

Received on: - 23/05/2025  
Registered on: - 23/05/2025  
Decided on: - 07/04/2026  
Duration: - YY- MM- DD

IN THE COURT OF 2<sup>nd</sup> ADDITIONAL JUDICIAL MAGISTRATE,  
PANCHMAHAL AT GODHRA.

Criminal Case No.1915/2025

Exhibit - 18

Complainant : Owner of Lala Auto Associate  
Sujela Imtiyaz Abdulraheman  
Age :37, occupation: business  
Add.: -Lala Auto Garage, Polan bajar,  
Godhra, Dist.Panchmahal.

VERSUS

Accused : Luhaniya Nileshbhai Meghrajbhai  
Add. Luhar Fadiyu, SRP ground, Lunavada  
road, Ta.Godhra, Dist. Panchmahal.

SUBJECT: COMPLAINT UNDER SECTION-138 OF NEGOTIABLE  
INSTRUMENTS ACT, 1881

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APPEARANCES:

1. MR. J.A. Shaikh Ld. Advocate for Complainant.
  2. MR. C.J. Parmar Ld. Advocate for Accused.
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-:: J U D G M E N T ::-

1. The present complaint is filed by complainant against accused under section-138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as 'the N.I. Act').
2. The brief facts emerging from the complainant's complaint is as under: -

- 2.1. It is case of complainant that the complainant is doing business of sale and purchase of vehicle in the name of Lala Auto Garage and also doing vehicle repairing. It is case of complainant that the accused decided to purchase one Honda active from complainant and the sale price was decide to the tune of Rs.39,000/-. It is case of complainant that the accused gave Rs.16,000/- in cash and promise to pay the remaining amount of Rs.23,000/- till 29/11/2024 and if accused fails to pay the same then the amount is to considered as Rs.25,000/-.
- 2.2. It is say of complainant that accused did not pay the remaining amount hence the complainant made demand to accused on 29/11/2024 and to pay this outstanding amount the accused issued cheque bearing no. 686944 dated 27/02/2025 amounting to Rs. 25,000/- of his account in State Bank of India, Bhuravav branch, and told to the complainant that on deposit of the cheque, complainant will get the amount.
- 2.3. It is say of complainant that on 03/04/2025 the complainant deposited the cheque in his bank account in The Godhra Urban Co. Op. Bank Ltd. Godhra branch, however the cheque returned with the reason "funds insufficient" on 04/04/2025.
- 2.4. Therefore complainant, through his advocate sent a demand notice to accused on 16/04/2025 by RPAD and the same was served upon accused on

17/04/2025. That accused did not repay the amount and therefore upon failure of accused for repayment of amount, complainant has lodged present complaint under section 138 of N.I. Act.

3. That upon filing of the complaint, considering the complaint, documents and affidavit u/s 145 of the N.I. Act, cognizance was taken and summons was issued against accused under Section 227 of Bharatiya Nagrik Suraksha Sanhita,2023 for the offence under section-138 of the N. I. Act. thereafter the accused appeared before this Court. That after compliance of section-230 of Bharatiya Nagrik Suraksha Sanhita,2023, plea came to be recorded at Exh.-07 wherein the accused pleaded not guilty and claimed to defend the matter. Then-after the matter was posted for the complainant's evidence.
4. That to prove his case, the complainant produced and relied upon the following oral and documentary evidence produced on record.

Oral Evidence

Sr. No.	Description	Exh.
1.	Affidavit in the form of examination - in - chief of the complainant	4

Documentary Evidence

Sr. No.	Description of Document	Exh.
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1.	Original cheque bearing no. 686944	10
2.	Original return memo	11
3.	Statutory demand notice	12
4.	Original RPAD postal slip	13
5.	Tracking report	14

Despite sufficient opportunity given to accused, yet the accused did not remain present for cross examination of complainant and therefore right of accused for cross-examination was closed vide order below Ex.09. Thereafter complainant tendered the closing purshish vide Exhibit-15. The preliminary statement of accused was recorded at the time of recording of plea, however thereafter due to absence of accused, the further statement of accused under Section 351 Bharatiya Nagrik Suraksha Sanhita,2023 is closed vide order passed below Ex.16 and thereafter the matter was posted for the final hearing.

