GJRJ020029362025

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IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, AT RAJKOT

Criminal Case No. 2100 / 2025

Exh.

Complainant:-

Shree Shivjyot Credit Cooperative Society Limited

Through its Recovery Manager

Shri Yashbhai Sojitra

Age : Mature, Occupation : Employed,

Address :

Office No.105, Om decora nine square,

Wing-A, Floor-M, Beside Marwadi building,

Nana mava road, Rajkot.

VERSUS

Arvindbhai Keshubhai Vekaria

Age : Adult, Occupation : Employed,

Address:-

Block No.3, Plot No.48, New Gandhinagar society-4,

Mavdi plot, Rajkot.

Subject: Offense Under Section 138 of The Negotiable Instruments Act, 1881

Mr. D. A. Rudakiya, Ld. Advocate for the complainant,

Mr. C. D. Sankaliya, Ld. Advocate for the accused,

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

(1) The present accused faces trial for commission of the offence punishable under Section 138 of the Negotiable Instruments Act. The complainant herein is a credit society, dealing business in financial services based in Rajkot and has been registered under Section-9, Rule-10 of The Gujarat Cooperative Societies Act, 1961-62 and its registration certificate issued by Government of Gujarat. The complainant society has appointed its authorized person through its authority powered by the board of directors and the society is designed to pool savings and provide affordable credit to eligible borrowers mainly with its purpose to promote financial inclusion, encourage thrift (savings) and protect members from high-interest informal moneylenders by offering low-cost loans and other essential financial services. The authorized person who is a recovery manager on behalf of cooperative society has filed this complaint as power of attorney holder and authorized all rights to file, transact on behalf of the complainant society.

1.1) It is the case of the complainant society that the accused had approached the present complainant society with the purpose of borrowings of financial assistance as loan of amount of **Rs. 3,35,000/-** and the complainant disclosed accused about their teams and conditions to provide the said loan after covenanted the accused and had entered into loan agreement vide **Loan Agreement No. V00995**. After executing the said loan, the accused committed default in payment of periodical installment and reminded repeatedly through demand notice and letter were issued to the accused. The accused failed to honor commitments to pay off erstwhile outstanding dues and kept on postpone on one and another pretexts and thereafter, on receipt of such demand notice, the accused issued **cheque vide No. 078527** on dated **10/12/2024** of amount of **Rs. 3,45,000/-** of **Saurashtra Gramin Bank, Mavdi branch, Rajkot.** At the time of issuing the cheque, the accused positively assured complainant society regarding honoring cheque as and when presented.

1.2) That as per direction of the accused, the complainant had presented the said cheque for clearance in their respective registered bank account maintained by them, but the cheque was dishonored and returned unrealised with remarks **"FUNDS INSUFFICIENT"** vide its memo on dated **12/12/2024**. After the dishonored cheque, the complainant informed, reminded and persuaded several times that the cheque has been dishonored and returned by the bank. But, despite assurance neither the accused responded nor taken care of repaying the due amount. Therefore, from entire behavior on part of the accused with respect to the said transaction, the complainant has come to a tacit conclusion that the accused possesses malafide intention with a view to deceiving and cheating knowingly. Therefore, from the entire conduct of the accused, it is clear that intention of the accused seems not appropriate and committed offence under Section 138 of the Negotiable Instruments Act and Section 420 of I.P.C. as well.

1.3) Afterwards, the complainant issued a legal demand notice stating to pay due amount within 15 days under Section 138 of Negotiable Instrument Act to the accused through their Ld. Advocate on dated **18/12/2024** by R.P.A.D. and the said notice was duly served upon the accused on **20/12/2024**. However, the accused did not comply with the notice and failed to make payment of the said dishonored cheque within 15 days. The complainant has not received the cheque amount from the accused till recent date even after sending reminders in form of notice to the accused. Hence, the accused has committed offence u/s 138 of the Negotiable Instrument Act and the complainant has mandatorily compelled to file the present complaint against the accused for deceiving and committing crime in accordance with law.

