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Presented on Date	**15**	**07**	**2022**
Registered on Date	**15**	**07**	**2022**
Disposed on Date	**02**	**06**	**2026**

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IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE, PRANTIJ

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C.C. No. 1455/2022
Exh.

<u>COMPLAINANT :</u>

Makwana Siddharthsinh Bhavansinh

Age: 30 years, Occupation: Agriculture,

Address: At & Po.: Aminpur,

Ta.: Prantij, Dist.: Sabarkantha.

Versus

<u>ACCUSED:</u>

Parmar Ramsinh Sardarsinh

Age: 40 years, Occupation: Business,

Address : Nishalwalu Faliyu,

At & Po.: Zala Ni Muvadi,

Ta.: Prantij, Dist.: Sabarkantha.

Subject: The Offense Punishable under Section 138 of Negotiable Instrument Act, 1882.

<u>Appearance :-</u>

Ld. Ad. Mr. N. S. Baloch for the complainant.

Ld. Ad. Mr. M. D. Zala for the accused.

:: JUDGMENT ::

1. Brief facts of the present case is that the complainant and the accused were good friends hene the complainant and the accused used to borrow money from each other as needed and return it on time. That the accused had demanded borrowed amount of Rs.1,20,000/- from the complainant in the year 2021 for paying his motorcyle loan and personal house work. Hence, the complainant had given amount of Rs.1,20,000/- to the accused on 29/07/2021 in presence of his family members which was accepted by the accused and the accused had given promised and assurance to return it within six months. That on 02/06/2022, the accused had given cash amount of Rs.20,000/- to the complainant and the accused had given cheque of Rs. 1,00,000/- of Canara Bank, Prantij branch bearing Cheque No. 023487, dated 02.06.2022 and promised that it would be realized on presentation. On presentation, the cheque was dishonoured and returned with the remarks of “Account Blocked” dated 04.06.2022. The complainant sent notice to the accused via his Ld. Advocate on 15/06/2022 which was duly served on 17/06/2022. So far, the accused has made no attempt to pay his due amount. Hence, present criminal case has been filed against the accused under Section 138 of the Negotiable Instruments Act.

2. The Court took cognizance of the offense on the basis of the complaint filed by the complainant under Section-142 of Negotiable Instrument Act and after satisfying about the prima facie case against the accused, issued summons against the accused under Section-204 of the Code of Criminal Procedure in order to answer the charge under Section-138 of Negotiable Instrument Act. In pursuance of the summons issued against the accused, he appeared before the court and he has been provided the copies of all the documents and then after his plea has been recorded as per the Section-251 of the Cr.P.C. The accused pleaded not guilty and claims for trial so that the trial has proceeded.

3. Evidence of Complainant:

In support of the case complainant has produce oral as well as documentary evidence:

4. Oral Evidence:

Sr. No.	Particulars	Ex.
1.	Affidavit of the Complainant	4

5. Documentary Evidence:

Sr. No.	Particulars	Ex.
1	Original Cheque	10
2	Return Memo dated 04.06.2022	11
3	Notice	12
4	R.P.A.D. Receipt	13
5	Statement of Post	14

6. Evidence of Accused:

Oral Evidence:

Sr. No.	Particulars	Ex.
1.	Deposition of Sahilkumar Shaileshji Makwana	36

7. Submission of Arguments by both the parties:

Heard the arguments of Ld. Advocates for the respective parties in detail.

8. Following points are framed for determination of this case :

1. Whether complainant proves that the complainant has finance to the accused and the accused issued Cheque of **Rs. 1,00,000/-** which was dishonored on the ground of **"Account Blocked" dated 02.06.2022** and the complainant issued legal notice demanding the said amount within the time and accused failed to pay the amount and thereby he has committed the crime under Section 138 of NI Act ?

2. What order ?

9. My findings for the above issued are as follows :

1. In negative.

2. As per the final order.

:: REASONS ::

10. Before determination of this case, it would be necessary to see the ingredients of the offense under sec 138 of N.I. Act.

History of Dishonour cheque:

Dishonor of cheque which originally gave a cause of action to file a civil suit, was criminalized in the year 1988, with the insertion of chapter XVII in the Negotiable Instrument Act, 1881. Cheque dishonor followed by default in payment after a demand notice, became punishable under section 138 with imprisonment The Court or fine which may extend to twice the amount of cheque or both. The legislative intent behind the above mentioned amendment was to ensure faith in the efficacy of banking operations and credibility in transacting business on cheques. It was to provide a strong criminal remedy in order to deter the high incidence of dishonor of cheques and ensure compensation to the complainant. Subsequent amendments in the act and the pronouncements of this court reflect that it was always perceived that these cases would be disposed off speedily so as to preserve the object of criminalisation of the act.