5. Arguments by both side: -

5.1 Arguments on behalf of complainant.

The Ld. Advocate for complainant has argued that the accused has borrowed amount and failed to pay the same as mentioned in complaint. notice is served and the accused has failed to raise any defense and hence requested to allow present complaint.

5.2 Arguments on behalf of accused

Accused has remained absent on the date of hearing and hence right of accused for final arguments was also closed vide order passed below Ex.17.

6. In this case, it is important to observe that absenteeism of accused from criminal proceedings is major obstacle which is put in between Court and speedy disposal of the case. Inordinate delays not only cause hardship to the parties, loss of critical evidence and compelling the victim to succumb midway, but they also result in the loss of public confidence in the criminal justice system. A close examination of the delays can reveal a pattern of blatant misuse of the provisions by the accused person to delay and scuttle criminal trials. That in this case it appears that accused is not interested in further prosecuting this case. Therefore trial of this complaint proceeded further in the absence of accused in accordance with the ratio laid down by Hon'ble Delhi High Court in case of *Ambica Plastopack Pvt Ltd & Anr vs State & Anrs* CRL.M.C. No. 2698 of 2011, Cri. M.A. Nos.9619 of 2011&1468 of 2013) (2013 Supreme(Del) 1447).
7. After having all heed to evidence produced on record and arguments advanced, following issues arise before me for judicial decision of case.

A. Whether the complainant proves beyond all reasonable doubt that the accused had issued him cheque outstanding amount the accused issued cheque bearing no. 686944 dated 27/02/2025 amounting to Rs. 25,000/- of his account in State Bank of India, Bhuravav branch, to discharge his legal debt or legal liability and same was dishonored with endorsement of "funds Insufficient" on 04/04/2025 and despite receipt of demand notice and accused did

not make payment of the cheque amount and thus they have committed offence under section-138 of N.I.Act?

B. What order?

8. My answers to the above issues are as under: -
- a) In Positive.
  - b) As per final order.

Reasons.

9. My reasons for above-mentioned answers are as under. Since both issues occupies reason based on same set of evidence, I propose to decide them analogously. Before adverting to appreciation of evidence it is important to have a look at settled principles in cases filed under section-138 of the N.I.Act.
10. In cases filed under section 138 of Negotiable Instrument Act the onus to a great extent lies on the accused as there are presumptions provided in the Act which favours the complainant. That the main presumptions are provided in Section-118 & 139 of N.I. Act. However, these presumptions are rebuttable by accused by leading reasonable explanation or evidence on record. In case of **K.N.Beena reported as AIR 2001 2895,** Hon'ble Supreme Court held that, "in complaints under section 138 of N.I. Act the court has to presume that cheque had been issued for a debt or a liability. This presumption is rebuttable. However, the burden of proving that cheque had not been issued for debt or a liability is on accused."

11. Before advertng to the appreciation of evidence it would be germane to refer herein judgment of *N.Harihara Krishnan Vs. J.Thomas reported in AIR 2017 SC 4125*, in which Hon'ble Apex Court has enunciated necessary ingredients for attracting penal provisions under section-138 in para. 23 as under.

23."Obviously such complaints must contain the factual allegations constituting each of the ingredients of the offence under Section 138. Those ingredients are:

(1) that a person drew a cheque on an account maintained by him with the banker; (2) that such a cheque when presented to the bank is returned by the bank unpaid; (3) that such a cheque was presented to the bank within a period of six months from the date it was drawn or within the period of its validity whichever is earlier;

(4) that the payee demanded in writing from the drawer of the cheque the payment of the amount of money due under the cheque to payee; and

(5) such a notice of payment is made within a period of 30 days from the date of the receipt of the information by the payee from the bank regarding the return of the cheque as unpaid."

12. Thus, it can be said that to prove the commission and successful prosecution of an offence under Section-138 of the N.I.Act, the following ingredients are required to be proved:

- A. Cheque was drawn by the accused on a bank account maintained by him.
- B. Cheque was issued in favour of the complainant in discharge of legal liability.
- C. Cheque was returned for want of sufficient funds/ arrangement exceeded upon presentation.
- D. Cheque was presented during the period of its validity.
- E. A demand notice is sent by the complainant to the accused within 30 days of receipt of information from the bank regarding dishonour of the cheque.
- F. Notwithstanding the receipt of the demand notice, the accused fails to make payment of the cheque amount within 15 days.