2) Upon filing of the complaint, the verification of the complainant was recorded on oath under Section 200 of Criminal Procedure Code and thereafter, the present criminal complaint was ordered to be registered and summons was issued upon the accused under Section 204 of Criminal Procedure Code. The said summons was duly served to the accused and appeared before this Court with their Learned Advocate. Thereafter, under the provisions of Section 207 of Cr.P.C., the accused was given copies of all the papers. On confirming that all the papers are being supplied to the accused, the statement (plea/testimony) of the accused was recorded at **Exh. 5** on dated **10/03/2025 ,** wherein the accused had pleaded not guilty and therefore, the case was adjourned for judicial proceedings and others have been passed for the trial as summons case trial. Primary further statement has been recorded in which the accused has stated that all the facts mentioned in the complaint is not true and complainant has given wrong deposition. Furthermore, the accused has stated that he has not borrowed the said loan amount and denied facts as mentioned by the complainant in their application. Additionally, it is stated by the accused in his further statement that he has not conferred any agreement, neither the said cheque has been issued neither dishonored and has been served the legal notice that he has not issued any cheque. The accused has projected itself inculpable and there is no criminal liability in the said loan or in this case. Afterwards, the matter was pending for further judicial proceedings of evidence of the complainant.

3) The matter was often adjourned for cross-examination of the complainant from the accused side, but the matter could not proceed due to the absence of accused so, the matter was kept pending. Subsequently, warrants were issued by the Court often as the accused was absent repeatedly. Therefore, the matter was adjourned for recording of further statement of the accused.

4) Looking to the record on hand, affidavit by **Shri Yashbhai Sojitra** is presented on behalf of the complainant company, as per Board Resolution dated **01/08/2018**.

5) To prove guilt of the accused, the complainant has produced following oral as well as documentary evidence on record.

Oral Evidence

Sr. No.	Particulars	Exh. No.
1	Deposition of **Shri Yashbhai Sojitra,** authorized person on behalf of the complainant	**4**

Documentary Evidence

Sr. No.	Particulars	Exh. No.
1	Registration certificate of the complainant	**7**
2	Authority letter of the complainant authorizing its authorized person	**8**
3	Application form for membership of the accused	**9**
4	Loan application form	**10**
5	Loan deed / Promissory note	**11**
6	Loan account statement of the accused	**12**
7	Dishonored cheque issued by accused to the complainant	**13**
8	Cheque return memo	**14**
9	Legal demand notice to the accused	**15**
10	Registered AD post receipt	**16**
11	Track consignment report	**17**
12	Closing pursis	**27**

(4) After the submission of not producing any evidence by the complainant, the accused has not appeared before the Court to give his further statement. The accused has not adduced any oral evidence in support of his defence. Further statement under Section 313 of Cr.P.C. was not recorded, as the accused remained absconding. It is ordered to dispense

with the recording of further statement. Although, the matter was adjourned for the cross-examination of the complainant from the accused side but the accused has frequently remained absent so the right to cross-examine the complainant from the accused side was also closed and and no further evidence are adduced by the accused vide **Exh. 26** and thereafter, closing pursis was produced vide **Exh. 27**.

4.1) Furthermore, the Ld. Advocate for the complainant has submitted that the complainant has proved his case beyond doubt. It is proved that the accused had borrowed loan from the complainant company and had given the subject cheque for clearance his legal dues / liability of the complainant company. The complainant has proved that the accused had issued the alleged cheque to discharge his legal dues. It has been proved that the cheque was dishonored. Service of legal notice has been proved. The accused was liable to make the payment within stipulated time, however, the notice was served to the accused but the same was refused by the accused and the said notice return with cover. Furthermore, the accused side has not challenged the documents which are produced by the complainant vide **Exh. 7 to 17**. Therefore, the complainant had requested to prosecute and punish the accused to pay the outstanding amount and imprisonment of two years as laid in provisions of Section 138 of Negotiable Instrument Act.

5) **<u>Issues:-</u>**

For the adjudication of the present complaint, following issues are necessary to determine:

1. Whether the complainant proves beyond all reasonable doubts that towards repayment of the due amount, the accused has issued **Cheque No. 078527** of **Saurashtra Gramin Bank** on dated **10/12/2024** in favour of the complainant ?
2. Whether the complainant proves that when the cheque was

presented for collection, it was dishonored and returned for the reason “Funds Insufficient” ?

3. Whether the complainant proves that they had issued legal notice on 20/12/2024 calling upon the accused to clear the cheque amount and the said notice was duly served with tagged as “SERVED”, knowing fully well that there are no sufficient funds in his account to honour the cheque, the accused had issued the cheque and thereby committed an offence made punishable under Section 138 Negotiable Instruments Act ?

