



**In The Court of Principal Civil Judge & Judicial Magistrate First Class,
Taluka - Bahucharaji - Dist. Mahesana
Before Hon'ble Mr. S.I.Chauhan**

CNR = GJMH080005032018



Criminal Case No. :-		407/2018
Exhibit No. :-		
TIME/DURATION		
YY	MM	DD
06	10	30
Date of Regi. :-		20-08-2018
Date of Judgement :-		19-07- 2025

(Form-A)

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As per section 138 of the Negotiable Instruments Act

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Solanki Mansangji Paragji

Age - 47 ,

Resident - Kalri, Taluka -Bahucharaji.

Dist - Mahesana.

.....Complainant

V/S

Rathod Girishkumar Dalabhai

Age -60 ,

Resident - kharadharva , Ta - Chanshma

Dist - Patan

.....Accused

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Ld. Advocate For the Complainant :- Mr. V.R.Patel

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Judgement

- [1] **Case of the Complainant :-** The Factual matrix of the case is that .. “The Complainant and the accused both have had a friendly relationship for a long time. In that relationship , Occasionally the accused used to borrow money from the complainant as well as repay on time. The complainant narrated that Just 9 months ago, the accused urged the complainant regarding his personal issue of case pending in Highcourt and required Rs. 3,00,000/- to pay the fee to the advocate and promised to re-pay within 3 months. After that, the complainant placed reliance on the given promise and lended the cash amount Rs. 3,00,000/- to the accused. Afterwards on completion of promised time, complainant demanded the money and in response to that demand , the accused handed over a cheque (No. 112001) of Rs. 3,00,000/- Dated - 07-03-2018 to the complainant and gave assurance that he would get the money on presentation of the cheque.

Upon relying on the promise of the accused the complainant had deposited the cheque three times in the bank which was returned on 12-03-2018, 27-04-2018 & 02-06-2018 stating the reason for “In-sufficient Fund”. Later on the complainant had given a demand notice to the accused on 30-06-2018 which was duly served on 03-07-2018. However, neither the accused had given any reply to the notice nor paid the due amount of cheque. Eventually, the accused has cheated the complainant by not paying the amount and has committed an offence under Section 138. Therefore, the complainant has requested & Prayed for the severe punishment to the accused and compensation demanded twice of the Cheque amount.

Table of Content.

Cheque No.	112001
Date on Cheque (Issue Date)	07-03-2018
Amount of Cheque :-	Rs. 3,00,000/-
Accused Bank Name :-	Nidhi Co Op Bank
Complainant's Bank Name :-	Bank of Baroda
Date of Cheque Deposited	07-03-2018
Cheque returned Date :-	12-03-2018 , 27-04-2018, 02-06-2018
Reason of Cheque returned :-	Funds Insufficient
Date of Return Memo :-	07-06-2018
Date of Notice given to Accused :-	30-06-2018
Date of Service of Notice :-	03-07-2018
Date of filing of complaint :-	20-08-2018

- [2] **Notice to the Accused :-** After the case is registered , this court has issued several summons to the accused. But the summons were not served. It is on record that the certificate of Sarpanch where the accused is residing stating that the accused is not residing in the village from the last 20 years dated 17-03-2019 and 09-10-2019. Further perusal of the records it seems that the police agency had tried many times to execute the warrant. Even on 26-07-2023 this court had issued a notice to the S.P. office at Patan along

with a NBW. The complainant had also tried by taking a direct warrant from the court itself and reached the police station.

[3] After pursuing above all efforts, vide exh. 19 the complainant has made an application to issue public notice in the daily newspaper which was granted by this court. And vide exh. 23 the complainant produced the original copy of the Public summons / notice published in the News Paper which is recorded by this court. The adjournment date of the public notice was 17-06-2025. But the accused had not appeared before this court. Therefore despite all efforts, the accused did not appear as well as the police agency, unable to fix his presence before this court. Therefore this court declared him an “Absconding Accused”.

[4] The complainant has already served the notice to the accused before filing the case. There is nothing wrong with saying that the accused had no knowledge about the issuance of the cheque and resultantly he disappeared to avoid legal proceedings which are charged against him. If so, his conduct stands against him. At this juncture, it is right to mention that Hon’ble Apex court in the case of **P. Mohanraj vs M/S. Shah Brothers Ispat Pvt. Ltd. on 1 March, 2021** .. quoted that ... *“Interestingly, criminal proceedings are stated to be proceedings in which the larger interest of the State is concerned. Given these tests, it is clear that a Section 138 proceeding can be said to be a **“civil sheep” in a “criminal wolf’s” clothing, as it is the interest of the victim***

that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases, as has been seen by us in the analysis made hereinabove of Chapter XVII of the Negotiable Instruments Act.” Therefore as the Section 138 offence has a civil as well as criminal nature , for the interest of the victim , this court has found no other reason to put the case on waiting period until the appearance of the accused. This case has been pending for a long time, it is not appropriate to keep the case pending on the same stage for several years. And if this court proceeds against the absence of the accused it will protect the right of the victim. And still there is an opportunity in the hands of the accused and can approach the higher court if it materialized that the right of the accused is curtailed. Nowadays it is required to break-down the trending practice of accused that “Do crime & disappear - as the case gets older will be dismissed” particularly in Negotiable instrument act. Therefore in the interest of justice this court proceeded against the accused in absentia.