Object & Purpose of Negotiable Instrument Act:

The object of this amendment Act is:

1. To regulate the growing business,trade, commerce, and Industrial Activities.

2. To Promote greater vigilance in financial matters.

3. To safeguard the faith of creditors in drawer of cheque.

Important Ingredients of Section:138

A mere presentation of delivery of cheque by the accused would not amount to acceptance of any debt or liability. Complainant has to show that cheque was issued for any existing debt or liability. Thus, if Cheque is issued by way of gift and its gets dishonored offense under Sec. 138 of the will not be attracted. These provision deal with the procedure, trial, cognizance, defense and punishment relating to offenses of dishonor of cheques. Dishonour of cheque is by itself not an offense u/s 138 of Negotiable Instruments Act. To come within the ambit of offense in such a case following elements have to be fulfilled.

1. Drawing the cheque.
2. Presentation of the cheque to the bank.
3. Returning the cheque unpaid by the drawee Bank.
4. Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount.
5. Failure of the drawer to make payment within 15 days of the receipt of notice.

The offense of dishonour of cheque has been made cognizable only on a written complaint by the payee or holder in due course. Section 138 to 147 of Negotiable Instrument act as inserted by the amendment act 2002, further lay down a kind of complete code for trial of offenses under the Negotiable Instrument Act. Thus, If the provision of Negotiable Instruments act specifically Sec 138 to 147 are followed strictly by the courts, at a large number of such cases will reach their final fate within a fair and reasonable time. The Provisions has been incorporated with a view to encourage the culture of use of cheque and enhancing credibility of the Instrument.

M/S Dalmia Cement (Bharat) Ltd. V/s. M/s. Galaxy Traders & Agencies Ltd. & Ors. 2001 6 SCC 463 Supreme Court of India Para 3

The act was enacted and section 138 thereof incorporated with specified object of making a special provision by incorporating a strict liability so far as the cheque, a negotiable instrument is concerned. The law relating to negotiable Instrument is the law of commercial world legislated to facilitate the activities in trade and commerce making a provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily passable from one person to another. In the absence of such instruments, including a cheque, the trade and commerce activities, in the present day would, are likely to be adversely affected as it is impracticable for the trading community to carry on with it the bulk of currency in force. The negotiable Instruments are in fact the instruments of credit being convertible on account of legality of being negotiated and are easily passable from one hand to another.

To achieve the objective of the Act, the legislature has in its wisdom, though it proper to make such provisions in the act for conferring such privileges to the mercantile instruments contemplated under it and provide special penalties and procedure in the case the obligations under the instrument are not discharged. The law relating to the act are, therefore required to be interpreted in the light of the objects intended to be achieved by it despite there being deviations from the general law and procedure provided for the redressal of the grievances to the litigants. Efforts to defeat the objectives of law by resorting to innovative measures and the methods are to be discouraged, As it may affect the commercial and mercantile activities in a smooth and healthy manner, ultimately affecting the economy of the country.

Para 4: Sec 138 of the act makes a civil transaction to be an offense by fiction of law. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any account of money to another person is returned by the bank unpaid either because of the amount of money standing to the credit of that person being insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account, such person , subject to the other conditions, shall be deemed to have committed an offense under the section and be punished.

11. Before determination of this case, it would be necessary to see the ingredients of the offense under sec 138 of N.I. Act.

Section 138 : Dishonour of cheque for Insufficiency;

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 offense and shall without prejudice to any other provision of this Act, be punished with imprisonment for or with the fine which may extend to twice the amount of the cheque or with both.

- The cheque has been presented to the bank within a period of three months from the date on which it is drawn or within thev period of its validity whichever is earlier.
- The Payee or the holder in due course of the cheque, as the case be demand for the payment of the said amount of money giving a notice in writing to the drawer of the cheque.
- 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.

12. In Addition, in prosecution under Sec-138 of NI Act, the court shall presume certain facts against accused upon proof of issuance of cheque by the accused to the complainant in view of Section:118 and Section 138 of NI Act. However such presumptions are not conclusive in nature but they are rebuttable and it is for the accused to rebut such presumption. The standard of proof for rebutting the presumption is that of preponderance of probabilities. 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 defense. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by the reference to the circumstances upon which they rely. The said presumption can also be rebutted by the accused from the admission made by the complainant in his cross examination which creates doubt on the prosecution story. It is also well settled that it is not necessary for the accused to come in the witness box in support of his defense in all the cases. It is also well settled that sec-139 imposed an evidentiary burden and a persuasive burden. So it can legitimately be the said that whether presumption stood rebutted or not would depend upon the facts and circumstances of each case. Furthermore it is also well settled that if the accused is not able to rebut the said presumption raised against him, he can be convicted only on the basis of such presumption raised against him, he can be convicted only on the basis of such presumption. And if the accused is able to rebut the presumption, then the onus is again shifted to the complainant to prove his case beyond all reasonable doubt.