4. What Order ?

5.1) My answers to the above points are as under:

1. In Affirmative
2. In Affirmative
3. In Affirmative
4. As per final order

6) **<u>Reasons for the Issue No. 1 & 2 :</u>**

The evidence led by the complainant is duly considered and the same have discussed herein below, but before moving to that it is required to consider for offence u/s 138 NI Act the **necessary ingredients** to be proved by the complainant are : **a)** legal liability / debt towards the complainant and the accused issued a cheque in discharge of the said legal liability/debt. **b)** that the accused was maintaining a bank account for the cheque issued by him. **c)** that the cheque was presented by the complainant within its validity period and the said cheque was dishonored on its presentation. **d)** that the complainant issued legal demand notice within 30 days from the date of dishonor of the cheque and the accused failed to pay within 15 days of receipt of legal demand notice. If the above ingredients are proved then an offence punishable u/s 138 Negotiable Instrument Act is committed.

6.1) *Further it is necessary to consider the ratio laid down i*n case of ***M/s. Kusum Ingots & Alloys Ltd. Vs. M/s. Pennar Peterson Securities Ltd. And Ors.*** **Etc. AIR 2000 SC 954 Hon'ble Supreme Court has held as under:**

On a reading of the provisions of Section 138 NI Act it is clear that the ingredients which are to be satisfied for making out a case under the provision are :

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;

(ii) that 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;

(iii) that cheque is returned by the bank unpaid. either because of the amount of money standing to the credit of the 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 the bank;

(iv) the payee or the holder in due course of the cheque 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice;

If the aforementioned ingredients are satisfied then the person who has drawn the cheque shall be deemed to have committed an offence. In the explanation to the section clarification is made that the phrase "debt or other liability" means a legally enforceable debt or other liability.

6.2) Further it is necessary to refer the ratio laid down in ***The Hon'ble Apex Court in Basalingappa vs. Mudibasappa (2019) 5 SCC 418 has held as under:***

"23. We having noticed the ratio laid down by this Court in the above cases on

Section 118(a) and 139, we now summarise the principles enumerated by this Court in the following manner:

(i). Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

(ii). The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

(iii). To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv). That it is not necessary for the accused to come in the witness box in support of his defence. Section 139 imposed an evidentiary burden and not a persuasive burden.

(v). It is not necessary for the accused to come in the witness box to support his defence."

7) **<u>Evidence and Defence regarding the above ingredients:</u>**

legal liability / debt towards the complainant and the accused issued a cheque in discharge of the said legal debt.:

7.1) The complainant in his deposition on affidavit at Exh. 4, in which the complainant has reiterated and supported the facts stated in the complaint. Therefore, the same have not reproduced herein-below and the complainant has produced some relevant documents in support of his affidavit which are produced vide **Exh. 7 to 17.** So far as the business dealing between the complainant and the accused is concerned, the complainant has stated that the accused has borrowed financial assistance from the complainant company and in service of that, the complainant society provides same to the accused. Thereafter, the accused failed to repay the amount of the said loan to the complainant. Thereafter despite repeatedly demanded the amount by the complainant to the accused and therefore, the accused issued **Cheque No. 078527** of **Saurashtra Gramin Bank** on dated **10/12/2024** after deposition of the said cheque the same was returned with endorsement of 'Funds Insufficient'. Now, at this juncture, it is necessary to look into **Sec. 139 of the Negotiable Instrument Act, 1881,** which provides for **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 in part, of any debt or other liability.

7.2) To rebut the presumption in favour of the complainant, the accused and his Ld. Advocate not remained present for further proceed the case and had not taken any objection against the complaint, so right of cross-examination and arguments have been also closed from the accused side. Furthermore, the accused side has not brought on record any rebuttal evidence to show that the said cheque was not issued by him for legal dues. Therefore, it is not enough to built-up a reasonable and probable defense, in a circumstances that the accused is not at all challenging the paying capacity of the complainant. Therefore, merely confronting some questions to the complainant or witness is not enough to believe the defense evidence.

7.3) It is pertinent to note here that, the accused has to try to put up his case by bring fact that the complainant has misused his cheque which was issued not discharge of his legal liability. But nothing is brought on the record as to when he issued a cheque in question to the complainant for the purpose of payment. It is also not the case of the accused that which amount he has to pay to the complainant. Looking to the record of the case, the legal debt is owed by the accused is crystallized, as the accused purchased material from the complainant hence, the complainant is liable to receive the cheque amount, the accused had issued a **Cheque No. 078527** of **Saurashtra Gramin Bank** on dated **10/12/2024** to the complainant. Further the accused has not produced any oral as well as documentary evidence, which proves the fact that this is not a legal debt.