- [5] The Complainant of the case to prove their case submitted following evidence on record during the trial which were original in nature and public documents therefore exhibited and taken into consideration in the evaluation of evidence.

Oral Evidence Produced by Complainant		
Exhibit	Witness Name	Type
05	Affidavit of The Complainant	Written

Documentary Evidence produced by the complainant		
Exhibit	Name of the Document	Type
24	Original Cheque No. 112501	Original
25	Bank Slip	Original
26	Return Memo	Original
27	Demand Notice	Office Copy
28	Post Slip	Original
29	Post Acknowledgement.	Original

Evidence Closing Pursis Given by the Complainant wide Exh. 30

[6] **Statement u/s 313 of the CRPC.:-** As the Accused is declared absconded, the Statement u/s 313 of the CRPC is not recorded.

[7] **Evidence for the Accused :-**No Oral or Documentary evidence is there on record.

[8] **Arguments for the parties:-**

[➤] Ld. The advocate for the complainant has made an argument and stated that they have proved their case beyond reasonable doubt. The accused had not given a legal enforceable debt due to the complainant

therefore prayed for the maximum punishment and sentence to the accused.

[➤] NO Argument for the Defence.

[9] **Question and its Answer :-** On the basis of the above produced evidence on record, this court finds the following issues to be resolved for the adjudication of the matter.

No	issue	Answer
1	Whether the accused has rebutted the presumption of law lies in favour of the complainant ?	NO
2	Whether the complainant proves beyond a reasonable doubt that the accused has committed an offence under Section 138 of the Negotiable Instruments Act by not paying the complainant's legal debt?	Yes
2	What order ?	As per final order

- [10] Before moving to the discussion of the above both issues, following principles of the Law, Provisions and judgements are required to keep in mind which are as this wise.
- [11] **Presumption of Law :-** As per the provisions, the complainant must prove the following four essential elements to prove the fact of the offense under Section 138 of the Negotiable Institution Act and the answer must be affirmative.

No	Essential elements	Observation and conclusion
01.	The holder of the cheque had presented the cheque for payment within its valid time and the cheque was not out of date.	In the present case the cheque is presented to the bank for collection of the due amount in three months. And not found out of date.
02	After the cheque is bounced, the holder serves a notice of dishonor on the cheque writer within 30 days of the cheque being bounced.	The cheque is returned with insufficient funds in the return memo. And accordingly the complainant has given notice in one month
03	He demanded money from the cheque writer. If the drawer of the cheque does not pay the amount of the cheque within 15 days of	Although the notice has been served on the accused, the money has not been paid to him within 15 days nor has any response been given to

	receiving the notice, then the offence arises and is liable for the punishment stated under Section 138 of the Act.	the notice. So it comes on record that an offense under Section 138 has been committed against the accused.
04	Also such cheque must be lawfully issued in whole or in part in payment of any debt or other liability.	In view of the facts of the complainant, as per complaint no.-01, the financial transaction is not connected with any illegal practice or agreement which cannot be enforceable by law. And it is a legal transaction. And hence, the prima facie presumption of law is established in favour of complainant.

- [12] **Provisions of the Law** - Once the presumption is established , the accused himself can bring on record facts which can rebut the case of the prosecution, apart from testifying on oath, but also taking into account the evidence presented by the prosecution. As long as the defense party does not bring on record the fact rebutting the facts of the complainant, the presumption of law remains in favor of the complainant and the court is bound to decide the case based on the presumption. For that, it is very important to keep the following provisions in mind. **"Until the contrary is proved, it shall be presumed that the cheque has been received by the bearer in lieu of discharge of any debt or other liability referred to in section 138, or any part thereof."** "The present legal debt or liability shall be presumed to have been discharged as returned

unpaid" "The burden of proof to the contrary, or to prove that a returned unpaid cheque is not subject to a present or existing legal liability or debt, rests on the cheque writer." "Such presumption is without prejudice to the fundamental right conferred by Article 20(3) of the Constitution of India." further the provisions of Section 118 of the Act must also be kept in mind that Until the contrary is proved, the following presumptions shall be made of consideration; that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration as to date; that every negotiable instrument bearing a date was made or drawn on such date as to time of acceptance; that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity as to time of transfer; that every transfer of a negotiable instrument was made before its maturity; as to order of indorsements; that the endorsements appearing upon a negotiable instrument were made in the order in which they appear thereon; as to stamp; that a lost promissory note, bill of exchange or cheque was duly stamped; that holder is a holder in due course; that the holder of a negotiable instrument is a holder in due course: Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an SP offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burthen of proving that the holder is a holder in due course lies upon him.