13. It is well settled principle that accused is not bound to step into the witness box to depose as a witness to rebut the said presumptions. Accused can rebut these presumptions by cross-examination of the complainant and his witness or by bringing some material and some circumstances regarding facts of the case on record.

14. After keeping in mind above principle, I have gone through the evidence as to find out whether accused had rebutted the presumption that there was no any legal debt or liability?. In present case, accused has not entered into witness box, neither he has led any evidence, therefore while deciding whether accused has rebutted the presumption or not, court has to rely only upon evidence of complainant.

15. The complainant has submitted his examination in chief by way of affidavit vide Exh.04, wherein he has affirmed to the contents of complaint. As the complainant was not cross-examined by the accused, it is to be seen that whether the ingredients of Section 138 NI Act are fulfilled by complainant or not. It is evident that nothing is rebutted by the accused which infers the guilt of the accused. Therefore, as per the presumption under NI Act, it is to be presumed that the cheque was given with all information duly filled. The burden to rebut the said issue lies on the accused. No cogent evidence is led by accused to prove anything contrary about cheque. Thus, this Court is of the view that burden is not discharged by accused and hence it can be presumed that cheque was given by accused to complainant for discharge of legal debt.

16. Moving ahead with the appreciation of evidence for rest of the requisite under Section 138 of NI Act, it transpires that the cheque was deposited by the complainant within three months as required by the NI Act. The said cheque was dishonored and returned. The relevant documents i.e. cheque and return memo are produced vide exhibits- 10 & 11 which are not contested by the defense and thus making them admissible in evidence. Moreover, the complainant had demanded for the payment of the said amount by giving notice dated 11.04.2025 which is produced vide exhibit-12. That the notice sent to the accused is served on 17/04/2025 and original RPAD slip and

tracking report are at Ex.13 and 14. It is evident that the said payment was not made by the accused within 15 days of the receipt of notice and hence it seems that all ingredients of offence under Section 138 of NI Act are duly proved by the complainant. Therefore presumption under Section 139 of the N.I. Act is drawn. That the accused has not contested the documents and the affidavit as mentioned above. Further the accused or their advocate were not present before the court therefore this court has closed his right of cross- examination.

17. At this juncture it is also important to discuss the judgment of Hon'ble Supreme Court in case of M/s. Meters and Instruments Private Limited & Anr Vs. Kanchan Mehta reported as AIR 2017 SC 4594. In this judgment in para.20 it is held that "The accused, who wants to contest the case, must be required to disclose specific defense for such contest. It is open to Court to ask specific questions to the accused at that stage." In this case accused has not disclosed his specific defense. He has merely denied that he has not committed any such offence. Such bald plea has no value in eye of law in cases filed under section-138 of N.I. Act, wherein there are statutory presumptions raised in favour of the complainant.

18. In this case as foundational facts are proved by the complainant, presumption of section-139 starts to run in favour of the complainant and against accused. If accused does not want to lead evidence, then it would mean that he/she has no defense. Thus, it

additionally mean that accused has failed to rebut presumption raised in favour of the complainant. In this case as this Court has discussed earlier accused failed to make challenge to the case of complainant. Thus, all the documentary evidences were left unchallenged.

19. In cases filed under section-138 of N.I. Act, rule of reverse burden comes into play when complainant has established foundational facts of his case. The Hon'ble Supreme Court in case of Triyambk S. Hegde Vs. Sripad reported as 2021(4) R.C.R.430 held thus. "11. From the facts arising in this case and the nature of the rival contentions, the record would disclose that the signature on the documents at Exhibits P-6 and P-2 is not disputed. Exhibit P-2 is the dishonoured cheque based on which the complaint was filed. From the evidence tendered before the JMFC, it is clear that the respondent has not disputed the signature on the cheque. If that be the position, as noted by the courts below a presumption would arise under Section- 139 in favour of the appellant who was the holder of the cheque. Section-139 of the N.I. Act reads as hereunder: - " 139. Presumption in favour of holder - 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." 12. Insofar as the payment of the amount by the appellant in the context of the cheque having been signed by the respondent, the presumption for passing

of the consideration would arise as provided under Section- 118 (a) of N.I. Act which reads as hereunder: - " 118. Presumptions as to negotiable instruments - Until the contrary is proved, the following presumptions shall be made: -(a) 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." Thus, in this very judgement Hon'ble Apex Court held that when signature on cheque is admitted presumption u.s.139 of N.I.Act will be in aid of complainant's case.