7.4) As discussed above, this court is of view that the complainant had succeeded and proving the legal debt on accused and the accused has not at all denied his signature on the cheque, on the contrary he has admitted the legal debt owed by him. Further more, looking to the entire record from which, it transpires that the said cheque was issued by the accused for clearing his legal dues of the complainant and the said cheque was dishonored with an endorsement 'Funds Insufficient'. Therefore, in view of the above discussion, the complainant has succeeded in proving the fact that the cheque in-question was issued by the accused in discharge of a legal liability towards the complainant.

(8) Accused is maintaining a bank account for the cheques issued by him.

So far as this ingredient is concerned, no dispute is raised by the accused, rather it is admitted that the cheque was issued by the accused and also not denied his signature on the cheque. Further, considering the facts of the case on hand, it appears that, the accused is having account of **Saurashtra Gramin Bank** because the accused side has not resist any objection that it is not having such above mentioned account in his name. Therefore, this ingredient is satisfied on the record.

(9) The said cheques was presented by the complainant within its validity period and it was dishonored on its presentation.

Looking to the documentary evidence of the complainant, original cheque is produced at **Exh-13**, the Bank Return Memo is produced at **Exh-14**, which states that the cheque in-question was returned respectively, with a reason for return noted is 'FUND INSUFFICIENT'. The complainant has also stated the same in his deposition. Furthermore, as discussed above, the said disputed cheque was presented by complainant in his bank which was also dishonored with an endorsement 'Funds Insufficient'. If the complainant had not presented the said cheque in his bank within prescribed time limit from the date of the cheque than the bank would not have accepted. Thus, these documents sufficiently proves the above requirement of presentation of cheque in question within its validity period and the same was dishonored on its presentation.

(10) **<u>Issuance of demand notice within 30 days of dishonor of the cheques and failure to pay within 15 days of receipt of the said demand notice.</u>**

Looking to the bank return memo, the cheque was returned on **18/12/2024** and the demand notice was duly served through R.P.A.D. on **20/12/2024**, Postal receipt issued by the Postal Department is produced at **Exh-16** to prove the service of the said demand notice to the accused. To that, by this it appears that the demand notice was sent within 30 days of dishonor of cheque to the accused. Moreover, in the present case, the said notices was served to the accused on **20/12/2024** but the accused had not filed any reply to the demand notice and he has not raised any objection that the notice was not duly executed to him. Moreover, it has not taken any objection that the address mentioned in the demand notice is not correct and he was not residing there at the time of notice was sent. Hence, despite service of the legal notice the accused did not make any payment towards the discharge of his legal debt/liability. In this situation, it is proved that the demand notice was issued within 30 days. After that the accused did not make any payment to the complainant within 15 days of receipt of the said demand notice.

(11) Defence without taking further statement and cross-examination:

The accused intentionally remained absent as well as has evaded the services of the processes/warrants issued by this court. Subsequently, order below Exh-1, this court has also dispensed the recording of further statement u/s. 313 of the Cr.P.C. In the non appearance of accused, adverse inference has to be drawn against him. As such the complainant has proved the alleged guilty of the accused beyond doubt. At the same time, the accused has accepted the existence of legal debt by paying the cheque amount to the complainant. Hence, the accused is liable for conviction.

Since the accused is very well aware about the pendency of the present complaint, he himself choose to remain absent and ready to face the judicial outcome of the present case. In this situation, the accused failed to prove that he act like a prudent, reasonable person and in absence of the same, his defense brought up by the cross-examination cannot be considered as proved.

Thus, the documentary as well as oral evidence lead by the complainant confirms the facts that cheque bearing no. **078527** was issued by the accused and same was returned due to 'Funds Insufficient'. Hence, as per the discussion above, I answer the issue no. 1 and 2 in affirmation.

(12) For issue no. 3 & 4:

I have given my conscious thought and deep consideration to the evidence and material on record. As per my opinion, the offence is well proved against the accused person and hence, the accused person is liable to be convicted as per the above reasons. Further, in the present case, there is no reason which lead this court to conclude that the accused is falsely implicated by the complainant. In such a situation, keeping the seriousness of the offence in mind as well as keeping the object of the Negotiable Instrument Act in consideration, I hold that the complaint against the accused person is duly proved and the accused person is liable to be convicted under Section 138 of the Negotiable Instrument Act.