13. That the complainant was cross-examined by the learned advocate Mr. M. D. Zala for the accused vide Exh.4 and during the cross-examination, the following facts come to the fore;
He work in a fertilizer shop. His working hours are from 8 a.m. to 6 p.m. He has been working in a fertilizer shop for two-three years. This job is a labour job and he earn Rs.15,000/- per month from it. When you travel to Talod by motorcycle, and also spend on pan masala and meals, approximately how much do you spend per month on these expenses ? He has not calculated such expenses. He go to work as a laborer from 8 a.m., so he does not get any other time. He is the only earner in his house. The monthly maintenance expense of his family is around Rs.4,500/-. He does not do farming. He voluntarily states that his family members take care of farming. His age is currently around 30

years. There is a big difference between his age and the age of the present accused. The name of the fertilizer shop he work in at Talod and who owns it has not been mentioned in his complaint, affidavit or notice, nor has he produced any documentary evidence to show this fact. Is your monthly income Rs.15,000/- or less ? It may be one or two thousand less or more. If you want to go to Talod, you have to go through Pallachar, Vadrad and this road is a short one, most of the people of his village go through that road to go to Talod. If he want to go to Talod from Bhankhariya via the railway station, the distance increases by about a kilometer. He has not stated in his complaint, affidavit or notice of the accused in this case, the exact name under which the taluka panchayat runs a tea-snack lorry in front of the railway station, nor has he submitted any documentary evidence to show that fact. He has not stated in his complaint, affidavit or notice of the accused in the present case that he has known the accused in the present case for how many years. The accused in the present case is not your friend ? He is relatives and is like friends. He know Mamtaben, she is his sister. Mamtaben's mother has filed a case in the present Court to get money. The acquaintance with the accused in the present case was due to his sister Mamtaben. Mamtaben used to come with him to the Court in the present case. He is not aware that Mamtaben has many cheques as security. Mamtaben keeps cattle at her house and his brother-in-law works in Uttar Pradesh. He comes home every 6 to 12 months. The cheque produced vide Exh.10 was given to him by Mamtaben. He has not mentioned in his complaint, affidavit or notice on which date, place, time and in whose presence the money was given to the accused in the year 2019. He has not submitted any documentary evidence regarding the amount of Rs.1,20,000/- in the year 2021. He has not mentioned any fact in his complaint, affidavit or notice that he brought this amount from his sister or brother-in-law or that it was his savings. He has not produced any documentary evidence regarding the accused giving him a return of Rs.20,000/-. He is little weak in reading and writing in Gujarati. By showing complaint vide Exh.1, he has stated that cheque No.02348 is mentioned in the complaint and the present complaint is filed for the same cheque number. The present complaint has not been filed for any other number than the cheque No.02348 as mentioned in the present complaint. Mamtaben's land has been sold. She got money by selling the land and form this money, she used to lend to some people and also give it to some people at 2% and 3% interest. Mamtaben also used to take blank signed cheques as security and surety for this money. Mamtaben has not filed any complaint in the Prantij Court. When transaction is made for an amount exceeding Rs.20,000/-, a written record has to be taken. No written record has been executed regarding the payment of money to the present accused nor has he produced any such record in the Court. There was no financial transaction between him and the present accused? Only Rs.20,000/- was transacted. He has not stated in his complaint, affidavit or notice whether he had any financial transaction with the present accused before this so-called transaction. The signature letters and the body letters of cheque vide Exh.10 are written with different pens and are different. He has not produced any documentary evidence with his signature regarding the fact that the notice vide Exh.12 was issued to the accused.