20. That in catena of judgments Hon'ble Apex Court as well as Hon'ble Gujarat High Court has held that speedy trial is not only right available to the accused only. But, complainants are also entitled to have speedy trial. When accused appeared before the Court and did not file any application for opening their right to carry out cross-examination of complainant and to lead their evidence, this Court will lean in favour complainant's case and court has closed the right of cross-examination and arguments by accused.

21. For the reason stated above, this Court is of the view that in view of the aforesaid facts and circumstances brought on record, the evidences adduced and the discussion on both the issues, the complainant has established all ingredients as per

section-138 of NI Act and this court finds the accused guilty of the offence punishable under section 138 of NI Act. Answering issue no.(a) in affirmative, the matter is kept for hearing for quantum of sentence.

22. While for accused no-one has chosen to appear before the Court. Repeatedly Hon'ble Supreme Court as well as Hon'ble Gujarat High Court has issued directions to disposed of such type of cases in expeditious manner. In this circumstance it would be not appropriate to delay the case in absence of accused. The Hon'ble Gujarat High Court in case of Sharad J. Savla Vs State of Gujarat reported in 2017(3) G.L.R. 2352 held that judgment of conviction can be pronounced in absence of accused. Hence, I deem it fit to pass following order with respect to issue no. (b).

23. It appears that in cases filed u.s.138 of N.I. Act Maximum punishment which may be inflicted on conviction of offence U/s.138 of the N.I. Act is 2 years or with fine which may extend to twice the amount of cheque or both. In humble opinion of this Court, to sub-serve the object of the enactment, awarding of simple imprisonment of two months is right and correct sentence. Too lenient punishment may make mockery of justice. Too draconian a penalty might not only result in injustice but may be fraught with other ramification which might defeat the very object of enactment. Punishment must not be unjust or too high but at the same time, it should not be so

low which may recedes deter of punishment. The Court, while awarding punishment has to strike balance by keeping fact and circumstances in which offence happened and impact of it on accused as well as society at large.

24. Further-more, Hon'ble Supreme Court as well as Gujarat High Court in catena of judgments has directed all trial Courts to award compensation in cases of N.I. Act invariably. Hence, in light of above-mentioned facts and circumstances, with regard to issue no.B I pass following final order.

**-:: O R D E R ::-**

1. Accused **Luhaniya Nileshbhai Meghrajbhai**, r/o Luhar Fadiyu, SRP ground, Lunavada road, Ta.Godhra, Panchmahal is hereby convicted under Section 278(2) of Bharatiya Nagrik Suraksha Sanhita,2023 for the offence committed under section 138 of NI Act.
2. The accused is hereby sentenced for simple imprisonment of two months.
3. The Accused is hereby directed to pay Rs.25,000/- (Rupees Twenty Five Thousand Only), as compensation to the complainant within 30 days of this order. In default of payment of compensation both the accused to suffer further simple imprisonment of One month.

4.As the accused did not remain present before this Court, a Non Bailable Warrant is to be issued for execution of sentence.

5.In view of judgment of Hon'ble Apex Court in case of Rajesh Ponadda Vs. Satyanarayan Srirangam reported as 2019(1) A.C.J.(SC)478, right of accused to have free copy of this judgment is hereby forfeited.

Order signed & pronounced in open Court on 7<sup>th</sup> day of April, 2026.

Date:07/04/2026  
Godhra

(Aradhana Rachandra Yadav)  
2<sup>nd</sup> Addl.Judicial Magistrate,  
Panchmahal @ Godhra.  
(Judge Code: GJ-01672)