The matter is kept for hearing on the point of quantum of sentence.

Order pronounced in the open Court today on 1st day of July, 2026.

Sd/-

Date: 01/07/2026
Place: Rajkot

(SUNANDA PRASHANT DULERA)
Chief Judicial Magistrate,
Rajkot.
Judge Code: GJ00887

Hearing on sentence

Looking to the case facts on hand, the adequate opportunity has been given to the accused but he is deliberately not remain present in the case since long time and also the Ld. Advocate for the accused is not remain present to proceed further and not done any oral arguments before the Court against the quantum of sentence.

Whereas the complainant side Ld. Advocate submitted that, accused had not paid the cheque amount within 15 days from the service of demand notice. The cheque was issued in the year 2024, the complainant is entitled for interest of **Rs. 3,45,000/-** from the accused person. It is further submitted that the case has been proved against the accused beyond reasonable doubt and the accused have committed offence under Section 138 of Negotiable Instrument Act. Therefore, requested to punish the accused person according to law.

Considering all the averments, despite knowing all facts about the case, today the accused is knowingly and intentionally remained absent in the case for lingering the matter and avoid the Court proceedings. Taking these things into consideration, this Court has power to pass the judgment of conviction even in the absence of the accused lies with the court hence, to prove this point consider the following judgments **(1.)** ***In case of Sharad Jethabhai Sawala Vs. State of Gujarat reported in G.L.R. 2017 (3) 2353 &*** **(2.)** ***In case of Ishwar Hirabhai Chunara Vs. State of Gujarat reported in Sp. Criminal Application No. 19862/2015 dtd. 14.11.2016 are held that, 'the verdict was pronounced in the absence of the accused and the accused was found guilty'.***

On perusing the record of this case, the accused had issued the alleged cheque for **Rs. 3,45,000/-** on **10/12/2024** in favour of the complainant as the accused borrowed loan amount from the complainant company and the complainant company sanctioned the same to the accused as per order disclosed in the complaint. Hence, the accused was failed to pay the due amount to the complainant company therefore the cheque was issued by the accused for the purpose of outstanding dues which was taken from the complainant company and also the accused as stated to the complainant that, if the said cheque deposited in the bank, the said cheque amount will be deposited into the account. In this situation, The Hon'ble Supreme Court in ***R. Vijayan Vs Baby and Anr. (AIR 2012 SC 528)*** has held that, unless there are special circumstances, in all cases of conviction, uniformly exercise the power to levy fine upto twice the cheque amount (keeping in view the cheque amount and the simple interest thereon at 9% per annum as the reasonable quantum of loss) and direct payment of such amount as compensation. Therefore, considering the facts of this case and going through the judgment of Hon'ble Supreme Court in R Vijyan Supra, if amount mentioned in cheques is paid by accused during the trial then complainant is also entitled for reasonable quantum of loss and for that compensation can be awarded. As in this case cheque was issued in the year **2024**, therefore, this Court decides respective fine is imposed and from that, amount of of **Rs. 3,55,000/-** be awarded to the complainant then it will serve the justice. Accordingly, the accused person is held guilty and convicted for the offence punishable under section 138 of the Negotiable Instrument Act and under Sec. 255(2) of the Cr.P.C. Hence, following order is passed:

- : Order :-

1. In view of section 255(2) of Criminal Procedure Code, accused **Arvindbhai Keshubhai Vekaria,** shall pay amount of **Rs. 3,55,000/- (Three lacs fifty five thousand rupees)** with sentenced to suffer simple imprisonment for a period of One Year. It is hereby ordered to deposit the fine in Court within two months from this order, if default of payment of fine, accused suffer simple imprisonment for Two months.

2. In view of section 357 (1) of the Criminal Procedure Code, the compensation of **Rs. 3,55,000/- (Three lacs fifty five thousand rupees)** be paid to the complainant out of the recovered fine after the period of appeal.

3. Since the accused is absconded, warrant be issued for execution of this order.

4. Copy of this judgment be furnished to the accused free of cost.

Order pronounced in the open Court today on 1st day of July, 2026.

Sd/-

Date: 01/07/2026
Place: Rajkot

(SUNANDA PRASHANT DULERA)
Chief Judicial Magistrate,
Rajkot.
Judge Code: GJ00887