[13] While deciding the above case, the following principles laid down in the landmark judgments have been considered.

- **In Rangappa Vs. Sri Mohan (2010)** 11 SCC 441 the Hon'ble Supreme Court held that "it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of 'preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own".
- **The Apex Court It has been held in Hiten P Dalal v. Bratindranath Banerjee reported in (2001) 6 SCC 16** that a mere plausible explanation given by the accused is not enough to rebut the presumption and the accused has to necessarily disprove the prosecution case by leading cogent evidence that he had no debt or liability to issue the said cheque.
- **Bir Singh Vs Mukesh Kumar 2019 - 4 SC 197 Section 139** mandates that unless the contrary is proved, it is to be presumed that the holder of 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. However their presumption is rebuttable by proving to the contrary. Section 139 introduces an exception to the general rule as to the burden of proof and shifts the onus on the accused to prove by cogent evidence that there was no debt or liability; mere denial or rebuttal by the accused was not enough.

[14] **Evaluation of Evidence :-** To prove this case, the complainant has given an affidavit wide exh. 05 in support of his complaint. Which is recorded and the documents which are produced by the complaint wide exh. 24 to 29 are public documents and original in nature which are taken into the consideration and recorded by this court. Along with the evidence, the presumption of the law is also in the favour of the complainant.

[15] As the accused is absconding, the documents produced by the complainant are unchallenged. Whereby the accused needs to rebut the presumption by disputing the signature on the cheque by responding to the demand notice or by producing evidence against the transaction and how the cheque is handed over to the complainant. In the instant case, the accused failed to appear before this court therefore there is no question of rebuttal. Hence, the answer of Issue No. 1 is in Negative.

[16] **Conclusion :-** As the complainant produced the original cheque no. 112501 amounting to Rs. 3,00,000/- which is undisputed and unchallenged, the law of presumption remains in favour of the complainant. And this court is bound to take on record that the accused had issued the cheque to discharge the liability which was dishonoured and by not paying the legally enforceable amount to the complainant, the accused has committed the offence u/s 138 of the Negotiable Act 1881. In that light the answer to the issue no. 2 stands in affirmative and the answer of Issue No. 3 is as per the Final order.

Found Guilty.

[17] The accused **Rathod Girishkumar Dalabhai** is hereby **found guilty** under Section 255(2) of the Criminal Procedure Code, 1973 for an offence punishable under Section 138 of the Negotiable Instrument Act, 1881.

[18] it is necessary to hear the accused before sentencing him, the accused shall be heard regarding the sentence. Therefore , the accused is called out.

[19] **Hearing For the Sentence :-** The accused of the case is absconded and the Nonailable warrant has been issued. No counsel appeared today on behalf of him. The Complainant and his Ld. Advocate both are present and argued for the maximum punishment in the instant case. Considering the argument of the complainants this is on record that day by day the number of such offences are increasing . As per the nature of the complaint, and the evidence presented, it becomes clear that the complainant has suffered financial loss. In that circumstance, the court here believes that the purpose of justice can be served only if the accused realizes that he has committed the crime. And if there is a crime related to financial transactions, it is anti-social and spreads evil in the society and if it is not punished, it seems to have an adverse effect on the society. It being found that the benefit of a lesser sentence cannot be granted, therefore in the interest of justice this court passes the following order.

:: FINAL ORDER ::

[20] The accused **Rathod Girishkumar Dalabhai** is hereby **convicted** u/s 255(2) of CrPC and sentenced to undergo simple imprisonment for Two (2) year for the offence punishable under Section 138 of the Negotiable Instrument Act, 1973.

- [21] The accused **Rathod Girishkumar Dalabhai** is hereby **convicted** and is ordered to pay the principal amount of the cheque Rs. 3,00,000/- (three Lakh Rs.) compensation to the complainant within a period of 1 (one) month from the date of this order. If the compensation amount is not paid, then an additional 3 months of imprisonment will have to be served.
- [22] If the accused has remained in judicial custody for said offence that duration shall be set off towards the sentence.
- [23] Provide a copy of this judgement free of charge to the accused.
- [24] As the Accused is not present and declared absconded , The Warrant of sentence (arrest) is ordered to be issued through Nodal Officer of the District Police.
- [25] The Criminal Branch is directed to maintain a separate register of “absconded accused” as who have been sentenced and are not present and to record information regarding execution of warrants on quarterly basis and issue reminders of the same.

- [26] The Criminal Branch is directed to maintain a Copy of Issued Warrant of Sentence in a Physical File as well as in a Digital File (Scan Copy / Date wise)
- [27] The complainant is also directed to obtain information from the court regarding the execution of the warrant on a quarterly basis.
- [28] The Order is pronounced in the Open Court Today.

Date :- 19-07-2025

Place :- Bahucharaji Taluka Court.

(SANDIP ISHVARBHAI CHAUHAN)
JUDICIAL MAGISTRATE FIRST CLASS
BAHUCHARAJI-COURT
DIST-MAHESANA
GJ - 01580