GJMR020022682020

Received on : 16/03/2020
Registered on : 16/03/2020
Decided on : 11/03/2026

Exhibit :

IN THE COURT OF 4^{TH} ADDITIONAL SENIOR CIVIL JUDGE & ADDITIONAL CHIEF JUDICIAL MAGISTRATE, MORBI.

Criminal Case No. 2063/2020

COMPLAINANT :-

MOX TILES LLP
A Limited Liability Partnership
Through its Designated Partner :
Mr. Lalit Bhanjibhai Aervadiya
Aged : 35 years, Occupation : Business,
Resident of 401 - Nisarg Residency,
Umiya Park Society, Vavdi Road,
Morbi – 363641, Gujarat IN
Registered Office of the LLP :
Survey No. 585, Paikee 1 & Paikee 2/1,
Village : Rangpar, Jetpar Road,
Morbi GJ 363642 IN

Vs.

ACCUSED :-

1. M/S. Pardkar Tiles & Sanitary
32, Nagpur Road, Chandangaon Sarra,
Chindwara - 480 001 Madhya Pradesh
2. Mr. Baban Paradkar
Proprietor of Pardkar Tiles & Sanitary,
32 Nagpur Road, Chandangaon Sarra,
Chindwara - 480 001 Madhya Pradesh

Subject - Offence U/s. 138 of Negotiable Instrument Act ,1981.

Advocates:-
Learned Advocate for the Complainant : **Aman Shrotriya**
Learned Advocate for the Accused : **Mr. M. P. Pujara**

-: J U D G M E N T :-

[1] The present complaint is filed under Section 138 of the Negotiable Instruments Act, 1881 by the complainant, Lalit Bhanjibhai Aervadiya, designated partner of Mox Tiles LLP, who is engaged in the business of manufacturing, sale, distribution and export of ceramic products, against the accused, wherein Accused No.1 is a sole proprietorship firm run and managed by Accused No.2, Baban Paradkar, engaged in the business of trading tiles and sanitary products, and it is the case of the complainant that the accused approached the complainant for supply of tiles and placed an order for digital tiles of different sizes and grades totaling 2597 boxes, pursuant to which the complainant raised Invoice No. GSTT/720 dated 06.11.2019 for an amount of Rs.2,76,352/-, which was duly acknowledged by the accused, and towards discharge of the said legally enforceable debt the accused issued Cheque No. 026947 dated 16.01.2020 for Rs.2,73,480/- drawn on Central Bank of India, Chandagaon Branch, Chhindwara, assuring that the same would be honoured on presentation. However upon presentation of the said cheque by the complainant through its banker, Bank of Baroda, Mahendra Nagar Branch, Morbi, the cheque came to be dishonoured and returned unpaid vide bank return memo dated 17.01.2020 with the endorsement “Funds Insufficient”, whereupon the complainant immediately informed the accused and thereafter issued a statutory legal notice dated 02.02.2020 through advocate by RPAD demanding payment of the cheque amount, which notice was duly served upon the accused, yet the accused neither replied to the said notice nor paid the cheque amount within the statutory period, thereby failing and neglecting to discharge the liability and consequently committing an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, for which the accused are liable to be tried and punished in accordance with law.

[2] Upon filing of the complaint, verification of the complainant was recorded on oath under Section 200 of the Code of Criminal Procedure, 1973, and thereafter summons were issued to the accused under Section 204 of the Code. Upon service of summons/warrant, the accused appeared before the court through his learned advocate, and the documents relied upon by the complainant were supplied to the accused under Section 207 of the Code, whereafter the plea of the accused was recorded under Section 251 of the Code vide Exhibit 20 dated 11.01.2023, wherein the accused pleaded not guilty and claimed trial, and hence the judicial proceedings of the present case were carried forward.

[3] The complainant has produced following oral as well as documentary evidence in support of his complaint.

Oral Evidence		
Sr. No.	**Exh.**	**Description of Document**
1	32	Affidavit of evidence
Documentary Evidence		
Sr. No.	**Exh.**	**Description of Document**

1	36	Copy of Limited Liability Partnership Deed of M/s. Mox Tiles LLP
2	37	Copy of Certificate of Incorporation of M/s. Mox Tiles LLP
3	38	Original authority letter / resolution of M/s. Mox Tiles LLP authorizing Mr. Lalit Bhanjibhai Aervadiya
4	39	Copy of E-Way Bill No. 6411 4965 4035, Dated - 06/11/2019
5	40	Copy of Invoice No. GSTT/720, Dated 06/11/2019
6	41	Original Cheque No. 026947 of Central Bank of India, Dated 16/01/2020.
7	42	Original Return memo of Cheque no. 026947, Dated 17/01/2020.
8	43	Original Legal Notice U/s. 138 of N. I. Act, Dated 02/02/2020.
9	44	Original RPAD Postal Receipts, Dated 05/02/2020
10	45	Copy of postal tracking report
11	46	Copy of postal tracking report
12	47	Original cancelled Cheque No. 000332 of Bank of Baroda

[4] The record reveals that bailable warrants were issued against the accused on 08.07.2022 and 03.10.2022, pursuant to which the accused appeared before the court through his learned advocate, and the plea of the accused was recorded under Section 251 of the Code of Criminal Procedure, 1973 vide Exhibit 20, wherein the accused pleaded not guilty and claimed trial.