14. Sahilkumar Shaileshji Makwana has been examined vide Exh.36 by the learned advocate Mr. M. D. Zala for the accused and during his examination, the following facts come to the fore; He doesn't know the complainant of the present case. Mamtaben is the complainant's sister. He know the accused four years ago when he used to sit and drink tea at his hotel. When he needed money, he and the accused took money from Mamtaben. At that time, he took Rs.45,000/- from Mamtaben, as security. He gave her a blank signed cheque of IDFC Bank, Himmatnagar branch and took cash there in the presence of the accused and Kajalben. At that time, the accused Ramsinh gave Mamtaben a blank signed cheque of Canara Bank, Prantij branch, its number was 023487. Ramsinh gave this cheque as security. The disputed cheque vide Exh.10 is the same as the one given to her as security. He doesn't remember the number of the cheque he gave as it has been a long time now. He and Ramsinh took money from Mamtaben at 10% interest. The present accused Ramsinh took Rs.20,000/- from Mamtaben and Ramsinh returned this money to Mamtaben in his presence. After he returned the money to Mamtaben, she did not return the cheques and when asked, she said that they were lying at Talod. These cheques have not been returned to them till today. As Mamtaben is not returning the cheques to them, they have filed a written complaint against Mamtaben at the Prantij Police Station. After filing the complaint, the police recorded his and Mamtaben's statements. In her statement to the police, Mamtaben stated the following facts,"She has to take Rs.1,20,000/- and she has filed a case in the Prantij Court against the cheque amount of Rs.2,00,000/-, the case number is CC No.2538/2023. Mamtaben has misused his and Ramsinh's cheques. The present complaint is false.

Sahilkumar Shaileshji Makwana has been cross-examination vide Exh.36 by the learned advocate Mr. J. P. Parmar for the accused and during his cross-examination, the following facts come to the fore;

No written deed has been executed for this transaction. He has slight friendship with the accused.

15. The present complaint filed for the recovery of amount of Rs.1,20,000/- wherein accused has given a cheque No.023487 for amount of Rs.1,00,000/- dated 02/06/2022. The said cheque is deposited in the bank which was returned with "Account Blocked" endorsement on 04/06/2022. Legal notice given on 15/06/2022 still the accused has not paid the amount therefore the present complaint is hereby filed.

Looking to the cross-examination of the complainant which is produced vide Exh.4 wherein complainant has stated that I used to go labour work, earning around Rs.15,000/- monthly. The household expenses around Rs.4,500/-. I have not produced any documentary evidence for the same. It is admitted that accused identity is given by Mamtaben. It is admitted that Exh.10 cheque is given by Mamtaben. It is admitted that in 2019 on which date, time and place the amount of money is given which is not mentioned in complaint, examination in chief and notice. It is admitted that I have not produced any documentary evidence regarding the amount of Rs.1,20,000/- in the year 2021. It is admitted that in a complaint cheque number which is mentioned is 02348 for the said cheque number, I have filed the present criminal complaint.

Witness examined vide Exh.36 wherein he has stated that there is a requirement of money therefore the accused had taken amount from Mamtaben, the said amount of money is Rs.45,000/-. For the security reason cheque is given. Ramsinh has taken the amount of Rs.20,000/- from Mamtaben with 10% rate of interest. The said amount of money is given by Ramsinh but cheque is not returned by Mamtaben. In the cross-examination, he has stated that I have friendship with the accused. It is admitted that there no written agreement took place.

Looking to the connotation, the present complainant has not clarified the clear cheque number in his complaint as well as in cross-examination, no correction took place till date. Further, there is cheque amount variation in a cross-examination as well in complaint. Further, as per the accused he did transaction with Mamtaben not with the present complainant. Looking to the connotation, the present complainant has not fulfilled the basic ingredients of Section 138 of the Negotiable Instrument Act hence the present complaint is not tenable in the eye of law. Hence, the present complainant has not proved legal debt as well as the transaction. Therefore looking to the oral as well as documentary evidence of the present case, it is clear that the complainant has not been able to prove the legal enforceable debt and other liability consequently upon the oral as well as documentary produced in the present case on hand, this court is of the view that no case is made out against the accused under Section 138 of the Negotiable Instruments Act and the compliant is required to be dismissed as rejected. Therefore discussing the above facts and law related to the present case on hand, I am giving the answer of Issue/Question No.1 in the negative and so far as question No. 2 is concerned, final order would be passed accordingly and hence the following order:

:: O R D E R ::

1. The complaint under Section 138 of the Negotiable Instruments Act is hereby rejected.

2. Present accused Parmar Ramsinh Sardasinh is hereby acquitted under Section 255(1) of the Code of Criminal Procedure, for the offence punishable under Section 138 of the Negotiable Instruments Act.

3. The accused is directed to furnish the bail bond of Rs.5,000/- as per the provision of 437 (A) of the Negotiable Instruments Act.

Signed and pronounced in open court today on 2nd day of June, in the year 2026.

Date: 02/06/2026 **[I. M. Shaikh]**
At : Prantij **Addi. Chief Judicial Magistrate**
Prantij
Code: GJ01485