M. Kotai appearing on behalf of the respondent No.2 i.e. original complainant has submitted that the accused had taken a hand loan of Rs.50,000/- from the complainant and at that time, the accused issued a cheque No.000001 dated 18/09/2023 for Rs.50,000/-, drawn on the Mehsana Urban Co-operative Bank Ltd., Mehsana Branch, duly signed by the accused in the presence of the complainant. The complainant deposited the said cheque in his account in the Mehsana Urban Co-operative Bank Ltd. Mahesana Branch. However, the said cheque was returned unpaid on 27/09/2023 with the endorsement of "Insufficient Funds." Thereafter, the complainant, through his advocate, issued a legal demand notice on 11/10/2023 to the accused by Registered Post A.D., the said notice was duly served upon the accused on

12/10/2023. Despite receipt of the notice, the accused has neither replied to the notice nor paid the cheque amount to the complainant. Consequently, the present complaint was filed. In the 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 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 was the accused before the Ld. Trial Court and present respondent was the complainant before the Ld. Trial Court and accused has been convicted in 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 re-appreciating the evidence at Exh.05, i.e., examination-in-chief of the complainant, wherein the complainant has reiterated the facts stated in the complaint. Furthermore, it is evident from the cross-examination of the complainant that the transaction of Rs.50,000/- between the complainant and the accused is proved by the complainant. The complainant has also admitted the signature of the accused over the cheque.

However, during cross-examination conducted by the learned advocate for the appellant, nothing has emerged to contradict the complainant's testimony. On re-appreciating the evidence vide Exh.10 i.e., original cheque, it is undisputed that cheque is signed by accused and cheque is belonging to the bank account of the accused, there is no such alteration found in the original cheque. The cheque has been written in the name of complainant and amount also written Rs.50,000/- over the cheque and the dated 18.09.2023 has also been mentioned on the cheque. Complainant has proved that the said cheque has been given by the accused to discharge his legal liability. By way of cross-examination, it becomes very clear that the accused has incurred legal enforceable debt toward the complainant and the cheque drawn by the accused was for the said legal enforceable debt. Further, accused has not shown any probable defence for rebut the evidence, therefore, the presumption under Section 139 has been drawn in favour of the complainant. The complainant has clearly proved there is legal enforceable debt and cheque was drawn for the whole part of any debt or liability and said cheque was signed and issued by the accused to the complainant, accused failed to rebut the presumption by way of cross-examination of complainant, documentary evidence.

14. On appreciating the evidence vide Exh.11 i.e., return memo it becomes very clear that the cheque has been returned unpaid with endorsement of "Insufficient Funds". Thereafter within the period of limitation the complainant has given the legal notice vide Exh.14 on 11.10.2023 through R.P.A.D. and the said notice was served upon the accused on 12.10.2023 as

reflected from the postal tracking consignment produced vide Exh.13. However, the accused has not paid the cheque amount which is narrated in the legal notice of the said cheque, thereafter, the complainant has filed the complaint. After service of summon, he has not paid cheque amount. Further on re-appreciating the oral evidence of the complainant, he has proved the content of Section 138 of N.I. Act. The accused failed to rebut the presumption, on the other hand complainant has proved by own evidence and by presumption of his case, further on re-appreciating the evidence, accused has not shown any probable defence by the cross-examination of complainant. Moreover, the accused has not produced any cogent and reliable documentary evidence in this behalf.

15. On perusing the judgment passed by Ld. Trial Court, it appears that the disputed cheque has been returned unpaid with the endorsement of "Insufficient Funds". Thereafter the legal notice has been issued and the same has been received by the accused, however accused has not paid the cheque amount up to the final disposal of criminal case. Not only that, accused has not produced any receipt to show that he had deposited or paid the cheque amount to the complainant. However, only during the pendency of appeal, accused has given Rs.5,000/- to the complainant. Except Rs.5,000/- as above, remaining amount of the cheque has not been paid by the accused to the complainant. Not only that, the accused has not shown any probable defense that the cheque has not signed by the accused and cheque is not of the bank account of the accused and Rs.50,000/- has not been given by complainant to the accused as hand loan. Here in the present case the cheque has been

issued by the accused in favour of the complainant which was returned unpaid with the endorsement of "Insufficient Funds". Thereafter, the complainant, through his learned advocate, issued legal demand notice to the accused which was served upon the accused. Despite of service of notice, the accused did not repay the cheque amount to the complainant till the date.

16. 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.

17. 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 and 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 in the offence of 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.8841/2023, dated 29.11.2025 by the Learned 4th Additional Judicial Magistrate First Class, 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 07th day of March, 2026.**

Place: Mahesana.

Date: 07.03.2026.

(Ambrish Laljibhai Vyas)

Sessions Judge,

Mahesana.

Code No.GJ00508.