However, it is pertinent to note that in support of his defense the accused neither produced any documentary evidence nor remained present before this court for cross-examination of the complainant, and despite granting sufficient opportunities, the accused failed to avail the same, and therefore, by order (Ex.34) dated 25.2.2025, this court closed the right of the accused to cross-examining the complainant. **However, despite being afforded sufficient opportunities, the accused failed to remain present** therefore vide order below Ex.35 further statement right of the accused u/s 313 was closed .

[5] Thereafter, the complainant side advanced written argument, which have been duly considered by this court. **However, despite being afforded sufficient opportunities, the accused failed to advance any arguments in support of his defense.** Therefore, the right of the accused to address arguments was closed. In view of the evidence brought on record and the submissions advanced on behalf of the complainant, the following points arise for determination in the present case.

[6] **-: <u>Issues</u> :-**

(1) Whether the complainant proves that the accused has committed an offence punishable under Section 138 of the Negotiable Instruments Act, 1881?

(2**)** What order?

[6.1] My findings to the above issues are as under :

(1) In Negative.

(2) As per final order.

-: <u>Reasons</u> :-

[7] I have considered the submissions of the complainant-side, perused the record. before proceed futher it is necessary to consider provision of section 138 of N.I. Act:-

> **Section 138. Dishonour of cheque for insufficiency, etc., of funds in the account.**
>
> Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless--
>
> (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
>
> **(b)** the payee or the holder in due course of the cheque, as the case may be, **makes a demand for the payment of the said amount of money by giving a notice;** in writing, to the drawer of the cheque, [within thirty days] of the

receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.-- For the purposes of this section, debt of other liability means a legally enforceable debt or other liability.

[8] The constituent elements of an offence u/s 138 N.I. Act are well laid out, in the section itself as well as through various pronouncements of the Hon'ble superior courts.The Hon'ble Apex Court summed them up in judgment,Himanshu v. B. Shivamurthy (2019) 3 SCC 797 Held as under:-

" The first condition is that the cheque ought to have been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. The second condition is that the payee or the holder in due course of the cheque, as the case may be, ought to make a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. The third condition is that the drawer of such a cheque should have failed to make payment of the said amount of money to the payee or as

> the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice. It is only upon the satisfaction of all the three conditions mentioned above and enumerated under the proviso to Section 138 as clauses (a), (b) and (c) thereof that an offence under Section 138 can be said to have been committed by the person issuing the cheque."

[9] As can be seen above, the law is fairly straight forward to comprehend with regards the ingredients of Section 138 NI Act. As regard to limitation to file this complaint, it is clear from Ex.41 that when the complainant presented the cheque in question to its banker within three months from the date of said cheque, said cheque came to be dishonoured with bank as " Fund Insufficient" and that when the complainant has issued statutory notice U/s.138 of N.I. Act (within 30 days from the date of intimation of dishonour of said cheque) to the accused by registered post calling upon the accused to pay within 15 days from the date of receipt of said notice, said notice came to be served(Ex.45 & 46) on the accused on Dt.18/02/2020. Hence complainant has sufficiently proved service of statutory notice on the accused.

[10] Perusal of the record would show that the complainant had sent the legal notice to the accused at 32, Nagpur road, Chandangaon Sarra, Chindwara, Madhya Pradesh. There is nothing on record to show that the accused never resided on the said address. Law has been settled that once it has been shown that the notice was sent at correct address of the accused, the defence that accused did not receive the notice is not maintainable. In Present case Accused has appeared after receiving Process on same address. No submission was made at that time that the address mentioned in the complaint is not the address of the accused. Once it is proved that the complainant had issued the legal notice at correct address of the accused, his duty comes to an end.

[11] In the present case, Ex. 41 Cheque amount is RS.2,73,480/- but in Ex. 43 legal notice the demand is made for Rs. 2,76,352/-. The relevant portion of legal notice is as under:-

> *"Under the circumstances, we call upon you to pay INR 2,76,352.00(Rupees Two Lac Seventy Six Thousand Three Hundred Fifty Two only) within a period of Fisteen (15) days from the date of receipt of this notice, failing which my client will be constrained to take legal action against you in a court of law for an offence punishable under Section 138 of Negotiable Instrument Act for which you will be liable for all costs and consequences."*

[12] Considering above demand in notice, it is necessary to consider the recent Judgment of Hon'ble Supreme Court of India in Kaveri Plastics vs Mahdoom Bawa Bahrudeen Noorul , SPECIAL LEAVE PETITION (CRL.) NOS. 11184-11185/2024 on 19 September, 2025

" 8. From the afore-stated reiterative pronouncements and the principles propounded by the courts, the position of law that emerges is that the notice demanding the payment of the amount covered by the dishonoured cheque is one of the main ingredients of the offence under Section 138 of the NI Act. In the event of the main ingredient not being satisfied on account of discrepancy in the amount of cheque and one mentioned in the notice, all proceedings under Section 138 of the NI Act would fall flat as bad in law. The notice to be issued under Proviso (b) to Section 138 of the Act, must mention the same amount for which the cheque was issued. It is mandatory that the demand in the statutory notice has to be the very amount of the cheque. After mentioning the exact cheque amount, the sender of the service may claim in the notice amounts such as legal charges, notice charges, interest and such other additional amounts, provided the cheque amount is specified to be demanded for payment.

8.1 A failure in above regard, namely when the cheque amount is not mentioned in the Proviso (b) notice or the amount different than the actual cheque amount is mentioned, in the notice, such notice would stand invalid in eye of law. The notice in terms of Proviso (b) being a provision in penal statute and a condition for the offence, it has to be precise while mentioning of the amount of the cheque which is dishonoured. Even if the cheque details are mentioned in the notice but corresponding amount of cheque is not correctly mentioned, it would not bring in law the validity for such notice. Here the principle of reading of notice as a whole is inapplicable and irrelevant. Any elasticity cannot be adopted in the interpretation. It has to be given technical interpretation.

8.2 **The condition of notice under Proviso (b) is required to be complied with meticulously. Even typographical error can be no defence.** The error even if typographical, would be fatal to the legality of notice, given the need for strict mandatory compliance. And in the facts of the present case, the explanation that mentioning of wrong amount in the cheque was in the nature of typographical or inadvertent error could hardly be accepted, for, the so called mistake occurred and recurred in both the notices dated 08.06.2012 and 14.09.2012.

9. **When the provision is penal and the offence is technical, there is no escape from holding that the 'said amount' in proviso (b) cannot be the amount other than mentioned in the cheque in question for dishonour of which the notice is received, nor the mentioning of omnibus amount in the notice would fulfil the requirement.** It has to be held that in order to make a valid notice under the Proviso (b) to Section 138 of the NI Act, it is mandatory that 'said amount' to be mentioned therein is the very amount of cheque, and none other."

[13] In the notice, demand has to be made for the "said amount" i.e. cheque amount. If no such demand is made the notice no doubt would fall short of its legal requirement. The present complaint is not maintainable as the notice issued by the complainant is not a valid notice in the eyes of law. In the legal notice the complainant has claimed an amount of Rs. *2,76,352/-* from the accused. As per law, the complainant cannot claim more than the amount for which the drawer of the chqeue is liable. As per Section 138 of the Act in proviso (b) lays down that the demand has to be made in writing by giving a notice for the payment of the chqeue amount. As stated above in the present case, the complainant, by way of the abovesaid notice, had demanded Rupees *2,76,352/-* from the accused. The amount claimed by the accused is more than the amount of the Cheque liability of the accused. As per law, the complainant cannot make a demand for an amount more than the chqeue amount i.e RS.2,73,480/-. In such situation the notice sent by the complainant to the accused under Section 138 NI Act is not a valid notice in the eyes of law. The complaint is therefore not maintainable against the accused.In the light of discussion herein above, I hold that the complaint is not maintainable as the legal notice sent by the complainant to accused demanding the amount is not a valid notice in the eyes of law. Hence I answered the Issue no 1 in negative and pass the following the final order.

F I N A L   O R D E R

(1) The Accused **Mr. Baban Paradkar Proprietor of Pardkar Tiles & Sanitary**,32 Nagpur Road, Chandangaon Sarra, Chindwara - 480 001 Madhya Pradesh, is acquitted under section 255[1] of Code of Criminal Procedure, 1973, for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881

(2) Bail bond if any stands canceled.

(3) Accused are directed to produce fresh bail bond under section 437 (a), to remain present before the appealed court, if any appeal is filed against the said judgment.

Pronounced and signed in the open Court today on this 11th day of March, 2026 at Morbi.

Date : 11/03/2026

Place : M o r b i

(Smt. Chandni Yuvrajsinh Jadeja)
4th Additional Senior Civil Judge &
Additional Chief Judicial Magistrate
M o r b i
U. I. C. No. GJ-01345

/HJK/